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ANDHRA PRADESH VIGILANCE COMMISSION

VIGILANCE MANUAL
VOLUME I

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GOVERNMENT OF ANDHRA PRADESH
Hyderabad

CONTENTS

DETAILED CONTENTS

CHAPTER II
VIGILANCE COMMISSION

CHAPTER IV
BRIBERY, CORRUPTION, CRIMINAL MISCONDUCT (PREVENTION OF CORRUPTION ACT, 1988)

CHAPTER V
MISCONDUCT

CHAPTER VI
COMPLAINTS

CHAPTER VII
SURPRISE CHECKS

CHAPTER X
REGULAR ENQUIRY

CHAPTER XI
REGISTERED CASES

CHAPTER XII
INVESTIGATION — BASIC PROVISIONS

CHAPTER XV
TRAPS

CHAPTER XVI
DISPROPORTIONATE ASSETS

CHAPTER XVIII
SANCTION OF PROSECUTION

CHAPTER XIX
TRIAL, APPEAL, REVISION

CHAPTER XX
DEPARTMENTAL ACTION IN CASE OF CONVICTION

CHAPTER XXI
CONDITIONS OF SERVICE
(ARTICLES 309, 310, 311 OF CONSTITUTION)

CHAPTER XXII
CONSTITUTIONAL PROTECTION, PRINCIPLES OF NATURAL JUSTICE, STANDARD OF PROOF, SIMULTANEOUS DEPARTMENTAL ACTION ETC.

CHAPTER XXIII
PENALTIES
SCOPE, CURRENCY AND EFFECT

CHAPTER XXIV
SUSPENSION

CHAPTER XXV
DISCIPLINARY PROCEEDINGS — INITIATION OF ACTION

CHAPTER XXVI
MINOR PENALTY PROCEEDINGS

CHAPTER XXVII
MAJOR PENALTY PROCEEDINGS

CHAPTER XXVIII
ORAL INQUIRY

CHAPTER XXIX
COMMON PROCEEDINGS, EX PARTE PROCEEDINGS, TIME LIMITS ETC.

CHAPTER XXX
DISCIPLINARY PROCEEDINGS BEFORE TRIBUNAL

CHAPTER XXXII
ACTION ON INQUIRY REPORT

CHAPTER XXXV
CONSULTATION WITH
PUBLIC SERVICE COMMISSION

CHAPTER XXXVI
ORIGINAL APPLICATIONS AND WRIT PETITIONS

CHAPTER XXXVII
P U B L I C I T Y

CHAPTER XXXVIII
FURTHER MEASURES TO COMBAT CORRUPTION

work in the Government Departments, the Public Undertakings and Autonomous Bodies receiving assistance from the Government. The Departments of Secretariat, the Director General, Anti-Corruption Bureau and the Director General, Vigilance and Enforcement report to him. The General Administration Department under the Chief Secretary exercises, administrative and supervisory control over the Director General, Anti-Corruption Bureau and the Director General, Vigilance & Enforcement.

2(i)2 A High Level Committee under the Chairmanship of the Chief Secretary to Government with the following members was constituted by the Government to look into all aspects of prevention of corruption and to review the working of the anti-corruption agencies, viz. the Anti-Corruption Bureau, the DG-V&E, the Police Department and the Crime Investigation Department to the extent it concerns offences by public servants.

Chief Secretary to Government	…	Chairman
Director General and Inspector General Of Police, Hyderabad	…	Member
Chairman, Commissionerate of Inquiries	...	Member
Chairman, Tribunal for Disciplinary Proceedings, Hyderabad	…	Member
Director General (Vigilance & Enforcement)& E.O.Prl. Secretary, General Admn.Dept.	...	Member
Director General, Anti-Corruption Bureau, Hyderabad	...	Member
Inspector General (Intelligence)	…	Member
Secretary (Poll), General Admn.Dept.	…	Convener

2(i)3 While constituting this Committee the Government placed highest importance on providing clean and corruption-free administration.

(ii) Vigilance Cells, Chief Vigilance Officers and Vigilance Officers

2(ii)1 With a view to prioritizing the work relating to vigilance and disciplinary matters arising therefrom, Government decided

that reorganization of work in the Secretariat, offices of Heads of Departments, Public Enterprises and other bodies may be undertaken in such a way that vigilance and disciplinary matters are separated from other service matters and centralized in clearly identifiable vigilance sections. Depending on the volume of work, disciplinary matters relating to corruption, criminal misconduct and misappropriation in each Secretariat Department, offices of Heads of Departments, Public Enterprises etc. should be dealt with in one or more Sections exclusively reporting to one or more Assistant Secretaries/supervising officials, who in turn report to the Chief Vigilance Officer in the Secretariat Department or Vigilance Officer in the office of the Head of the Department or Enterprise or authority. The Chief Vigilance Officer should be in complete charge of the entire vigilance and disciplinary function of the whole Department and report to the Secretary or Secretaries in charge of the Department in respect of vigilance matters concerning them. Vigilance Officers would similarly report to the Head of the Department or the Chief Executive of the Public Enterprise as the case may be. This way the Government hopes to achieve unified handling of vigilance matters and effective exercise of supervision.

2(ii)2 It is the intention of the Government that the Chief Vigilance Officers shall as far as practicable be full-time officers in exclusive charge of all aspects of vigilance. This objective is by and large to be achieved in major Departments with large number of officers by re-allocation of subjects. Accordingly Government decided that there shall be a full-time Chief Vigilance Officer to begin with in the Secretariat Departments of Revenue, Home, Municipal Administration & Urban Development; Health, Medical & Family Welfare, Irrigation and Command Area Development; Transport, Roads and Buildings, Panchayati Raj and Rural Development; and Education. The Government have emphasized the fact that the Chief Vigilance Officer should not be entrusted with any subject other than vigilance matters in these Departments. The Chief Vigilance Officers may not be lower in rank than a Deputy Secretary to Government. The Vigilance Officers in Directorates, Government Undertakings/ Government Companies and such other Institutions

shall be selected from among the senior officers by the Head of the Department, the Head of the Undertaking/Institutions. The Chief Vigilance Officers and the Vigilance Officers shall be appointed in consultation with the Commission. No person whose appointment as Chief Vigilance Officer or Vigilance Officer is objected to by the Commission, shall be so appointed. No officer against whom there have been any punishments or against whom allegations of misconduct are pending investigation or enquiry shall be nominated as a Chief Vigilance Officer or a Vigilance Officer. The officers appointed to these posts shall be persons of impeccable integrity and be of sufficiently high rank in the hierarchy. The Chief Vigilance Officer and the Vigilance Officer, besides being the link between the Commission and the Departments, act as Special Assistants to the Secretary to Government, the Head of the Department, Head of the Government Undertaking/ Government Company/ Institution as the case may be.

Collectors are Chief Vigilance Officers

2(ii)3 Collectors of Districts shall be the Chief Vigilance Officers within their jurisdiction. Their functions will be:-

(i) to entrust any complaint, information or case for expeditious enquiry to the concerned Departmental Officers at the district level as per the instructions to be issued by the Government from time to time:

Provided that in respect of Gazetted Officers the Collector shall himself conduct such enquiry;

Provided further that where the Collector considers it necessary to entrust such enquiry to the Anti-Corruption Bureau, he shall forward the complaint, information or case with his views to the Vigilance Commission as to further action;

(ii) to co-ordinate with the Officers of the Anti-Corruption Bureau in his jurisdiction, the efforts to prevent corruption; and

(iii) to ensure that the existing procedures in the district offices are examined with a view to eliminate factors which provide opportunities for corruption and malpractices.

Functions of Chief Vigilance Officers and Vigilance Officers

2(ii)4 The role of a Chief Vigilance Officer of a Secretariat Department or a Vigilance Officer of an office of the Head of Department, a public enterprise and an autonomous institution, to which the jurisdiction of the Andhra Pradesh Vigilance Commission extends, may be broadly categorised under preventive vigilance and punitive vigilance. While detection of corruption and other malpractices and punishment of officials indulging in corruption and misconduct, which are measures constituting "punitive action", are certainly important, what is even more important is the taking of "preventive action". Government issued a job chart on the role of the Chief Vigilance Officers and the Vigilance Officers in G.O.Ms.No.104 G.A. (Spl.B) Dept. dt. 4-4-2003 which outlines their functions in the twin areas of preventive vigilance and punitive vigilance as follows:-

2(ii)5 Measures of preventive vigilance include -

(a) a detailed examination of the existing organisation and procedures in relation to each of the departments with a view to eliminate or minimise factors which provide opportunities for corruption or malpractices;

(b) planning and enforcement of regular inspections and surprise visits for detecting acceptance of mamools or extraction of bribes or harassment of general public; misappropriation of funds; inordinate delay in the disposal of applications; failure in quality or speed of work which would be indicative of the existence of corruption or malpractices;

(c) location of sensitive spots or places and points of corruption, regular and surprise inspections of such spots and proper scrutiny of personnel who are posted in sensitive posts which involve dealings with members of the public on a considerable scale;

(d) preparation and maintenance of lists of (i) officers of doubtful integrity and (ii) lists of suspect officers and maintaining proper surveillance over such officers;

(e) to take action for blacklisting of unscrupulous suppliers, contractors;

(f) to effect recoveries whenever misappropriation takes place;

(g) ensure observance of Conduct Rules relating to integrity covering (i) submission of statements of assets and acquisitions (ii) gifts (iii) relatives employed in private firms or doing private business (iv) benami transactions (v) possession of cash, and the like;

(h) to undertake scrutiny of property statements annually to check acquisition of property without prior permission or intimation and possible disproportionate assets.

(i) devise measures to reduce administrative delays through review of existing procedures and practices to find out the cause of delay, the points at which delay occurs and devise suitable steps at different stages and by setting definite time-limits for dealing with files etc.

(j) a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of these functions and of the exercise of powers of control are capable of improvement, can be undertaken.

(k) device adequate methods of control over exercise of discretion. The right to act according to discretion does not mean right to act arbitrarily. The fairness of the method by which the discretionary decision was arrived at may certainly be looked into.

(l) citizens should be provided with an easy access to administration at various levels without need for intervention of touts and intermediaries.

(m) only those whose integrity is above board should be appointed to high administrative positions.

(n) in making selections from non-gazetted to gazetted rank for the first time, all those whose integrity is doubtful should be eliminated.

(o) every officer who sponsors a name for promotion should be required to record a certificate that he is satisfied that the Government servant recommended by him is a man of integrity.

(p) grant of extension / re-employment should be to a person with good reputation for integrity only.

(q) to have in every department a proper agency which a person with a genuine complaint can approach for redress. Bona fide complainants should be protected from harassment or victimisation.

(r) to require all visitors to offices dealing with licences/permits to enter their names and purpose of their visits in a register to be kept at the Reception Office.

(s) to prevent sale of information. Information not treated as secret should be made freely available to the public.

(t) to see that time-limits are prescribed and enforced for the processing of various applications.

2(ii)6 On the punitive side, the Chief Vigilance Officer's/ Vigilance Officer's responsibility will be:

(i) to take prompt action to conduct or cause inquiry into allegations of corruption received by him directly or from superior officers or the Vigilance Commission;

(ii) to take expeditious action on request for suspension/ transfer made by the Anti-Corruption Bureau, Vigilance & Enforcement or the Crime Investigation Department to facilitate investigation or suggestion to that effect by the Vigilance Commissioner;

(iii) to expeditiously process and accord permission for attachment of properties sought by the Anti-Corruption Bureau or other investigating agencies;

(iv) to ensure that sanction for prosecution is accorded, within the stipulated time to the Anti-Corruption Bureau or other investigating agencies;

(v) to seek Vigilance Commissioner's advice in all cases involving vigilance angle respective of the source of the case including the nature of action to be taken on preliminary enquiry, discreet enquiry, regular enquiry reports and investigation reports on allegations of corruption originating within the Department or from the Director General, Vigilance and Enforcement or the Anti-Corruption Bureau or other agency;

(vi) to oppose and appeal against any decision of Appellate Courts to suspend trial of corruption cases;

(vii) to appeal against any decision to stay conviction in corruption cases;

(viii) to ensure immediate dismissal/withholding or withdrawal of pensionary benefits in cases where accused officers are convicted for corruption, for conduct that led to conviction without waiting for any appeal to be filed or decision on the appeal;

(ix) to ensure filing of appeal, Special Leave Petition in cases of acquittal in corruption cases where there are grounds for doing so;

(x) to ensure that charge-sheet, statement of imputations, lists of witnesses and documents are carefully prepared and copies of all the documents relied upon and the statements of witnesses cited on behalf of the disciplinary authority are supplied to the charged officer along with the charge-sheet;

(xi) to ensure that all documents required to be forwarded to the Inquiring Officer are carefully sorted out and sent promptly;

(xii) to ensure that there is no delay in the appointment of the Inquiring Officer and Presenting Officer and no dilatory tactics are adopted by the charged officer or the Presenting Officer;

(xiii) to ensure that cases against public servants on the verge of retirement do not lapse due to limitation for reasons such as misplacement of files etc. and that the orders passed in the cases of retiring officers are implemented in time;

(xiv) to see that timely review of suspension of officers is done in consultation with the Anti-Corruption Bureau

(xv) to ensure that the period from the date of serving a charge-sheet in a disciplinary case to the submission of the report of the Inquiry Officer should ordinarily not exceed six months;

(xvi) to ensure that the processing of the Inquiry Officer's Report for final orders of the Disciplinary Authority is done properly and quickly;

(xvii) to seek the advice of the Vigilance Commission on the decision to be taken on the Inquiry Officer's report;

(xviii) to ensure timely orders on disciplinary cases;

(xix) to scrutinise final orders passed by subordinate Disciplinary Authorities subordinate to the Department, with a view to see whether a case for revision is made out;

(xx) to see that proper assistance is given to the Anti-Corruption Bureau in the investigation of cases entrusted to them or started by them on their own source of information;

(xxi) to take proper and adequate action with regard to writ petitions/original applications filed by charged officers before the High Court/A.P.A.T. and in particular to expeditiously move for vacation of ex parte stay if any granted without notice including stay of suspension and appeal against decisions contrary to established principles;

(xxii) to ensure that the Vigilance Commission is consulted at all stages where it is to be consulted and that as far as possible, the time limits prescribed for various stages are adhered to;

(xxiii) to secure confiscation of assets in disproportionate assets cases where the accused officer is punished;

(xxiv) to ensure prompt submission of returns to the Commission; and to arrange to conduct timely review of vigilance cases by Secretary at regular intervals;

(xxv) to review from time to time the existing arrangements for vigilance work in the Department and subordinate offices to see if they are adequate to ensure expeditious and effective disposal of vigilance work;

(xxvi) to ensure that the competent disciplinary authorities do not adopt dilatory tactics in processing vigilance cases, thus knowingly or otherwise helping the suspect public servants, particularly in cases of officers due to retire;

(xxvii) to prosecute hostile witnesses or proceed against them departmentally whenever ordered by Courts or suggested by the Vigilance Commission.

2(ii)7 Information about corruption, malpractices or misconduct reaches the CVO/VO from different sources. The CVO is also expected to scrutinise Reports of Legislative Committees like the Estimates Committee, Public Accounts Committee and

the Committee on Public Undertakings and Audit Reports, Proceedings of the State Legislature and complaints and allegations appearing in the press relating to his own organisation and to initiate action whenever a case having a vigilance angle comes to light from any of these sources. The CVO should have a system of collecting his own intelligence about corruption, misconduct and malpractices among employees.

2(ii)8 It will also be the CVO's/V.O's responsibility to see that the following types of cases are normally entrusted to the Anti-Corruption Bureau for investigation:

(i) Allegations involving offences such as bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records etc.

(ii) Possession of assets disproportionate to known sources of income.

(iii) Cases in which enquiries have to be made from non-officials and non-government records or books of accounts have to be examined.

(iv) Cases of a complicated nature requiring expert police investigation.

2(ii)9 With regard to complaints decided to be looked into departmentally, the CVO should ensure that inquiries are completed promptly say within a period of three months and the progress of those which remain pending beyond this period is reviewed by himself or an authority higher in rank to the officer investigating the case. The CVO should also ensure that the procedure prescribed is strictly followed by all vigilance officers.

2(ii)10 It will also be the CVO's responsibility to obtain information about the disposal and pendency of complaints and vigilance cases from Vigilance Officers of Heads of department and Subordinate Offices/Units under his department.

2(ii)11 The CVO should invariably review all pending investigation reports, disciplinary cases and other vigilance matters in the first week of every month and take necessary steps for expediting action on the pending matters. In addition, the Secretary of each Department and the Chief Executive of Public Sector Undertakings etc. should undertake a quarterly review of the vigilance work done in the Department/Organisation.

2(ii)12 Although the discretion to place a Government/Public servant under suspension when a disciplinary proceeding against him is either pending or is contemplated is that of the Disciplinary Authority, the CVO should assist the Disciplinary Authority in the proper exercise of the discretion.

2(ii)13 After the disciplinary Authority has applied his mind to the Inquiry Officer's report and come to a tentative finding that one of the major penalties should be imposed, the final order should be carefully drafted. It should show that the Disciplinary Authority has applied its mind and exercised its independent judgment. No reference should be made to the Vigilance Commission's advice in any order of the Disciplinary Authority.

2(ii)14 The rules with regard to disciplinary proceedings will have to be scrupulously followed at all stages by all concerned and any violation of the rules would render the entire proceedings void. The CVO, therefore, has the special responsibility to see that these rules are strictly complied with at all stages by all concerned.

(iii) Anti-Corruption Bureau

2(iii)1 In Andhra Pradesh, the Anti-Corruption Bureau headed by a Director of the rank of a Deputy Inspector General of Police (independent of the Police Department), with headquarters at Hyderabad, was formed on 2-1-1961 as a separate department under the direct control of the Chief Secretary to Government in the General Administration Department, with the object of effectively checking the increasing evil of corruption in the services

and to improve the moral tone of the administration in the State, by G.O. Ms. No.1880 G.A. (SC-C) Dept. dated 16th December, 1960. Till then, these functions were being discharged by the anti-corruption machinery designated as the 'X' Branch, C.I.D., headed by a Superintendent of Police functioning under the control of the Inspector General of Police of the State.

2(iii)2 The Bureau is now headed by a Director General of the rank of a Director General or an Additional Director General of Police and he is invested with all the powers, financial, administrative etc. ascribed to a head of department and he functions as Head of Department.

2(iii)3 The Director General takes final decision in enquiries and investigations and recommends to the Government the action to be taken. The Director General is assisted by a Director of the rank of an Inspector General of Police, Addl. Directors of the rank of Deputy Inspector General of Police and Joint Directors of the rank of Superintendent of Police. The Director General should be kept informed of all important matters and developments and instructions obtained wherever considered necessary, by the Director, Addl.Directors and Joint Directors.

2(iii)4 The State is divided into Ranges comprising the Districts, each headed by a Deputy Superintendent of Police assisted by Inspectors. There are Special Units with state-wide jurisdiction.

2(iii)5 The Anti-Corruption Bureau is a full-fledged premier investigating Agency dealing with cases of bribery, corruption and criminal misconduct with officers in-charge of a Police Station notified under clause (o) and demarcated Police Stations declared under clause (s) of Sec. 2 of the Criminal Procedure Code.

(iv) Economic Offences Wing of the Crime Investigation Department

2(iv)1 The Anti-Corruption Bureau investigates offences under the Prevention of Corruption Act,1988. Offences under the Indian Penal Code,1860 committed by Public Servants under

sections like 166, 167, 168, 169, 217, 218, 219, 409, 420, 468, 477A, the more important of which are criminal breech of trust, misappropriation, forgery and falsification of accounts, are not enquired into by the Anti-Corruption Bureau. Ordinarily offences under the IPC relating to public servants referred to above are to be investigated by the local police for which a complaint is to be made to the Station House Officer concerned. However, misappropriation of public funds coming to light in the course of investigation of a case under the Prevention of Corruption Act, 1988 will be investigated by the Anti-Corruption Bureau. The Government have decided that cases of misappropriation of public funds in which a prima facie case has been made out may be referred to the CID for investigation depending on the seriousness of the offence. Any reference of such a case to the CID shall be done in consultation with the Home Department in the Secretariat. The aim of the Government is that, more serious cases of the above nature committed by the public servants alone should be referred to the CID.

2(iv)2 The Government issued guidelines for referring cases to the Crime Investigation Department (CID). They pointed out that to establish the offences of misappropriation, cheating, forgery, use of forged documents, utilisation of fake certificates etc, the following are the essential factors to be borne in mind:

(a) The complaint lodged by the competent authority should mention particulars of the crime, the persons responsible, amount involved and the manner or mode of commission of the offence.

(b) The complaint should further give the essential ingredients of a cognizable offence. The essential ingredients of some criminal offences committed by a Government servant are given at Annexure-I.

(c) Whenever a complaint involving misappropriation of public funds is preferred, it should be mandatory to initiate departmental audit to establish the instances and amounts of misappropriation. Steps should be taken by the concerned officers to ensure

preservation of the original documents i.e., the bills, vouchers, etc. The requisitions should be sent to the Treasury authorities/AG Office with a specific request to preserve the documents, which would prove the culpability of the persons responsible for the fraud / misappropriation. Specimen signatures and admitted handwritings of persons involved in the misappropriation, fraud etc., should be made available to the investigating agency.

(d) For an expeditious and proper investigation, it is necessary that relevant records like the forged documents, duplicate copies of vouchers, audit report, report of preliminary enquiry conducted by the department, note files, registers etc. are handed over in original to the CID, xerox copies being retained by the department.

Lodging of complaints

2(iv)3 The departments of Secretariat are required to lodge comprehensive complaints with the CID containing particulars of the crime and persons responsible. The complaint should be lodged with the original signature of the officer who is acquainted with the facts of the case and has been associated with the preliminary / departmental enquiry. Copies of the relevant documents should be enclosed with the complaint. The departments preferring complaints should ensure the collection and safe custody of the original documents.

Attachment under Ordinance

2(iv)4 Where a scheduled offence involving the money of the Government under the provisions of Criminal Law Amendment Ordinance of 1944 is committed, the departmental officers should collect data of movable/immovable property of the persons responsible for the commission of the offence, so that the properties are subjected to attachment. The monetary pensionary benefits of the public servant should be released only in consultation with the investigating agency.

Nodal Officer to assist

2(iv)5 Investigating Officers find it difficult to trace the original documents and relevant records and officers and witnesses required

for the investigation. Therefore, an officer acquainted with the case should be made available to maintain liaison with the Investigating Officer.

2(iv)6 In G.O.Ms.No. 677, G.A. (Ser.D) Dept., dt.30-5-1961, the Government directed the Heads of Office to hand over the records requisitioned by the Anti-Corruption Bureau and to render necessary assistance to the Investigating Officers. These instructions are applicable to cases investigated by CID as well.

2(iv)7 Senior Civil Servants who are de facto complainants in criminal cases or who are intimately acquainted with the facts and circumstances of the case and whose evidence is relevant and material should tender evidence in a Court of Law.

2(iv)8 Instructions issued by the Government regarding holding of simultaneous departmental action in cases where criminal action is initiated, should be complied with.

Check list for referring cases

2(iv)9 A Check list for referring cases to CB-CID is enclosed as Annexure-II and it should be followed before consulting the Home Department.

Quarterly Returns

2(iv)10 The departments of Secretariat should send a quarterly return of cases referred to the CID covering the following particulars:

a) Brief report of the case mentioning specific acts of omission and commission of individual officers constituting a criminal offence.

b) Particulars of documents furnished to the Investigating Agency.

c) Steps taken for ensuring speedy progress of investigation including appointment of a Nodal Officer to assist the Investigating Agency.

Annexure-I

Essential ingredients of a cognizable offence

Accused:

1. The accused should be a public servant or an Agent;
2. he should have been in such capacity entrusted with the property in question or with dominion over it; and
3. he should have committed criminal breach of trust in respect of the property.

Cheating: Sec. 420 IPC

1. There must be deception by the accused, and
2. by the said deception, the accused must dishonestly induce the complainant—
   a) to deliver any property to any person or
   b) to make, alter or destroy the whole or any part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security.

Forgery: Sec. 468 IPC

1. The disputed document is a forgery;
2. the accused forged the document and
3. he did so intending that the document forged shall be used for the purpose of cheating.

Using as genuine a forged document: Sec. 471 IPC

i) The document in question is a forged document;

ii) the accused used the said forged document as a genuine document;

iii) he knew, or he had reason to believe that it is a forged document when he used it; and

iv) he used it fraudulently or dishonestly.

Annexure-II

Check list for referring cases to CB.CID

- Examine whether misconduct of Govt. servant warrants criminal action or departmental action.
- If the misconduct of the Govt. servant warrants criminal action, examine whether the facts of the case attract penal provisions of law.
- In case it is prima facie established that the facts of the case constitute a cognizable offence, the Officer fully acquainted with the case should be directed to lodge a self-contained complaint with the CB.CID under his signature.
- Action should be taken to preserve incriminating material evidence. In case of a scheduled offence involving Government money, action should be initiated to collect particulars of movable/immovable properties of the accused.
- For facilitating expeditious completion of investigation, the department concerned should be required to nominate a Nodal Officer.

(U.O.Note No.1067/L&O-I/A1/2000-4 G.A.(Law & Order-I) Dept. dt.30-12-2000)

(v) Directorate General of Vigilance & Enforcement

2(v)1 The Vigilance & Enforcement Department was constituted in G.O.Ms.No.269 G.A.(SC.D) Department, dt. 11-6-85 by the Government as part of GAD to conduct enquiries / investigations into specific allegations affecting public interest and to take effective measures through its own machinery and with the help of other vigilance bodies, organisations and departments of the Government to achieve the objectives of (i) prevention of leakage of revenues, (ii) detection of misuse or wastage of Government funds and resources, (iii) prevention of loss of State's wealth and natural resources, (iv) prevention of losses/wastage and graft in Public Sector Undertakings and Government Companies, (v)

advising the Government regarding changes needed in laws and rules and (vi) advising Government on matters referred to it. It is thus required to carry out Vigilance functions where Government spending is involved and enforcement functions in respect of revenues due to Government.

2(v)2 The Department is headed by an Officer designated as Director General (V&E), and ex officio Prl.Secretary to Government, who is assisted by Director (V&E) of the rank of Inspector General of Police.

2(v)3 The Department consists of (i) Revenue Wing, (ii) Engineering Wing (iii) Development Works Wing and (iv) Natural Resources Wing, each headed by a Joint/Addl.Director. It has 12 Regional Offices headed by a Regional Vigilance & Enforcement Officer.

2(v)4 The V&E Department has jurisdiction and powers throughout the State of Andhra Pradesh in respect of matters to which the executive authority of the State extends, covering all Departments of the Government, State Public Sector Undertakings, State Government Companies, all local bodies like Municipalities and Zilla Parishads and quasi-Government bodies and organisations receiving aid or assistance of the State Government in any form.

2(v)5 Full co-operation and facilities should be extended by administrative authorities and individual public servants to the officers of V&E Department, in conducting enquiries/investigation, in making over records and making available witnesses, in providing technical assistance and in transferring suspect public servants and placing them under suspension.

2(v)6 Prosecution should be the general rule in cases of bribery, corruption and criminal misconduct like causing wrongful loss to the Government or wrongful gain to others, and in such cases, the V&E Department will submit a report to the Government or the Director General, Anti-Corruption Bureau recommending registration of a case and investigation by the Anti-Corruption Bureau With the vesting of power under cls. (o) and (s) of sec. 2 of the Criminal

Procedure Code, the Vigilance & Enforcement Department itself could take up investigation of offences.

2(v)7 Petitions and complaints received from the Vigilance Commissioner, Institution of Lokayukta and Upa-Lokayukta, Chief Minister's Office and Chief Secretary addressed to the Director General (V&E) will be enquired into or investigated and reports submitted.

2(v)8 Normally, V&E Department does not entertain requests from Departments to conduct enquiries on petitions received against their officials. In exceptional cases, very important enquiries may be entrusted, with the approval of the Chief Secretary.

2(v)9 The Director General (V&E) may convene meetings with the Principal Secretaries, Heads of Department or with their representatives and review the follow-up action taken on the reports of the V&E Department. The Departments are required to inform the action taken and the Director General (V&E) is authorised to call for Action Taken Reports (ATRs) from the Departments. (Single Directive issued in G.O.Ms.No.504, G.A. (V&E-A) Dept. dt. 25-11-97)

2(v)10 The Director General, Vigilance and Enforcement Department is required to send reports having a vigilance angle to the Departments concerned through the Vigilance Commission for advice. (U.O.Note No.36/Spl.C/2003-1 G.A. (Spl.C) Dept. dt.26-5-2003)

2(v)11 In cases enquired into/investigated by the Vigilance & Enforcement Department, Departments of Secretariat and Heads of Department are required to prepare the draft articles of charge etc. utilising their own resources. The Director General, V&E should forward the documents along with the report of inquiry/investigation and render assistance in identifying witnesses and documents to be cited in the articles of charge and in securing the witnesses, and an officer of the V&E Department may be appointed as presenting officer wherever considered necessary. (U.O.Note No.599/Spl.B/99-1 G.A. (Spl.B) Dept. dt.31-5-2001)

2(v)12 Government clarified that Investigating Officers of the Vigilance & Enforcement Department should appear before the Commissionerate of Inquiries on behalf of the Disciplinary Authority whenever required. (U.O.Note No.853/SC.E/2001-7 G.A.(SC.E) Dept. dt.28-1-2002)

(vi) The Institution of Lokayukta and Upa Lokayukta Constitution

2(vi)1 The Institution of the Andhra Pradesh Lokayukta and Upa-Lokayukta was constituted under the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983 on 1-11-1983. The A.P. Lokayukta and Upa-Lokayukta (Investigation) Rules, 1984 were framed thereunder to regulate its functioning. The Lokayukta shall be a Judge or a retired Chief Justice of a High Court and the Upa-Lokayukta, a District Judge Grade-I. They are appointed by the Governor, Lokayukta in consultation with the Chief Justice, and Upa-Lokayukta from out of a panel furnished by the Chief Justice. They hold office for a period of 5 years. They can be removed from their office by the Governor on the ground of misbehaviour or incapacity following the procedure prescribed.

Matters dealt with by Lokayukta and Upa-Lokayukta

2(vi)2 The Lokayukta and Upa-Lokayukta investigate any "action" which is taken by or with the general or specific approval of, or at the behest of a "public servant" in any case where a complaint involving an "allegation" is made in respect of such action. "Action" means action taken by a public servant in the discharge of his functions as such public servant by way of decision, recommendation or finding or in any other manner. "Allegation" means any affirmation that a public servant has abused his position as such, to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person, or was actuated in the discharge of his functions as a public servant by improper or corrupt motive and thereby caused loss to the State or any member or section of the public or is guilty of corruption or lack of integrity in his capacity as a public servant.

2(vi)3 “Public servant” means and includes a Minister (but not a Chief Minister), an M.L.A., Chairman of a Zilla Parishad, President of a Panchayat Samithi, Mayor of a Municipal Corporation, Chairman of a Municipal Council, Chairman or President of a governing body and Director of any local authority, corporation established by or under a State Act and owned or controlled by the Government, Government Company, any society registered under the Societies Registration Act which is subject to the control of the Government, any co-operative society with an area of operation over not less than a district, Vice-Chancellor or Registrar of a University and ‘officer’ appointed to a public service and post in connection with the affairs of the State holding a post carrying a minimum scale of pay of above Rs.7,400.

Matters outside jurisdiction

2(vi)4 The Lokayukta or Upa-Lokayukta shall not investigate any allegation where an inquiry has been ordered under the Public Servants (Inquiries) Act or where the matter has been referred for inquiry under the Commission of Inquiries Act, or where Lokayukta or Upa-Lokayukta gave prior concurrence for an inquiry or where a complaint is made after 6 years of occurrence of the action complained against.

2(vi)5 Members of the Judicial Service and officers and servants of any court, among others, are specifically excluded from the purview of the Lokayukta and Upa-Lokayukta.

2(vi)6 Though the Act provides for it, the Lokayukta and Upa-Lokayukta do not exercise jurisdiction over members of the All India Services, in view of the decision of the High Court of Andhra Pradesh dated 15-10-93 in W.P.Nos. 2396 & 2397 of 1993 (S. Santhanam, IAS vs. State of Andhra Pradesh and A. Valliappan, IAS vs. State of Andhra Pradesh) holding that the provisions of the A.P. Lokayukta and Upa-Lokayukta Act, 1983 to the extent they empower the Lokayukta to conduct preliminary verification and investigation into the conduct of members of All India Service are repugnant to the All India Services Act, 1951 and the rules framed thereunder rendering them thereby ultra vires of the Constitution calling for their striking down.

Matters, where Lokayukta, Upa-Lokayukta may refuse investigation

2(vi)7 Lokayukta or Upa-Lokayukta may in his discretion refuse to investigate or discontinue the investigation of any complaint if in his opinion (a) the complaint is frivolous or vexatious or is not made in good faith or (b) there are no sufficient grounds for investigation or for continuing the investigation or (c) other remedies are available to the complainant and it would be more proper for the complainant to avail of such remedies.

Demarcation of functions between Lokayukta and Upa-Lokayukta

2(vi)8 There is demarcation of functions between the Lokayukta and the Upa-Lokayukta on the basis of the category of public servants involved.

Initiation of action

2(vi)9 Lokayukta and Upa-Lokayukta initiate action on receipt of a complaint or suo motu or when required by the Governor (but not the Government). A complaint may be made by any person.

Investigation and Legal Sections

2(vi)10 The Institution of Lokayukta and Upa-Lokayukta has an Investigation Section headed by Director (Investigation) of the rank of an Inspector General of Police, and a Legal Section of legal officers headed by Director (Legal), attached to it to assist in conducting preliminary verification and investigation of the complaints.

Compliance with communications

2(vi)11 All communications received from the Institution of Lokayukta and Upa-Lokayukta calling for reports or information etc. should be attended to and complied with on priority basis and the

information etc. furnished without any delay. If the subject matter does not relate to the department to which it is referred by the Institution, the department should transmit the reference to the department concerned, as per the Business Rules, without delay. (Memorandum No.410/SC.D/91-1 dt.18-4-91 G.A.(SC.D) Dept.; Memo.No.229/SC.D/91-2 dt.12-6-91 G.A.(SC.D) Dept.; U.O.Note No.1411/SC.D/91-1 dt.17-9-91 G.A.(SC.D) Department)

Anti-Corruption Bureau not to pursue where Lokayukta or Upa-Lokayukta is seized of the matter

2(vi)12 Anti-corruption bureau will not conduct enquiry or investigation into any matter, which the Lokayukta or Upa-Lokayukta is seized of.

Preliminary Verification

2(vi)13 The Lokayukta or Upa-Lokayukta conducts preliminary verification for the purpose of satisfying himself whether there are any grounds for conducting an 'investigation' into the complaint. The preliminary verification is conducted in private and the identity of the complainant and of the public servant affected is not disclosed. Lokayukta or Upa-Lokayukta may call for remarks, information or report after a confidential probe from the concerned departmental authority or officer about the truth or otherwise of the allegation made in the complaint. They may also require any investigating agency or the investigation section of the Institution to make a confidential probe into the allegations contained in the complaint and submit a report.

Anti-Corruption Bureau to assist in preliminary verification — Guidelines issued

2(vi)14 The Institution of Lokayukta and Upa-Lokayukta has right to take the assistance of the Anti-corruption bureau at the stage of preliminary verification and the verification may be conducted as per the guidelines given below:

H Investigating Officers may contact the complainant and witnesses and peruse all relevant records.

- The public servant affected may be contacted if considered absolutely necessary, with the prior permission of the Lokayukta or Upa-Lokayukta as the case may be.
- The identity of the complainant and the public servant affected should not be disclosed to the public or the press.
- No statements should be recorded from witnesses and the question of the public servant concerned cross-examining them does not arise.
- The officer conducting the verification will not have to figure as a witness during the 'investigation' conducted by the Lokayukta or Upa-Lokayukta at a subsequent stage and he will not be called upon to substantiate his conclusions.
- His report is not furnished to the public servant concerned and his identity is not disclosed to him.
- True copies of relevant documents and extracts of entries in books etc. should be furnished along with the preliminary verification report; Lokayukta or Upa-Lokayukta will send for the original documents if and when found necessary.
- The verification should be conducted in private.
- The report should be marked 'Confidential' and sent to the Registrar of the Institution of Lokayukta and Upa-Lokayukta through a special messenger or by registered post.
- The Preliminary Verification is time-bound and should receive the first priority and completed within the time stipulated. (Memo.No.193/SC.D/84-4 dt.7-5-84 G.A.(SC.D) Dept.)

Investigation conducted by Lokayukta and Upa-Lokayukta

2(vi)15 The Lokayukta or the Upa-Lokayukta, where deems it fit after preliminary verification, conducts investigation as per the procedure laid down under sections 10 and 11 of the A.P. Lokayukta and Upa-Lokayukta Act and rule 6 of the A.P. Lokayukta and Upa-Lokayukta (Investigation) Rules, giving the complainant an

opportunity to substantiate his allegations and the public servant concerned to defend himself. The procedure satisfies the requirements of a regular inquiry conducted in major penalty proceedings under the respective C.C.A. and D&A Rules. The investigation is conducted in public, except where it is considered fit to hold it in private.

2(vi)16 For the purpose of investigation (as also for the Preliminary Verification) the Lokayukta and Upa-Lokayukta have the power of a civil court in respect of summoning and enforcing attendance of witnesses and examining on oath, requiring discovery and production of documents, receiving evidence on affidavits, requisitioning any public record from any Court or Office and issuing commissions for examination of witnesses or documents. No privilege can be claimed in respect of production of documents or giving of evidence except to the extent available in a proceeding before a court and except in the case of certain categories specified.

2(vi)17 Summonses received from the Lokayukta or the Upa-Lokayukta should be given prompt attention and the official concerned should personally attend the Institution without fail unless the summons is only for production of documents, in which case a subordinate official can be deputed to produce them. In the event of default, the Lokayukta and the Upa-Lokayukta will be constrained to issue an arrest warrant to secure the appearance of the official. Correspondence with the Institution in this regard should be under the signature of the officer concerned and not of a subordinate official. (U.O.Note No.2965/SC.E/95-1 dt.9-10-95 G.A.(SC.E) Dept.)

2(vi)18 The complainant and the public servant concerned are entitled to engage a legal practitioner on their behalf and the Lokayukta and the Upa-Lokayukta may utilise the services of an officer of the legal section of the Institution or any legal practitioner. The proceedings before the Lokayukta and Upa-Lokayukta are deemed to be a judicial proceedings for the purpose of sec.193 I.P.C. (giving of false evidence). The Lokayukta or the Upa-

Lokayukta may, for the purpose of conducting investigation utilise the services of any officer or investigation agency of the State Government or the Central Government or any other person or agency. The investigation shall be completed within a period of 6 months ordinarily and shall in no case exceed 1 year.

Liability for false complaint

2(vi)19 Whoever wilfully or maliciously makes a false complaint is liable to be punished with imprisonment upto 1 year and fine.

Findings and recommendations of Lokayukta or Upa-Lokayukta and action thereon

2(vi)20 After investigation, the Lokayukta or Upa-Lokayukta, as the case may be, by a report communicates his findings and recommendations to the competent authority (prescribed under the Act) and the latter shall examine the report and without any further inquiry, take action on the basis of the recommendation and intimate within 3 months, of the action taken. A copy of the report of investigation of the Lokayukta/Upa-Lokayukta should be furnished to the public servant to enable him to make representation and the representation, if any, taken into consideration before passing final orders. Final orders are passed under the provisions of the A.P.C.S. (CC&A) Rules, 1991 in respect of those governed by the said Rules as laid down under Rule 27 thereof.

2(vi)21 Where the recommendation is for imposing the penalty of removal from the office, of a Chairman of a Zilla Parishad or a similarly placed public functionary, the Government shall without any further inquiry, take action for the removal of the public servant from his office and make him ineligible for being elected to any office specified by the Government.

2(vi)22 Where the Lokayukta or Upa-Lokayukta is not satisfied with the action taken by the competent authority, he may make a special report to the Governor and a copy thereof be placed before the State Legislature by the Government together with an explanatory memorandum.

Consultation with Vigilance Commission, dispensed with

2(vi)23 It is not necessary to consult the Vigilance Commission where the inquiry is held by the Lokayukta or the Upa-Lokayukta. (U.O. Note No. 854/SC.E/2001-2 dt.25-8-2001, G.A. (SC.E) Dept.).

Consultation with Public Service Commission, dispensed with

2(vi)24 It is not necessary for the Government to consult the Public Service Commission where the inquiry (called 'investigation') is held by the Lokayukta or Upa-Lokayukta.

Subordinates complaining against superiors, to Lokayukta or Upa-Lokayukta constitutes misconduct

2(vi)25 Government hold that a subordinate official, though he can make a complaint about alleged irregularities to an officer immediately superior to the officer complained against, cannot complain to the Lokayukta or Upa-Lokayukta directly about the alleged irregularities committed by his superior in the same organisation. If any such complaint is given, it has to be construed as misconduct and disciplinary action taken under the provisions of the A.P.C.S. (C.C.&A) Rules, 1991. (Memo.No.284/Ser.C/84-1 dt.22-3-84 G.A.(Ser.C) Dept.)

Conferment of additional functions on Lokayukta and Upa-Lokayukta

2(vi)26 The Governor may confer on the Lokayukta and Upa-Lokayukta additional functions in relation to the eradication of corruption and powers of supervision over agencies, authorities or officers set up, constituted or appointed by the Government, for the eradication of corruption.

(vii) Andhra Pradesh Vigilance Commission

2(vii)1 The Government of India appointed a Committee on Prevention of Corruption with Sri K. Santhanam, Member of

Parliament as Chairman (known as the Santhanam Committee) in 1962 to examine, among other things, the organisation, set up, functions and responsibilities of vigilance units and to suggest measures to make them more effective. On the recommendation of the said Committee, the Government of India set up the Central Vigilance Commission in February 1964 with jurisdiction extending to all matters to which the executive power of the Union extends and to all employees of the Central Government and Central Public Undertakings and it has been functioning ever since.

2(vii)2 In the State of Andhra Pradesh, the State Government set up the Andhra Pradesh Vigilance Commission in June 1964 on the lines of the Central Vigilance Commission constituted by the Government of India with a full-time officer designated as the Vigilance Commissioner. The Commission had jurisdiction and powers in respect of matters to which the executive power of the State extends. The Vigilance Commission was abolished on 3-2-83 and in its place an one-man authority called "Dharma Maha Matra" was created to look after vigilance matters and this institution was abolished on 18-8-84.

2(vii)3 After the abolition of the Dharma Maha Matra, the State Government created a separate Department of Vigilance and Enforcement (General Administration Department) to co-ordinate the activities of the various vigilance and enforcement agencies and to advise the Government on matters relating to vigilance, enforcement and anti-corruption, by G.O.Ms.No. 269 General Administration (SC.D) department dated 11-6-85. The jurisdiction of the Vigilance and Enforcement Department extended to all employees of the State Government and employees of local bodies, and employees of statutory bodies, Corporations and State-owned Companies and Corporate Institutions in which the State Government has an interest, by Notification issued by the Government. The Department was set up in order to remove the lacunae which were impeding the achievement of the objective of providing a clean, efficient administration and to increase the revenues of the State. The State Government also constituted the State Vigilance Advisory Board with the Chief Secretary as Chairman, by G.O.Ms.No. 270

General Administration (SC.D) department dated 11-6-85 to coordinate the activities of vigilance, enforcement and anti-corruption agencies.

2(vii)4 Government revived the Vigilance Commission as it existed in the past and restored the original role and functions as laid down in G.O.Ms.No. 368 G.A. (Spl.B) Department dated 29-6-1993 and appointed a full-time Vigilance Commissioner. With the revival of the Vigilance Commission, the Vigilance & Enforcement Department's functions were curtailed to that effect. (G.O.Ms.No.504 Genl.Admn. (V&E.-A) Dept., dated 25-11-1997)

CHAPTER II

VIGILANCE COMMISSION

1. Introduction

1.1 The Vigilance Commission has jurisdiction and powers throughout the State of Andhra Pradesh in respect of matters to which the executive power of the State extends, to check, prevent and eradicate corruption in the public services and to deal with any complaint, information or case that public servants, including members of All India Services, had exercised or refrained from exercising their powers, for improper or corrupt purposes and any complaint of corruption, misconduct, lack of integrity or other kinds of malpractices or misdemeanour on the part of the public servants.

1.2 The Vigilance Commissioner is responsible for the proper performance of the duties and responsibilities assigned to the Commission from time to time and for generally co-ordinating the work and advising the Departments, Government Undertakings, Government Companies and such other Institutions as may be notified by the Government from time to time, in respect of all matters pertaining to the maintenance of integrity and impartiality in the administration.

1.3 In exercise of its powers and functions, the Vigilance Commission will not be subordinate to any department and will have the same measure of independence and autonomy as the Andhra Pradesh Public Service Commission. The Vigilance Commissioner shall be appointed by the Governor by a warrant under his hand and seal and shall not be removed or suspended from the office except in the manner provided for the removal or suspension of the Chairman or a member of the Public Service Commission.

1.4 All cases of misconduct of public servants involving lack of integrity having a vigilance angle, viz. Illegal gratification, bribery, causing loss to Government and unlawful gain to themselves or

others and such other acts of corruption and criminal misconduct like misappropriation, cheating, fraud etc. should be referred to the Vigilance Commission for advice. Cases of misconduct involving administrative lapses which have no vigilance angle are not required to be referred to the Vigilance Commission for advice. In case of doubt whether a case has a vigilance angle or not, a decision can be taken at the level of the Secretary to Government of the department concerned. The Vigilance Commission, however, will be at liberty to call for any file at any time in terms of the Scheme of the Commission. (U.O. Note No. 235/SPL.B/2001-1 dt.26-7-2001 G.A. (Spl.B) Dept.)

1.5 The Commission will submit an annual report to the Government in the Genl.Admn. (SC.D) Department about its activities drawing particular attention to any recommendations made by it, which had not been accepted and acted upon and the report together with a memorandum explaining the reasons for non-acceptance of any recommendations of the Commission will be laid by the Genl.Admn. Department before the State Legislature.

2. Scheme of Vigilance Commission

2.1 Government issued the Scheme of the Vigilance Commission defining its powers, functions and jurisdiction, by G.O.Ms.No.421 G.A.(SC.D) Dept. dated 3-8-93 amended by G.O.Ms.No.451 G.A.(Spl.B) Dept. dt.5-11-2002, (G.O.Ms. No.424 dt.26-8-94 GA (SC.D) Dept.; G.O. Ms.No.552 dt.15-11-94 GA (SC.E) Dept.).

2.2 The Vigilance Commission has power —

(i) to cause an enquiry into any transaction in which a public servant including a member of an All-India Service is suspected or alleged to have acted for an improper purpose or in a corrupt manner.

(ii) to cause an enquiry or an investigation to be made into:

(a) any complaint that a public servant had exercised or refrained from exercising his powers for improper or corrupt purposes;

(b) any complaint of corruption, misconduct or lack of integrity or other kinds of malpractices or misdemeanour on the part of a Public Servant.

Corruption in this context has the same meaning as criminal misconduct in the discharge of official duties under the provisions of the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988).

(iii) to call for records, reports, returns and statements from all Departments / Government Undertakings / Government Companies / and such other Institutions as may be notified by the Government from time to time so as to enable the Commission to exercise a general check and supervision over the Vigilance and Anti-corruption work in the Departments / Government Undertakings / Government Companies and such other Institutions as may be notified by the Government from time to time.

(iv) to take over under his direct control such complaints, information or cases as he may consider necessary for further action which may be either:-

(a) to ask the Anti-Corruption Bureau to register a regular case and investigate it;

or

(b) to entrust the complaint, information or case for enquiry:

(1) to the Anti-Corruption Bureau

or

(2) to the Department / Government Undertaking / Government Company concerned and such other Institutions as may be notified by the Government from time to time.

(v) In cases referred to in paragraph (iv)(b)(1) and also in all other cases where the Anti-Corruption Bureau has made enquiries

including suo-motu enquiries, the preliminary report of the enquiry will be forwarded by the Anti-Corruption Bureau to the Vigilance Commission. A copy may be sent by the Bureau to the Genl. Admn. (SC.F) Dept., and the concerned Department/Government Undertaking/Govt. Company and such other Institution as may be notified by the Government from time to time. The Vigilance Commission will consider whether or not a regular enquiry is called for. If a regular enquiry is considered necessary by the Vigilance Commission against public Servants other than those concerning members of the All-India Services and Heads of Departments, it will authorise the Bureau to conduct a regular enquiry under intimation to the General Administration (SC.F) Dept., and the concerned Dept./Government Undertaking/Government Company and such other Institutions as may be notified by the Government from time to time. If, however, a regular enquiry is not considered necessary, the Commission will advise the Department / Govt. Undertaking / Government Company / such other Institutions as may be notified by the Government from time to time, concerned as to further action. In cases taken up by the Anti-Corruption Bureau suo motu in which the finding of the Bureau is that there is no basis to proceed further in the matter, the preliminary/discreet enquiry reports shall be forwarded to the Vigilance Commission while marking copies to the General Administration (SC.F) Department in duplicate for advice.

(G.O.Ms.No.424 G.A.(SC.D) Dept., dt. 26-8-1994)

In respect of cases concerning members of the All-India Services and Heads of Departments, if a regular enquiry is considered necessary by the Commission, it will authorise the Bureau to conduct a regular enquiry only after consultation with the Chief Secretary to Government under intimation to the Genl.Admn. (SC.D) Dept., and Department of Secretariat concerned. If, however, no regular enquiry is considered necessary, the Commission will advise the Chief Secretary to Government as to further action.

The final report of the enquiry by the Bureau in all cases will be forwarded to the concerned Department/Govt. Undertaking/ Govt. Company and such other Institution as may be notified by

the Government from time to time through the Vigilance Commission provided that such reports against the Members of All-India Services, and Heads of Departments will be forwarded to the Chief Secretary to Government through the Commission so that on a consideration of the report and other relevant records it may advise the concerned Department/Govt. Undertaking/Govt. Company and such other Institution as may be notified by the Government from time to time/Chief Secretary to Government, as the case may be, as to further action. A copy of report of the enquiry will be sent by the Bureau to the General Admn. (SC.F) Dept., and the concerned Department/Govt. Undertaking/Government Company and such other Institution as may be notified by the Government from time to time/Chief Secretary to Government, as the case may be.

In cases referred to in paragraph (iv)(b)(2), the report of the enquiry by the Department/Government Undertaking/Government Company and such other Institution as may be notified by the Government from time to time will be forwarded to the Vigilance Commission for its advice as to further action.

(vi) The further action on the final reports of the Anti-Corruption Bureau, Government Department/Govt. Undertaking/ Govt. Company and such other Institution as may be notified by the Government from time to time, as the case may be, will be as follows:-

i. Prosecution in a Court of Law.

ii. Enquiries by the Tribunal for Disciplinary Proceedings in respect of all Gazetted Officers except All-India Services Officers.

iii. Enquiry by the Commissioners for departmental Inquiry as may be appointed by Government.

iv. Departmental Inquiry otherwise than by the Commissioners for departmental Inquiry.

(vii) The Anti-Corruption Bureau will forward the final reports in all cases investigated by the Bureau in which it considers that a prosecution should be launched to the Department/Govt.

Undertaking/Govt. Company and such other Institution as may be notified by the Government from time to time concerned through the Vigilance Commission and simultaneously send a copy to the General Admn. (SC.F) Department and to the Department/Govt. Undertaking/Govt. Company and such other Institution as may be notified by the Government from time to time concerned for any comments within 21 days from the date of receipt of the report by the Department/Govt. Undertaking/Govt. Company/and such other institution as may be notified by Government from time to time, which the latter may wish to forward to the Commission.

(viii) The Commission after examining the case and considering any comments received from the concerned disciplinary authority will advise the concerned department / Government Undertaking / Govt. Company and such other Institution as may be notified by the Government from time to time with a copy to the G.A. (SC.F) Dept., whether or not prosecution should be sanctioned. Orders will thereafter be issued by the concerned Administrative Department in the Government in the cases of all Gazetted Officers and Non Gazetted Officers and Govt. Undertaking / Govt. Company and such other Institution as may be notified by the Government from time to time as the case may be. A copy of the final orders issued by the Government / Govt. Undertaking / Govt. Company and such other Institution as may be notified by the Government from time to time shall in all such cases be furnished to the Commission.

(ix) The final report of the Tribunal for Disciplinary Proceedings in all cases referred to it, will be referred to the Commission by the Administrative Department concerned for advice both before arriving at a provisional conclusion and final conclusion in respect of the penalty to be imposed on the Government employee concerned. The Commission will examine the entire record and advice the Administrative Department as to further action. A copy of the final orders issued by the Government shall in all such cases be furnished to the Commission.

(x) The Government in consultation with the Commission

prepare a panel of Commissioners for Departmental Inquiry for all Departments. The Commission may advise the Government to refer to one of the Commissioners for conducting an enquiry against a Public Servant in such of those cases not referred to Tribunal for Disciplinary Proceedings. The Final report of the Commissioner shall be referred to the Vigilance Commission for advice. The Government Department concerned after consideration of the Report of the Commissioner for Departmental Inquiries and advice of the Vigilance Commissioner thereon will issue final orders imposing the penalty under A.P. Civil Services (CCA) Rules or All-India Services (D&A) Rules. A copy of the final orders issued by the Government will in all such cases be furnished to the Commission for record.

(xi) The Commission having regard to the facts of a particular case may advise the Government or the Govt. Undertaking / Govt. Company/such other Institution as may be notified by the Government from time to time to have the inquiry conducted departmentally otherwise than by the Commissioner for Departmental Inquiries or Tribunal for Disciplinary Proceedings. The final report of such Departmental enquiry shall be referred to the Vigilance Commission for advice. The Government Department concerned after consideration of such report and the advice of the Vigilance Commissioner thereon will issue final orders imposing the penalty under the A.P.C.S. (CCA) Rules. A copy of the final orders issued shall in all such cases be furnished to the Commission for Record.

(xii) In any case, where it appears that the discretionary powers had been exercised for improper or corrupt purposes, the Commission will advise the Department / Govt. Undertaking / Govt. Company and such of the Institution as may be notified by the Government from time to time that suitable action may be taken against the Public Servant concerned and if it appears that the procedure or practice is such as affords scope or facility for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed or altered in a particular manner.

(xiii) The Commission may initiate at such intervals as it considers suitable review of the procedure and practice of Administration in so far as they relate to the maintenance of integrity in the Administration in all departments of administration.

(xiv) The Commission may collect such statistics and other information as may be necessary.

(xv) The Commission may obtain information about action taken on its recommendations.

2.3 The Commission will be provided with such staff as may be necessary for the proper discharge of its duties and responsibilities in consultation with the Vigilance Commissioner. The staff may include administrative, technical and legal officers.

2.4 There will be one Chief Vigilance Officer for each Secretariat Department and Vigilance Officers in all subordinate and attached Offices and in all Government Undertakings/ Government Companies and such of the Institutions as may be notified by the Government from time to time. The Chief Vigilance Officer may not be lower than the rank of a Deputy Secretary to Government and the Vigilance Officer shall be selected from among the senior officers of the department. In Government Undertakings/ Government Companies and such other Institutions as may be notified by the Government from time to time the Vigilance Officers may be of such rank as may be decided by the Head of the Undertaking in consultation with the Commission; The Chief Vigilance Officers and the Vigilance Officers in subordinate and attached offices shall be appointed in consultation with the Commission. No person whose appointment as Chief Vigilance Officer is objected to by the Commission shall be so appointed.

2.5 The Chief Vigilance Officer and the Vigilance Officers, besides being the link between the Commission and the departments, should be the special assistants to the Secretary to the Government, in the department or head of the Government Undertaking/Government Company/such of the Institution as may be notified by the Government from time to time concerned in

combating corruption, misconduct and malpractices in the department/Government Undertaking/Government Company/such of the Institution as may be notified by the Government from time to time. The Chief Vigilance Officrs will be responsible for co-ordinating and guiding the activities of other Vigilance Officers in the attached and subordinate offices and other organisation for which his department is responsible to the Legislature.

2.6 Collectors of Districts shall be the Chief Vigilance Officers for their jurisdiction. The functions will be :-

(i) to entrust any complaint, information or case for expeditious enquiry to the concerned Departmental Officers at the district level as per the instructions to be issued by the Government from time to time:

(ii) to ensure that investigations by Anti-Corruption Bureau or departmental officers are conducted expeditiously;

(iii) to ensure that the existing procedures in the district offices are examined with a view to eliminate factors which provide opportunities for corruption and malpractices.

2.7 The Vigilance Commissioner will assess the work of the Chief Vigilance Officers and the assessment will be recorded in the character roll of the said officers according to the procedure prescribed by the Government from time to time.

2.8 The Commission will take the initiatives in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against Public servants.

3. Procedure of the Commission

The Vigilance Commission issued a comprehensive set of Procedural Instructions with the approval of the Government to give effect to the Scheme, by letter No.66/VC-A2/93-3 dated 10-10-94. They lay down the procedure required to be followed by the Departments and the Anti-Corruption Bureau in dealing with complaints, conducting enquiries, investigating cases, submission and processing of reports, seeking and acting on the advice of the

Vigilance Commission and related matters. The procedural instructions contained in the following paragraphs will be observed in giving effect to the scheme set out by the Government in G.O.Ms.No. 421, General Administration (SC.D) Dept. dated 3rd August, 1993.

3(i). Authorities to which complaints may be made

Complaints charging public servants and the servants under the employ of Government Undertakings/Government Companies and such other institutions as may be notified by Government from time to time, with corruption, lack of integrity, misconduct, malpractices or misdemeanour may be made to any of the following authorities:-

(1) The Vigilance Commission;

(2) The Secretaries/Principal Secretaries to Government and Chief Secretary to Government;

(3) The Heads of Departments;

(4) The Director-General, Anti-Corruption Bureau;

(5) The Collectors of the Districts; and

(6) The Heads of Government Undertakings, Government Companies and such other Institutions as may be notified by the Government from time to time.

3(ii). Form of complaints and petitions

Petitions charging the public servants with corruption, lack of integrity etc. and addressed to any one of the authorities aforesaid shall ordinarily be in writing. In cases where persons give oral information, such information shall be reduced to writing by the authority or an officer designated in that behalf by the authority before which the information is laid. On the complaint being so reduced into writing it shall be read over to the informant and an endorsement or attestation of the information shall be duly taken. Where the informant is not willing or is desirous of concealing his

identity, he shall not be obliged to sign or attest the information. In such cases the information shall be treated as an anonymous or pseudonymous complaint and shall be dealt with accordingly.

3(iii). Anonymous and pseudonymous complaints

3(iii).1 Normally allegations contained in an anonymous petition ought not to be taken notice of except in cases where the details given are specific and, therefore, verifiable and the authority that receives such complaints may make such preliminary examination as may be necessary.

3(iii).2 In the case of petitions which are pseudonymous in character and where a specific address has been given in the complaint it shall be open to the authority which received the petition to address a communication to the person purporting to be the sender of the petition for further information. If it transpires that there is no person of the name at the address given, then it may be considered that the petitioner's name is a pseudonym and the petition dealt with in the same manner as an anonymous petition.

3(iii).3 The Government of India have since re-examined the matter in the light of instructions issued by the Central Vigilance Commission and decided that no action should at all be taken on any anonymous or pseudonymous petitions or complaints received against the cadre and non-cadre officers of the State and they must just be filed. (Circular Memo No. 706/Spl.A3/99, GA(Spl.A) Dept., dated 28.10.1999).

3(iv). Complaints against public servants of known integrity

A large number of disgruntled and disappointed persons are apt to make serious allegations against public servants out of malice or frustration. Such people generally do not reveal their identity and prefer to file anonymous or pseudonymous complaints even against public servants of known integrity and good repute. Care must, therefore, be exercised in dealing with such petitions.

3(v). Register of complaints

3(v).1 There shall be maintained in the offices of the Chief Vigilance Officers, Vigilance Officers and Anti-Corruption Bureau, a permanent register of all complaints, information or cases of corruption, lack of integrity, misconduct etc. against public servants received. It shall be maintained in form No.I by the Departments of Secretariat, and in Form No. I-A by Collectors and Vigilance Officers of the Heads of Departments/Undertakings etc.

3(v).2 A register will also be maintained in the Office of the Vigilance Commission in Form No.II.

3(vi). Complaints, information or cases received or taken notice of by Vigilance Commission

In addition to complaints or information received directly, the Vigilance Commission may call for any complaint or case filed before the Government, Heads of Departments, the Anti-Corruption Bureau, the Collectors or Heads of Government Undertakings/ Government Companies and such other Institutions as may be notified by Government from time to time, as the case may be, and take such complaint or case under its direct control or advise the concerned authorities as to further action.

3(vii). Action to be taken on complaints, information or cases received or taken notice of by Vigilance Commission

3(vii).1 Where it appears to the Vigilance Commission that the complaint does not contain specific, ascertainable or verifiable allegations or where the complaint contains allegations of a frivolous, fantastic or vexatious character, it shall be open to the Vigilance Commission to direct/advise that the complaint shall be lodged and that no further action shall be taken and wherever possible the party (complainant) may be so informed.

3(vii).2 In respect of petitions, the originals of which are addressed to the Government, Heads of Departments etc. and copies thereof are received by the Vigilance Commission, it shall

be open to the Vigilance Commission to enquire whether action is being taken by the authority to which the original petition was addressed or in appropriate cases take action suo motu on the copy and if deemed necessary or desirable intimate the concerned accordingly.

3(viii). Course of action to be taken where Vigilance Commission considers it necessary

In cases where the Vigilance Commission is of the opinion that action should be taken on a complaint or information, as the case may be, the Commission may adopt any of the following courses:-

(1) The Vigilance Commission may entrust the complaint or information for a preliminary enquiry to the administrative department of the Secretariat, to the Chief Vigilance Officer of a district or the Vigilance Officer of the Head of the Department, Government Undertaking, Government Company and such other Institution as may be notified by Government from time to time, concerned. In such cases the Chief Vigilance Officer/Vigilance Officer concerned will immediately make a preliminary enquiry to verify the allegations and submit his report in Form III to the Vigilance Commission together with relevant records for advice as to further action to be taken.

(2) The Vigilance Commission may, wherever it considers it expedient to do so, ask the Anti-Corruption Bureau to make a discreet and confidential (Preliminary) enquiry for ascertaining whether there are any prima facie grounds for the complaint. However, in respect of All-India Service Officers and Heads of Departments the concurrence of the Chief Secretary to Government shall be obtained before referring the case to the Anti-Corruption Bureau. Where the Anti-Corruption Bureau is requested to make a preliminary enquiry, it shall make discreet and confidential enquiries as it may consider necessary and expedient and forward a brief report containing the result of its investigation, indicating whether a regular enquiry is called for or not.

The Anti-Corruption Bureau will forward all its reports to the Vigilance Commission in duplicate in Form No.III with the least possible delay.

(3) The Anti-Corruption Bureau will assist the Vigilance Commission in dealing with complaints of corruption etc. against public servants and the servants under the employ of Government Undertakings, Government Companies and such other Institutions as may be notified by Government from time to time.

(4) (a) On receipt of reports of preliminary enquiries in respect of complaints against members of the All-India Services serving in connection with the affairs of the State, including Select List Officers and Heads of Departments, the Vigilance Commission shall, on a consideration of the report and other relevant records, if any, and after consultation with the Chief Secretary to Government, authorise the Anti-Corruption Bureau to conduct a regular enquiry, if in the opinion of the Commission such an enquiry by the Bureau is called for. The General Administration (SC.D) Department in respect of Indian Administrative Service Officers including Select List Officers. General Administration (SC.C) Department in respect of Indian Police Service Officers including Select List Officers and General Administration (IFS) Department in respect of Indian Forest Service Officers including Select List Officers will be kept informed in such cases. If, however, a regular enquiry is considered not necessary, the Commission will advise the Chief Secretary to Government as to the further action to be taken.

(b) On receipt of reports of preliminary enquiries in respect of complaints against public servants other than members of the All-India Services including Select List Officers and Heads of Departments the Vigilance Commission shall, on a consideration of the report and other relevant records, if any, direct the Anti-Corruption Bureau to conduct a regular enquiry if in the opinion of the Commission such an enquiry by the Bureau is called for. In such cases the Vigilance Commission will intimate the fact to the General Administration (SC.F) Department and the concerned

Department, Government Undertaking/Government Company and such other Institution as may be notified by Government from time to time. If, however, it is considered that a regular enquiry by the Bureau is not necessary, the Commission will advise the concerned Departments etc. as to the further action to be taken.

(c) The final report of enquiry by the Anti-Corruption Bureau shall be forwarded to the Chief Secretary to Government in respect of enquiries against members of All-India Services and Select List Officers through the Vigilance Commission with an advance copy to the Chief Secretary to Government. In respect of others, the final report of enquiry shall be forwarded to the concerned Principal Secretary/Secretary to Government or the Head of the Government Undertaking/Government Company or such other Institution as may be notified by the Government from time to time, through the Vigilance Commission, with advance copy to the General Administration (SC.F) Department and the concerned Principal Secretary/Secretary to Government. In cases involving employees of Government Undertakings etc. advance copies may be sent to the Head of Government Undertaking etc. also. The Chief Secretary to Government / Principal Secretary to Government / Secretary to Government / Head of the Department / Undertaking may forward his comments, if any, to the Commission within two weeks from the date of receipt of the copy of the report from the Anti-Corruption Bureau.

(d) The Regular/Final enquiry reports referred to in sub-clauses (a), (b) and (c) above shall be furnished to the Commission in Form No. VIII in duplicate and copies sent to the concerned as laid down in the said sub-clauses.

(5) In cases investigated into by the Anti-Corruption Bureau, suo motu or otherwise, where the Director General, Anti-Corruption Bureau, is satisfied that there is a case for criminal prosecution, he shall forward his report of enquiry in duplicate in Form No. VIII together with other relevant records, if any, to the administrative department of Secretariat/Undertaking etc. concerned through the Vigilance Commission with a copy to the administrative department of Secretariat and to the Head of the Department/ Undertaking/

Company and an advance copy to the General Administration (SC.F) Department. The administrative department of the Secretariat/Head of the Department / Undertaking / Company shall, on receipt of the copy of the report of the Anti-Corruption Bureau, forward its/his comments, if any, to the Vigilance Commission within two weeks from the date of its receipt by the Department / Head of the Department / Undertaking / Company. The departments of Secretariat, while forwarding their comments, shall indicate the designation of the authority empowered to sanction prosecution.

(6) In all cases where the Commission, after considering the regular/final reports, advises for launching criminal prosecution, the concerned Principal Secretary/Secretary to Government or the concerned Head of the Government Undertaking etc. shall take action to issue sanction of prosecution within a period of forty five (45) days from the date of receipt of the regular/final report with the advice of the Commission.

(7) In the case of All-India Service Officers serving in connection with the affairs of the State Government, Central Government's sanction is required for prosecution, under section 19(1) of the Prevention of Corruption Act, 1988. It would be appropriate that before moving the Central Government for sanction in such a case, the State Government should themselves take a firm decision that, in their opinion, a case for prosecution is made out and they should either issue their sanction under section 197 Criminal Procedure Code or they should, before moving the Central Government, obtain the firm orders of the competent authority in the State Government hierarchy that the State Government would issue their sanction simultaneously with the Central Government's decision to sanction the prosecution under the provisions of the Prevention of Corruption Act, 1988. There is otherwise also the risk that courts may take a view, that the State Government had not really applied its mind before according sanction in terms of section 197 Cr.P.C., in case the State Government's sanction just follows the Central Government's sanction under the provisions of

the Prevention of Corruption Act. This might result in a lacuna leading to the legal proceedings being quashed or held up.

(8) Where the Vigilance Commission is of the opinion that the case does not warrant the filing of a criminal prosecution, it may advise the Government to refer to the Tribunal for Disciplinary Proceedings for enquiry and report under section 4 of A.P.C.S. (Disciplinary Proceedings Tribunal) Act, 1960—

a) cases relating to Gazetted Officers including Select List Officers in respect of matters involving misconduct; and

b) cases relating to Non-Gazetted Officers involving corruption / integrity, enquired into by Anti-Corruption Bureau including cases of misappropriation / embezzlement investigated by Anti-Corruption Bureau or emanating otherwise and which are considered not appropriate for prosecution in a Court of Law.

(9) The Departments of Secretariat, shall, while referring cases to Tribunal for Disciplinary Proceedings for enquiry, send a copy of such reference to the Vigilance Commission. In all cases, the final report of the Tribunal for Disciplinary Proceedings shall be sent to the Vigilance Commission in duplicate together with all the relevant records by the administrative department of the Secretariat for its advice both before arriving at the provisional conclusion and after receiving the representation of the delinquent officer and before arriving at a final conclusion in respect of the penalty to be imposed on the Government servant concerned. The Vigilance Commission will examine the record and forward the same to the concerned administrative department of Secretariat with advice as to further action. A copy of the final orders issued by the Government in all such cases shall be furnished to the Vigilance Commission.

(10) Where the Vigilance Commission is of the opinion that a case does not warrant filing of criminal prosecution or inquiry by the Tribunal for Disciplinary Proceedings, as the case may be, it may advise departmental action in accordance with the procedure laid down in the A.P.C.S. (CCA) Rules, 1991, against the officers

concerned, both Gazetted including Select List Officers and Non-Gazetted. After conclusion of the enquiry, the concerned department shall forward to the Vigilance Commission a report of its conclusion together with relevant records for such advice as the Vigilance Commission may think fit to give on a consideration of the conclusions of the disciplinary authority and the relevant records in the case.

(10)(a) In cases relating to All-India Service Officers where the Vigilance Commission is of the opinion that a case does not warrant filing of criminal prosecution, the Commission may advise for taking Departmental action in accordance with the procedure laid down in All-India Services (D&A) Rules, 1969. After conclusion of the inquiry, the concerned Department shall forward to the Vigilance Commission a report of its conclusion together with relevant records for such advice as the Commission may think fit.

(11) In respect of reports against servants in the employ of Government Undertakings etc. the Vigilance Commission may, if satisfied that a criminal prosecution is inexpedient, direct the head of the Undertaking etc. to conduct necessary departmental enquiry. The advice of the Vigilance Commission shall be obtained after the conclusion of the departmental enquiry, regarding the findings on the delinquency and the penalty to be imposed on the charged officer, both before arriving at the provisional conclusion and after receiving the representation of the delinquent officer. The result of the action taken on the advice of the Vigilance Commission by the Head of the Undertaking etc. shall be reported to the Vigilance Commission together with a copy of the proceedings of orders issued in the case.

(12) In cases investigated by the Anti-Corruption Bureau suo motu or otherwise, where the Director General, Anti-Corruption Bureau, is satisfied that there is case for taking action other than criminal prosecution, he shall forward his report in duplicate in Form No. VIII together with other relevant records, if any, to the administrative Department of Secretariat/Undertaking etc. concerned through the Vigilance Commission with a copy to the

administrative department of the Secretariat and to the Head of the Department/Undertaking etc. and an advance copy to the General Administration (SC.F) Department. In the report, the Anti-Corruption Bureau may suggest whether the delinquent officer may be placed on his defence before the Tribunal for Disciplinary Proceedings or he may be proceeded against departmentally without indicating the specific penalty to be imposed. The administrative department of Secretariat/Head of the Department/ Undertaking etc. shall, on receipt of the copy of the report of the Anti-Corruption Bureau, forward its/his comments, if any, to the Vigilance Commission within two weeks from the date of its receipt by the administrative department of Secretariat/Head of the Department/Undertaking etc. On consideration of the report of the Anti-Corruption Bureau, the Commission will advice the Department/Undertaking etc. on the nature of the proceedings to be instituted.

(13) The Vigilance Commission will take action to eliminate the chances of Government servants having to face parallel enquiries by the various authorities referred to in paragraph 3 above on the same or substantially the same material, as far as possible. However, when the Anti-Corruption Bureau is conducting an enquiry/investigation, no other authority shall cause parallel enquiry/ investigation, without obtaining the advice of the Vigilance Commission.

3(ix). Complaints, information or cases received by Departments of Secretariat, Heads of Departments/ Government Undertakings/Government Companies, Collectors and the Anti-Corruption Bureau

3(ix).1 Complaints of corruption, misconduct, misdemeanour, lack of integrity etc. against Government servants received by the Departments of Secretariat, Heads of Departments/Government Undertakings/Government Companies and such other institutions as may be notified by Government from time to time, Collectors, and the Anti-Corruption Bureau, or referred to them by the Vigilance Commission, shall be dealt with by them. Complaints received by them shall be examined in the first instance in the manner provided

for in paragraph 4 above. In order to decide whether or not a detailed probe into a complaint is necessary, a prima-facie case should exist. For this purpose, the authority concerned shall conduct a preliminary enquiry. At the preliminary enquiry an attempt should be made to enquire into the allegation or a substantial part thereof with the help of available records or by discreetly contacting persons, if any, referred to in the complaint. The report of the preliminary enquiry shall be sent to the Vigilance Commission in duplicate in form No.III for advice as to the further action.

3(ix).2 Complaints referred to the Chief Vigilance Officers / Vigilance Officers etc. by the Vigilance Commission shall be enquired into by the officer to whom they are referred. If, for any reason, the authority concerned considers that he cannot enquire into it/them himself, he should return the complaint to the Vigilance Commission with the reasons therefor and suggest the manner in which the complaint may be enquired into.

3(ix).3 The Chief Vigilance Officers in the departments of the Secretariat will be the link between the Vigilance Commission and the department in which they function as Chief Vigilance Officers. They shall be responsible for helping the Vigilance Commission in unearthing corruption in the respective departments. They shall bring to the notice of the Vigilance Commission such practices or procedures which in their opinion give or likely to give rise to corruption, malpractices or lack of integrity on the part of the members of the establishment in their respective departments.

3(ix).4 The Chief Vigilance Officers shall conduct enquiries into allegations against the members of the staff under their charge either on a complaint received by them or by the Principal Secretary / Secretary to Government or on a reference by the Vigilance Commission. The Chief Vigilance Officers shall have the right to conduct the enquiry against any Government servant in their departments irrespective of the fact whether he is under the administrative jurisdiction of the Chief Vigilance Officer as Deputy Secretary / Joint Secretary / Additional Secretary to Government.

In conducting the enquiry the Chief Vigilance Officers will have the right to call for any file or document, including the property statements and confidential files of the persons concerned. They shall also have the right to examine the files of the person concerned. They shall also have the right to examine persons orally. If, in the course of conducting the enquiry, it appears to the Chief Vigilance Officer that it will be more advantageous to have the investigation conducted by the Anti-Corruption Bureau he shall have the power with the concurrence of the Principal Secretary / Secretary to Government of the Department concerned to refer the case to the Anti-Corruption Bureau under intimation to the Vigilance Commission. After the conclusion of the enquiry referred to supra, the Chief Vigilance Officer should forward his report in duplicate in Form No.III to the Vigilance Commission with the comments of the Principal Secretary / Secretary to Government, if any. In exercising their powers and performance of duties, the Chief Vigilance Officers shall carry out the advice and instructions given by the Vigilance Commission from time to time.

3(ix).5 As far as may be, all correspondence between the Vigilance Commission and the concerned departments of Secretariat shall be initiated, conducted and routed through the Chief Vigilance Officer, so that the provision of the scheme that the office of the Chief Vigilance Officer shall be the link between the department of Secretariat and the Vigilance Commission may be fully effectuated.

3(x). Complaints relating to subordinate and attached offices

3(x).1 Where a complaint of corruption, malpractice or lack of integrity on the part of a member of the staff of a subordinate or attached office or Government Undertaking or Government Company or such other Institution as may be notified by Government from time to time is received by the Chief Vigilance Officer, he shall call upon the concerned Vigilance Officer to make an investigation and furnish a report to him. On receipt of the report from the Vigilance Officer concerned, the Chief Vigilance Officer shall forward that report to the Vigilance Commission in duplicate together with the

comments, if any, through the Principal Secretary / Secretary to Government for advice as to further action.

3(x).2 The Vigilance Officers shall not be directed to make investigations into allegations against officers drawing higher pay or belonging to a higher cadre than the Vigilance Officer himself. In such cases, the Chief Vigilance Officer himself shall conduct the enquiry. The Chief Vigilance Officer shall have the right to comment upon the work of the Vigilance Officers and give them advice, guidance and instructions, from time to time.

3(xi). Complaints received by Collectors

Collectors, as Chief Vigilance Officers for their respective jurisdictions, may receive complaints not only against the officers and subordinates of the Revenue Department but also against those of other departments within their territorial jurisdiction. In respect of complaints against gazetted officers, the Collector shall himself conduct a preliminary enquiry and in respect of complaints against non-gazetted officers, he may direct the concerned Revenue Divisional Officer or the concerned District Head of the Department to enquire into the allegations and submit a report. The District Head of Departments shall render all necessary assistance and co-operation to the Collectors in this regard. The report of the preliminary enquiry of the Collector and/or those furnished by the Revenue Divisional Officers or District Heads of Departments shall be forwarded in duplicate in Form No.III to the Vigilance Commission together with his recommendation as to further action. If the Collector considers that he is unable to conduct a preliminary enquiry or direct his subordinate or district head of department concerned to conduct a preliminary enquiry or is of the view that an enquiry by the Anti-Corruption Bureau is called for, he shall forward the complaint together with any relevant records to the Vigilance Commission with his views as to further action.

3(xii). Complaints received by Anti-Corruption Bureau

3(xii).1 In all cases referred to or received by it, the Anti-Corruption Bureau shall conduct such discreet and open enquiries as it may consider necessary and expedient and forward its reports

to the Vigilance Commission with its findings and recommendations in duplicate for orders as to the further action to be taken.

3(xii).2 In the course of a preliminary enquiry where the Anti-Corruption Bureau is satisfied that there is material for a regular enquiry, it shall do so with the concurrence of the Vigilance Commission. At any stage of the preliminary enquiry if the Anti-Corruption Bureau is satisfied that there exists a case for launching criminal prosecution, or there is the likelihood of collecting evidence to deal with the officer, the Bureau shall register a case and proceed with the investigation so as to obviate the necessity of going through the same process of enquiry/investigation once over again and the resultant delay and exclude the possibility of witnesses being won over or evidence disappearing or being tampered with.

3(xiii). Reports of Anti-Corruption Bureau

3(xiii).1 All reports of preliminary enquiry conducted by Anti-Corruption Bureau shall be forwarded by it to the Vigilance Commission in duplicate in Form No.III. A copy of such report shall also be forwarded by the Bureau simultaneously to the General Administration (SC.F) Department and concerned department / Government Undertaking / Government Company and such other Institution as may be notified by Government from time to time.

3(xiii).2 Provided that in cases taken up by the Anti-Corruption Bureau suo motu and in which the finding of the Bureau is that there is no basis to proceed further in the matter, the Preliminary/Discreet Enquiry reports shall be forwarded only to the Vigilance Commission in duplicate for advice.

3(xiii).3 On completion of investigation and open or regular enquiry, the Director General, Anti-Corruption Bureau, should send his final report to Government, through the Vigilance Commission in two parts, i.e. parts ‘A’ and ‘B’ in duplicate. Part ‘A’ should contain a secret report given in complete confidence containing full particulars of the investigation for the information of the Government, and Part ‘B’ should contain confidential report of only relevant information

and also the statements of witnesses to be communicated by Government to the Head of the Department or the Tribunal for Disciplinary Proceedings for taking further action. The duplicate copy of Part 'B' and the statements of witnesses should not contain any signature or indication as to who took the statements. The Vigilance Commission will forward the original copy of Part 'A' and both copies of Part 'B' (together with the statements of witnesses) with its advice to the administrative department concerned.

3(xiii).4 The Director General, Anti-Corruption Bureau should also send simultaneously a copy of Part 'A' to the concerned administrative department for any comments which it may wish to forward to the Commission. Similarly, a copy of Part 'A' should be sent to the Chief Secretary to Government, General Administration (SC.F) Department for information.

3(xiv). Procedure in the case of complaints against All-India Services Officers, Heads of Departments and Gazetted Officers

(a) Complaints against AIS Officers/HODs

No complaint against a member of the All-India Services including select list officers and Heads of Departments shall be referred to the Anti-Corruption Bureau for enquiry without prior consultation with the Chief Secretary to Government.

(b) Procedure in the case of complaints against Gazetted Officers

The Vigilance Commission shall be consulted in respect of all complaints against gazetted officers which are received by the Department of Secretariat, Heads of Departments, Collectors etc.

(i) If in any case the administrative authority does not think that a preliminary enquiry is necessary, the complaint together with the views of the administrative authority shall be forwarded to the Vigilance Commission for its advice.

(ii) When an authority has, after a preliminary enquiry, come to the conclusion that no further action is necessary, the report of

such enquiry together with the relevant records and the views of the administrative authority shall be forwarded to the Vigilance Commission for its advice.

(iii) Where the administrative authority proposes, after a preliminary enquiry, to initiate disciplinary proceedings, the report of the preliminary enquiry, together with other relevant records, shall be forwarded to the Vigilance Commission for advice as to the further action to be taken.

3(xv). Traps

3(xv).1 In extreme cases of public servants who are notoriously corrupt and against whom charges of corruption cannot be easily booked in the usual way unless there is a direct trap, the Anti-Corruption Bureau may resort to laying of traps using its discretion well in choosing cases for laying traps. In respect of All-India Services Officers including select list officers and Heads of Departments, the Director General, Anti-Corruption Bureau shall obtain prior permission of the Chief Secretary to Government before laying a trap.

3(xv).2 After the trap is laid, and the public servant concerned is arrested, the Anti-Corruption Bureau shall forthwith inform the Vigilance Commission, the Chief Secretary to Government, the authority competent to suspend the delinquent officer, and the immediate superior authority of the delinquent officer, and send the preliminary report within a week from the date of laying the trap.

3(xv).3 The Anti-Corruption Bureau should strive to successfully deal with complaints of corruption etc. against the higher ranks and organised rackets of bribery and corruption in the Services, instead of concentrating mostly on complaints of petty corruption.

3(xvi). Powers of Anti-Corruption Bureau to collect information, register cases etc.

The Anti-Corruption Bureau will have full powers of collecting source information against all officers. Permission for preliminary or regular enquiries or registration of cases or laying traps should

be given by the Director General, Anti-Corruption Bureau personally and not by any other functionary as laid down in Government Memo.No. 163/SC.D/83-2, G.A.(SC.D) Dept., dated 30th March, 1983 read with Memo.No. 163/SC.D/83-3, G.A.(SC.D) Dept., dated 10th June, 1983. However, in respect of All-India Services Officers including select list officers and Heads of Departments permission of Chief Secretary for conducting preliminary or regular enquiry or for registering cases shall be obtained through the Vigilance Commissioner.

3(xvii). Assistance to Vigilance Commission, Chief Vigilance Officers,Vigilance Officers and Anti-Corruption Bureau

3(xvii).1 The Heads of Departments or officers concerned shall, when called for, normally furnish the relevant official records for reference to the requisitioning officer, viz., the Vigilance Commissioner (or a gazetted officer in the Commission authorised by the Vigilance Commissioner), Chief Vigilance Officers, Vigilance Officers, the Director General, Anti-Corruption Bureau or a gazetted officer of the Anti-Corruption Bureau in respect of cases against gazetted officers and an Inspector of Police or his equivalent in rank in the Anti-Corruption Bureau in respect of cases against the non-gazetted officers duly authorised in this behalf. Provided, in case of extremely confidential or privileged documents, orders of the Government shall be taken before the records are handed over to the requisitioning authority.

3(xvii).2 The records of Government may be furnished for reference if requisitioned by the Vigilance Commission or the Director General, Anti-Corruption Bureau if these records are relevant and are strictly essential for the purpose of investigation. As Government records often contain minutes of Ministers, Cabinet decisions, etc. they should not be made available without sufficient justification.

3(xvii).3 The Heads of offices whose assistance is sought shall render such assistance to the Vigilance Commission, or to the officers of the Anti-Corruption Bureau, as may be required by the investigating officers, in connection with the enquiries.

3(xviii). Secrecy

If an informant desires that his name shall not be published, care shall be taken by the Vigilance Commission, Department, Government Undertaking, Government Company and such other institution as may be notified by Government from time to time, the Anti-Corruption Bureau, or the Collector, as the case may be, to see that there is no disclosure of the informant's identity.

3(xix). Statement and Returns

3(xix).1 Every department of Secretariat, Head of Department, Government Undertaking, Government Company and such other Institution as may be notified by Government from time to time and the District Collectors shall forward to the Vigilance Commission the following statistical returns every six months as on 31st March and 30th September of every year, so as to reach the Vigilance Commission by the 15th of the succeeding month:

(i) Statement showing the disposal and pendency of complaints regarding corruption, appeals or memorials in connection therewith, in Form No.IV;

(ii) Statement showing the details of public servants under suspension for more than 6 months in Form No.V; and

(iii) Details of cases referred to the Tribunal for Disciplinary Proceedings, reports received from the Tribunal for Disciplinary Proceedings and their disposal and cases pending at the end of each quarter with reasons therefor in Form No.VI.

3(xix).2 The Anti-Corruption Bureau shall submit six monthly / annual reports on the progress and disposal of enquiries undertaken and criminal prosecutions filed in Courts of Law as on 30th September / 31st March of every year so as to reach the Commission by 15th of succeeding month in Form No.VII. The Anti-Corruption Bureau shall also send to the Commission monthly progress reports in the form of an abstract by 15th of every month.

3(xix).3 Departments of Secretariat are required to review the vigilance, disciplinary and criminal cases, every quarter periodically

at the level of Secretary to Government, Heads of Department, Chief Executives of Public Enterprises and other authorities and all appointing authorities. (U.O.Note No. 1801/Spl.B/2000-1 dt. 21-8-2000 G.A.(Spl.B) Dept.)

3(xx). Procedure in respect of Govt. Undertakings etc.

The procedure in regard to entertainment of complaints, the furnishing of statistical information and reports referred to in the foregoing paragraphs shall mutatis mutandis apply to the Government Undertakings, Government Companies and such other Institutions as may be notified by Government from time to time under the control of the State Government. The Departments of Secretariat and General Administration (PE) Department will issue suitable procedural instructions to the said Undertakings etc. with a copy to the Vigilance Commission.

3(xxi). Chief Vigilance Officers and Vigilance Officers

3(xxi).1 No Officer against whom there have been any punishments or against whom allegations of misconduct are pending investigation shall be nominated as Chief Vigilance Officer or Vigilance Officer, as the case may be.

3(xxi).2 It is enough to have Vigilance Officers in the Offices of Heads of Departments for the present. It is not necessary to have Vigilance Officers at the Regional, District, Mandal and lower levels. The Collector, who is the Chief Vigilance Officer of the district, will function without any Vigilance Officers.

3(xxi).3 All changes regarding transfers, leave etc. of the Chief Vigilance Officers and Vigilance Officers in any department/ undertaking etc. should be intimated to the Vigilance Commission as soon as they take place.

3(xxi).4 The Annual Confidential Report of the Chief Vigilance Officrs will be submitted to the Vigilance Commissioner by the Secretary concerned for recording his assessment.

3(xxii). Correspondence with Vigilance Commission

Correspondence with the Vigilance Commission shall be in the form of a letter. Correspondence of a routine character may, however, be addressed to the Secretary to the Vigilance Commissioner by a letter. Similarly the Vigilance Commission will address the Government, the Heads of Departments, Collectors etc., by a letter.

3(xxiii). Blacklisting of Firms

Any proposal to blacklist a firm or to withdraw a blacklisting order shall be referrd to the Vigilance Commission for advice before issue of final orders. In any case, it shall be competent for the Vigilance Commission to suggest suo motu the black-listing of any firm, contractor or supplier.

3(xxiv). False Complaints against Public Servants

Where, in the opinion of the Vigilance Commission, any person has made intentionally or knowingly a false complaint against a public servant or an employee of Government Undertaking, Government Company or any other Institution notified by Government from time to time, charging him with corruption or lack of integrity, or after making the complaint there is reason to believe that he acted in a manner jeopardising the course of inquiry, it shall be lawful for the Commission to advise the Government/ concerned authority to prosecute the person or the persons who made such a complaint.

4. Instructions of Government

4(i). Vigilance Commission's advice — only in cases having vigilance angle

The Government have clarified that cases of misconduct on the part of public servants involving lack of integrity like corruption, bribery, causing loss to Government and obtaining unlawful gain to oneself or others, misappropriation, cheating, fraud etc.,which have a vigilance angle should be referred to the Vigilance Commission

for advice and cases of mere administrative lapses without any vigilance angle need not be referred to the Commission, and that in case of doubt decision may be taken at the level of the Secretary of the Department concerned (U.O.Note No.235/Spl.B/2001-1 G.A. (Spl.B) Dept. dt.26-7-2001). However it shall be open to the Vigilance Commission to call for any such case and tender advice.

4(ii). First stage advice of Vigilance Commission

4(ii).1 The Government have further clarified that the Vigilance Commission's advice shall be sought on the course of action to be taken on all the preliminary enquiry reports on allegations of corruption enquired into internally by the Chef Vigilance Officer/ Vigilance Officer, departmental authorities or Public Enterprises or autonomous bodies including cases enquired into by the Anti-Corruption Bureau, whether to launch criminal proceedings or to institute departmental action for imposition of a major penalty, whether the inquiry should be entrusted to the Commissionerate of Inquiries or placed before the Tribunal for Disciplinary Proceedings or other departmental Inquiry Officer or whether to institute departmental action for a minor penalty or to drop action at the stage. The Department shall proceed further in the matter as advised by the Commission unless it decides to deviate from its advice. In that event it becomes a matter for reporting in the Annual Report of the Commission. In order to deviate from the advice of the Commission, it shall be necessary for the department to circulate the file and obtain orders of Chief Minister through the Chief Secretary and the Minister concerned.

4(ii).2 The administrative department of the Secretariat/Head of Dept./Undertaking etc. are required in terms of the procedural instructions forward its comments to the Vigilance Commission within two weeks of the date of receipt of an Anti-Corruption Bureau Report by them. It has been the experience of the Commission that the departments seldom comply with this procedure. As a result, the Vigilance Commission is forced to offer advice suo motu without the benefit of the views of the department.

4(ii).3 It is not necessary to refer the written statement of defence submitted by the Government servant/employee, where the Vigilance Commission tendered its advice initially as to the course of action, unless the department proposes to drop action.

4(iii). Second stage advice of Vigilance Commission

The Department should obtain the advice of the Vigilance Commission after conclusion of the departmental inquiry on the delinquency of the charged officer and the penalty to be imposed, if any, to be imposed on him both before arriving at a provisional conclusion and after receipt of the representation of the Government servant/employee thereon and thereafter consider the advice of the Vigilance Commission and the findings of the Inquiring Authority and the representation of the Government servant/employee, and obtain orders of the competent authority for imposition of a penalty or otherwise. Thus the advice of the Vigilance Commission should be obtained both before arriving at the provisional conclusion and after receiving the representation of the charged official. (U.O.Note No.1007/SC.E/97-1 G.A. (SC.E) Dept. dt.9-5-97; U.O.Note No.2670/SC.E3/98-1 G.A. (SC.E) Dept. dt. 2-12-98)

4(iv). Vigilance Commission to be consulted for withdrawal of inquiry

Government have decided that whenever it is proposed to withdraw a departmental inquiry, the advice of the Vigilance Commission should be obtained before taking a final decision. (U.O. Note No.314/SC.D/94-3 dt.7-6-94 GA (SC.D) Dept.; U.O. Note No.1166/SC.D/94-1 dt.13-10-94 GA (SC.D) Dept.)

4(v). Recommendation of Anti-Corruption Bureau and advice of Vigilance Commission on prosecution

The departments of Secretariat and Heads of Department and District Collectors are required to obtain advice of the Vigilance Commission and give it due consideration while taking a decision. Where the Vigilance Commission tendered advice for prosecution of a public servant, the advice of the Vigilance Commission shall

not be further examined in the administrative department or the Law Department from the legal side, as the recommendation of the Anti-Corruption Bureau and advice of the Vigilance Commission are already scrutinised by their Legal Cells. Where it is proposed to deviate from the advice of the Vigilance Commission, the case should be circulated to the Chief Minister through the Chief Secretary and the Minister concerned. (Memo.No.3148/SC.E/95-1 G.A. (SC.E) Dept. dt. 19-12-95; U.O.Note No.1184/SC.E/ 96-1 G.A. (SC.E) Dept. dt.22-4-96; Memo.No.1728/Spl.B(3)/99-2 G.A. (Sp.B) Dept. dt.31-7-2000)

4(vi). Vigilance Commission to be consulted on withdrawal of cases

The Departments of Secretariat have been instructed that advice of the Vigilance Commission should be obtained and considered before taking a final decision whenever it is proposed to withdraw a case of prosecution (including cases of misappropriation) before a court of law, cases before the Tribunal for Disciplinary Proceedings and a departmental inquiry authority. (U.O.Note No.314/SC.D/94-3 G.A. (SC.D) Dept. dt.7-6-94; U.O.Note No.1166/SC.D/94-1 G.A. (SC.D) Dept. dt.13-10-94)

4(vii). Vigilance Commission's advice — privileged document

4(vii).1 Care should be taken not to make any reference to the advice of the Vigilance Commission in the orders of the Government or Department or in the correspondence with the Commissioner or orders of appointment of the Inquiry Officer. The advice should be kept confidential in safe custody and handled with care avoiding misplacement. It should be ensured that officials involved do not get access. (U.O.Note No.962/SC.E/97-1 G.A.(SC.E) Dept. dt.4-8-97; U.O.Note No.2381/SC.E/97-1 G.A. (SC.E) Dept. dt.5-1-98; U.O.Note No.2985/SC.E1/98-1 G.A.(SC.E) Dept. dt.4-1-99; U.O. Note No.1636/Spl.B/ 2000-1 G.A. (Spl.B) Dept. dt.4-9-2000; U.O.Note No.757/Spl.B/2001-1 G.A. (Spl.B) Dept. dt. 18-7-2001; Memo.No.205/Spl.B/2003-1 G.A. (Spl.B) Dept. dt.15-3-2003)

4(vii).2 Where a reference to the advice of the Vigilance Commission becomes necessary, it should not be mentioned that the decision was taken "as advised by the Vigilance Commission", but "after considering the advice of the Vigilance Commission".

4(viii). Vigilance Commission advice — Supply of copy to official

A charged Government servant may go to a court of law either during the currency of the disciplinary proceedings or on their completion, pleading inter alia that a copy of the advice tendered by the Vigilance Commission, to the disciplinary authority had not been made available to him, and therefore, the rules of natural justice were violated. In such cases, the Vigilance Commission should be consulted and it would advise the disciplinary authority in regard to the drafting of the affidavit-in-opposition mainly with reference to procedural aspects of departmental inquiries or advice tendered by it on the report of the Inquiry Officer, if any. The Supreme Court in Sunil Kumar Banerjee vs. State of West Bengal, 1980(2) SLR SC 147, have held inter alia that the disciplinary authority could consult the Central Vigilance Commission and that it was not necessary for the disciplinary authority to furnish the charged Government servant with a copy of the Central Vigilance Commission's advice. The decision of the Supreme Court may be kept in view in contesting such cases.

4(ix). Impleading Vigilance Commission before APAT

4(ix).1 All Government Pleaders have been instructed to urge before the Tribunal at the admission stage of the Representation Petition itself for striking off of the name of the Vigilance Commissioner wherever impleaded as a respondent and to claim privilege under sec. 123 or sec. 124 of the Indian Evidence Act from production of records of the Vigilance Commissioner. (Memo.No.1396/SC.D/77-6 G.A. (SC.D) Dept. dt.27-10-77; Memo.No.1396/SC.D/77-9 G.A. (SC.D) Dept. dt.3-6-78)

4(ix).2 There may be instances where the Vigilance Orgainsation is impleaded as a respondent in Representation

Petitions/Appeals before the Andhra Pradesh Administrative Tribunal. The Vigilance Organisation is only an advisory/ recommendatory body and does not have anything which either the petitioner, the Government and the competent authority do not have with them. Government Pleaders should, therefore, argue before the Administrative Tribunal at the admission stage itself for the striking off of the name of the Vigilance Organisation whenever impleaded as a respondent in Representation Petitions / Appeals and claim privilege under section 123 or section 124 of the Indian Evidence Act wherever the Administrative Tribunal calls for the records of the Vigilance Organisation.

4(x). Vigilance Commission's advice on Judgments

The Vigilance Commission is of view that it is not necessary for the Commission to tender advice on judgments of criminal courts and it is for the Government to take a decision in consultation with the Law Department. (Memo.No. 1994/SC.D/77-1 GA (SC.D) Dept. dt.7-10-77)

4(xi). Vigilance Commission's advice — deviation from

4(xi).1 The recommendations of the Commission are advisory in nature. However, in the event it is proposed by the Government to deviate from the advice of the Commission, the case has to be circulated to the Chief Minister through the Chief Secretary as contemplated in the Business Rules and the Secretariat Instructions. (Memo.No.944/Spl.B/99-5 G.A. (Spl.B) Dept. dt.1-4-2002)

4(xi).2 An Annual Report of the Commission is to be presented to the Legislature. The Commission mentions in its Annual Report all the cases in which the Government did not accept its advice. A memorandum explaining the reasons for non-acceptance of the advice of the Commission is to be placed before the State Legislature along with the Annual Report of the Commission.

4(xii). Quarterly returns by Secretariat Departments

All Departments of Secretariat should furnish particulars of vigilance cases in the 11 proformae prescribed (Form Nos. 47 to 57 of Part II, Volume II) to the General Administration (SC) Department and Vigilance Commission by the 10th of the succeeding month after each quarter. The Departments of Secretariat are further required to prescribe the above proformae for reporting by Heads of Departments, Public Enterprises and Autonomous bodies in respect of cases pending with them for review by the Secretaries to Government. (Memo.No.256/Spl.B/2002-1 G.A. (Spl.B) Dept. dt. 22-6-2002)

4(xiii). Commissionerate of Inquiries brought under Vigilance Commission

The Commissionerate of Inquiries comprising its Chairman and Commissioners / Members, hitherto functioning under the General Administration Department, henceforth has been brought under the purview and administrative control of the Vigilance Commission. (G.O.Ms.No.174 G.A. (SC.E) Dept. dt.9-6-2003)

CHAPTER III

ANTI-CORRUPTION BUREAU

1. General

1.1 The Anti-Corruption Bureau takes up for enquiry or investigation cases coming to their knowledge from any source and cases referred to them by the Vigilance Commission, the administrative authorities or the Vigilance and Enforcement Department. Full co-operation and facilities should be extended to the Anti-Corruption Bureau by the administrative authorities and individual public servants during the course of enquiry and investigation of cases by the Bureau.

1.2 When once the Anti-Corruption Bureau takes up an enquiry or investigation, the departmental authorities should not proceed with parallel enquiries and they should hand over all connected records to the Anti-Corruption Bureau and extend co-operation and render assistance to the Bureau.

2. Enquiry/Investigation by Anti-Corruption Bureau

2.1 The Anti-Corruption Bureau takes up three types of cases, besides surprise checks:

(i) Discreet Enquiry;

(ii) Regular Enquiry;

(iii) Registered case.

2.2 Unless there are any special reasons to the contrary, cases which are to be investigated by the Anti-Corruption Bureau should be handed over to them at the earliest stage. Apart from other considerations, it is particularly desirable to do so to safeguard against the possibility of the suspect public servant tampering with or destroying incriminating evidence.

2.3 On receipt of a complaint from the administrative department, the Anti-Corruption Bureau takes up a “Discreet Enquiry”. If a prima facie case is established during the “Discreet

Enquiry" either in whole or in respect of a few of the allegations, the Anti-Corruption Bureau will convert the discreet enquiry into a "Regular Enquiry" under intimation to the department concerned without having to complete the enquiry on all the allegations. If a cognizable offence is made out during the Discreet or Regular Enquiry, the Anti-Corruption Bureau will register the case under section 154 of the Criminal Procedure Code as a "Registered Case" under intimation to the department concerned and take up formal investigation.

2.4 In a "Discreet Enquiry", preliminary enquiries are made to find out the truth or otherwise of the allegations maintaining secrecy. In the Regular Enquiry, detailed open enquiries are conducted. Statements of witnesses are recorded and the suspect Government servant is given an opportunity to explain the circumstances appearing against him. In a Registered case, formal investigation is conducted as per the provisions of law.

2.5 On completion of investigation, the Anti-Corruption Bureau may launch a criminal prosecution where sufficient evidence is forthcoming to do so. If the evidence available is not sufficient for launching a criminal prosecution, the allegations may be of a nature serious enough to justify departmental action being taken against the public servants concerned. Still there may be cases where sufficient proof is not available to justify either prosecution or departmental action but there is a reasonable suspicion about the honesty or integrity of the public servant concerned. In such cases, the nature of the irregularity or negligence is brought to the notice of the disciplinary authority for such administrative action as may be considered feasible or appropriate. In cases in which the enquiry or investigation discloses that there is no substance in the allegations, the Anti-Corruption Bureau may close the case.

2.6 In a case investigated or enquired into by the Anti-Corruption Bureau, no departmental fact-finding enquiry should be conducted. If there are any points on which the disciplinary authority may desire to have additional information or clarifications, the Anti-Corruption Bureau may be approached.

3. Allegations taken up by Anti-Corruption Bureau

3.1 The following categories of allegations are considered suitable for the Anti-Corruption Bureau to take up enquiry/ investigation. (U.O.Note No. 154/SC.E/92-1 G.A. (SC.E) Dept. dt. 18-2-92)

(a) allegations of dishonest conduct, failure to maintain integrity, gross dereliction of duty and other acts of corruption;

(b) allegations involving offences under the Prevention of Corruption Act, 1988;

(c) allegations, the truth of which cannot be ascertained without making enquiries from non-official persons or examining non-Government records, books of accounts etc.;

(d) allegations of the categories mentioned above relating to large undertakings and projects sponsored by the State Government or in which the State Government has financial interest.

3.2 Government have laid down guidelines for referring to the Anti-Corruption Bureau old cases relating to substandard quality in execution of works, irregularities in procurement of materials, falsification of bills, misappropriation of subsidies, irregularities in distribution of relief, grants etc, like conducting of a detailed preliminary enquiry, drafting of a proper complaint, securing of original documents, existence of dishonest intention on the part of the public servant in obtaining pecuniary advantage, and satisfactory explanation for delay. (Memo.No.202/Spl.C/2003-1 G.A. (Spl.C) Dept. dt.7-5-2003)

4. Allegations which are not suitable for Anti-Corruption Bureau

Ordinarily, the Anti-Corruption Bureau will not take up enquiry/ investigation in the following categories of allegations except for special reasons. (Memo.No. 824/SC.D/87-1 G.A. (SC.D) Dept. dt. 30-7-87)

(a) allegations, which are vague and of a general nature;

(b) allegations relating to minor service matters which can be dealt with by the departmental authorities;

(c) allegations of a trivial or insignificant nature which can be dealt with by the departmental authorities;

(d) allegations of departmental irregularities or negligence that can be looked into by the departmental authorities;

(e) allegations of false claims of Travelling Allowance, Leave Travel Concession, Medical Reimbursement etc.;

(f) allegations of production of false education certificates, false caste certificates etc. for the purpose of securing employment or other favours;

(g) allegations of misappropriation, fraud, embezzlement etc. by public servants which should normally be investigated by the local police or the C.I.D.;

(h) allegations of shortage in stores, loss, pilferages etc where the value of the property found short, lost etc is small and involving neither corruption nor malpractices;

(i) allegations of misuse of staff cars, Government vehicles, peons, orderlies etc unless they are habitual and extensive;

(j) allegations of acceptance of below-specification work when the loss caused is small and no malafides are involved.

5. Suo motu powers of Anti-Corruption Bureau

5.1 The Anti-Corruption Bureau is authorized to investigate offences under the Prevention of Corruption At, 1988. The Anti-Corruption Bureau is delegated with full powers of collecting source information against all officers. It is competent to conduct enquiries and investigations not only against government servants but also other public servants who are employees of Local Authorities i.e, all paid employees working in Municipalities, Zilla Parishads,

Panchayats and the institutions managed by such local bodies, State, Statutory Corporations, State Public Undertakings, Government Companies and other Autonomous Bodies receiving assistance from Government. While investigating offences under the Prevention of Corruption Act, the Bureau may investigate any other offence or offences committed by a public servant in the course of the same transaction. If in the course of investigation into a case of corruption any misappropriation of public funds on the part of accused officer comes to notice, the Anti-Corruption Bureau is authorized to take up investigation with a view to prosecuting the concerned instead of entrusting the case to the Crime Investigation Department (which is authorized by Government to conduct investigation into misappropriation cases). In cases where private persons are involved along with public servants in a criminal conspiracy or abetment or other offences, the investigation may include those persons also.

5.2 The Anti-Corruption Bureau should not investigate into complaints against non-official Chairmen of Municipalities and Zilla Parishads and Presidents of Panchayat Samithis and Panchayats without special orders of Government.

5.3 Where the Institution of Lok Ayukta is already seized of the matter, the Anti-Corruption Bureau will not investigate into cases of the above category.

5.4 Permission for preliminary or regular enquiries or registration of cases or laying of traps etc. should be given personally by the Director General, Anti-Corruption Bureau (Memorandum No. 163/SC.D/83-3 G.A.(SC.D) Dept., dt. 10-6-83).

5.5 While forwarding the petitions/complaints to the Anti-Coruption Bureau the referring authority need not specify the type of action to be taken. The petitions/complaints should be forwarded for 'Discreet Enquiries' only. If a prima facie case is established during the discreet enquiry by the Anti-Corruption Bureau either in whole or in respect of a few of the allegations, the Bureau will convert the discreet enquiry into 'Regular Enquiry' under

intimation to the Department concerned without waiting for the completion of the enquiry on all the allegations. During the Discreet or Regular Enquiry, if a cognizable offence is found to have been committed, the Anti-Corruption Bureau itself will register the case under the provisions of the Indian Penal Code or the Prevention of Corruption Act, as the case may be, and proceed with further investigation and intimation to the Department concerned.

5.6 In respect of the All-India Service Officers and Heads of Departments, the Director General, Anti-Corruption Bureau is required to obtain prior permission of the Chief Secretary before initiating a preliminary or regular enquiry or registering a case or laying a trap etc.

5.7 In respect of All India Service officers including Select List Officers and Heads of Department, the Director General sends a confidential report to the Chief Secretary to Government through the Vigilance Commission for prior orders to register a case .

5.8 Government have since constituted a Committee each, headed by the Chief Secretary to examine and accord clearance for investigation relating to the three All India Services, in G.O.Rt.No.140 G.A. (Spl.C) Dept. dt.9-1-2004. The Committees will have Special Chief Secretary to Government, Coordination & GPM&AR in all the three Committees; the Chief Commissioner of Land Administration & Special C.S. in respect of IAS Officers, the D.G. & I.G. of Police in respect IPS Officers and the Principal Chief Conservator of Forests in respect of IFS Officers respectively. The Heads of Department who are cadre officers will be covered by the respective Committees of the cadre to which they belong. The cases of Heads of Department who are non-cadre officers will be considered by the Committee consisting of the Chief Secretary, Chief Commissioner of Land Administration & Special Chief Secretary and the Special Chief Secretary (Coordination & GPM&AR). The Committees will resolve the cases placed before them within a specified period of 30 to 45 days with reasons and communicate the decision to the Vigilance Commission. A representative of the investigating agency, Anti-Corruption Bureau or Vigilance &

Enforcement Department, as the case may be, will present the case before the Committee. The Secretary to Government, GAD (Political) will be the Convenor for the Committees.(G.O.Rt.No.157 G.A. (Spl.C) Dept. dt.9-1-2004; Memo No.14/Spl.C/2004-1 G.A. (Spl.C) Dept. dt.9-1-2004)

6. Administrative Departments to extend co-operation and liaise with Anti-Corruption Bureau

The Heads of Department/Office are required to extend full co-operation to the Anti-Corruption Bureau at every stage of the enquiry/investigation on priority basis so as to enable them to complete the investigation as early as possible. They are also to ensure that the officers/employees co-operate with the Anti-Corruption Bureau in furnishing the required information and appearing before the Investigating Officers of the Anti-Corruption Bureau for giving their defence versions. There is an absolute need for close liaison and co-operation between the Chief Vigilance Officers/Vigilance Officers of the Departments/Offices and the Anti-Corruption Bureau. Both Anti-Corruption Bureau and Chief Vigilance Officers/Vigilance Officers receive information about the misconduct of public servants from diverse sources. Periodical meetings should be held between them for exchange of information and discussing cases under enquiry/investigation and cases pending before the Tribunal for Disciplinary Proceedings, Commissioners for Disciplinary Inquiries and departmental Inquiring Officers, and court cases. Periodical meetings should also be held between the Anti-Corruption Bureau, the Vigilance and Enforcement department and the Chief Vigilance Officers for exchange of information and discussing specific issues for achieving all-round co-operation and progress. (Memo.No. 574/SC.D/86-1 G.A. (SC.D) Dept. dt. 21-5-86; Memo.No. 2490/SC.E/96-2 G.A. (SC.E) Dept. dt. 30-12-97)

7. Precautions to guard against Impersonators

Departments should take precautions to guard against activities of imposters. They should satisfy themselves about the

identity of the Anti-Corruption Bureau Officer by verifying the identity card before transacting any official work with him. Any instance of impersonation should be promptly reported to the civil police, and the nearest Anti-Corruption Bureau office should be contacted. (Memo.No.1905/SC.D/84-1 G.A. (SC.D) Dept. dt. 15-1-85; Memo.No. 90/SC.D/87-1 G.A. (SC.D) Dept. dt. 21-2-87)

8. Technical Assistance during Investigation

The officers incharge of the Institutions and Organisations existing in the State which offer technical assistance and conduct laboratory tests are required to extend facilities available with them and to give full co-operation to the Anti-Corruption Bureau. When approached by the Investigating Officers of the Anti-Corruption Bureau, the Engineers of the Roads and Buildings Department are required to render necessary assistance in preparing rough estimates of the valuation of buildings in their cases.

9. Investigating Officer not to investigate where complainant or accused is related

Investigating Officer should not take up investigation of a case where either the complainant or the accused officer is in any way related to him. The Investigating Officer should, in such a case, immediately report to the Director General, Anti-Corruption Bureau about his relationship, for orders. (Memo.No. 182/SC.D/79-2 G.A. (SC.D) Dept. dt. 28-2-79)

10. Anti-Corruption Bureau Report and Vigilance Commission's advice

10.1 The final report of the Anti-Corruption Bureau will be approved by the Director General and should be self-contained and complete in all respects so that the case can be understood without having to refer to any other record. The pros and cons of the case should be brought out but this should not be done in a manner which is likely to confuse the recommendations made. The defence should be stated in full and dealt with in all its aspects pointing out how it could be met and how it is not acceptable or considered to be false. Each allegation and culpability of each accused should be dealt with.

10.2 The exact offence committed, the sections of law applicable or misconduct involved and the Conduct Rules contravened as the case may be, should be mentioned.

10.3 Lapses in the enforcement of the rules and regulations and loopholes and lacunae in the administrative procedure noticed in the course of investigation should be brought out with suggestions for plugging the loopholes.

10.4 The report should ordinarily be classified as "Confidential" and where necessary as "Secret" or "Top Secret".

10.5 There is no need to send an Anti-Corruption Bureau Report to Government where private persons alone are involved. (Memo.No.35/SC.D/88-2 dt.25-2-88 GA (SC.D) Dept.)

10.6 The Anti-Corruption Bureau will forward the Anti-Corruption Bureau report in all cases investigated by the Bureau, in duplicate, together with the relevant records, to the Administrative Department of the Secretariat/Head of the Undertaking etc. through the Vigilance Commission, with a copy to the administrative department of the Secretariat and to the Head of Department/ Undertaking etc. and an advance copy to the General Administration (SC.F) Department, so that there is proof of application of mind on the part of the competent authority.

10.7 The Bureau will offer its recommendation whether to prosecute the accused in a court of law or to take departmental action and in the latter event, whether the case should be referred to the Tribunal for Disciplinary Proceedings for inquiry and report or be sent to the Department /Undertaking etc. for taking departmental action and whether proceedings should be instituted for imposition of a major penalty or imposition of a minor penalty.

10.8 The Bureau will furnish a specimen Sanction Order for the guidance of the sanctioning authority, where prosecution is recommended by the Bureau.

10.9 The administrative department of the Secretariat/Head of Dept./Undertaking etc. will forward its/his comments to the Vigilance Commission within two weeks of the date of receipt of

the Anti-Corruption Bureau Report from the Anti-Corruption Bureau. It has been the experience that the departments seldom comply with this procedure. As a result, the Vigilance Commission is forced to offer advice suo motu without the benefit of the views of the department.

10.10 Vigilance Commission will offer its advice whether to launch prosecution in a court of law, whether to refer to the Tribunal for Disciplinary Proceedings for inquiry and report or to the department/Undertaking etc. for taking departmental action and whether to institute major penalty or minor penalty proceedings. Vigilance Commission may suggest departmental inquiries for a major penalty to be entrusted to a Commissioner of Inquiries or may be left to the Department to appoint an inquiry officer of its choice.

10.11 Where the Government/Undertaking etc. decides that the accused should be prosecuted in a court of law, the Principal Secretary/ Secretary to Government, Head of Department/ Undertaking etc. shall take action to issue sanction of prosecution within 45 days from the date of receipt of the Anti-Corruption Bureau Report with the advice of the Vigilance Commission.

10.12 On receipt of the sanction of prosecution, Anti-Corruption Bureau will take necessary steps to file a charge sheet before the Special Judge for Anti-Corruption Bureau Cases of competent jurisdiction.

10.13 Where the Bureau recommends departmental action by placing the accused on his defence before the Tribunal for Disciplinary proceedings or the taking of departmental action by the Department/Undertaking etc, as the case may be, the Bureau will send a confidential report called Part-B Report in duplicate, along with the Anti-Corruption Bureau Report. The Part-B Report should give only relevant information and statements of witnesses, to be communicated by the Government to the Tribunal for Disciplinary Proceedings or to the Department/Undertaking etc. for taking further action. The duplicate copy of the Part-B Report and the statements of witnesses should not contain any signature or indication as to who took the statements. The Bureau will also furnish a draft of the articles of charge etc. for the guidance of the

Tribunal and the disciplinary authority. Part B report should not be furnished to other than charge-framing authority.

10.14 The Vigilance Commission will offer its advice on whether the matter may be referred to the TDP or COI or a Departmental Inquiring authority chosen by the Disciplinary Authority for major penalty proceedings or minor penalty proceedings as the case may be. Action will be taken to place the official on his defence before the Tribunal for Disciplinary Proceedings or to institute major penalty through the Commissioner of Inquiries or departmental inquiry officers or minor penalty proceedings against the official as per the decision taken. (Vigilance Commission Procedural Instructions)

10.15 After conclusion of the inquiry under the A.P.Civil Services (C.C&A.) Rules, 1991 in cases against G.Os. including select list officers and N.G.Os., the department concerned shall forward to the Vigilance Commission a report of its conclusion together with relevant records for advice.

10.16 In cases against All India Service Officers, where it is of the opinion that the case is not fit for prosecution, Vigilance Commission may advise taking of departmental action. After conclusion of the inquiry, the department shall forward to the Commission, a report of its conclusion together with relevant records for advice.

10.17 The Commission will advise whether the inquiry report may be accepted in toto or whether there are grounds for deviation from the finding or findings; whether further inquiry is called for etc. Where the inquiry report is acceptable, Commission will advise accordingly and the disciplinary authority considers the same and will forward a copy of the report to the charged officer, together with its own tentative reasons for disagreement with the findings of Inquiring Authority on any article of charge to the Government servant requiring him to submit if he so desires, his written representation or submission within 15 days. Where further inquiry is decided the Disciplinary Authority may remand the case to the Inquiring Authority accordingly. Upon receipt of the submission or

upon expiry of the specified time the Disciplinary Authority shall come to provisional conclusion on the guilt of the charged officer having regard to the gravity of the charge and the penalty that may be imposed and refer the case to the Commission for its advice on the penalty. Upon receipt of the Commission's advice the disciplinary authority will apply its mind to the matter and decide the punishment and issue a speaking order awarding the punishment. Where the disciplinary authority deviates from the advice of the Commission the Department is expected to obtain orders of the Chief Minister through the Minister concerned or the Chief Secretary in terms of Business Rule 32. In that event the Commission shall report the case in its Annual Report. Wherever the Andhra Pradesh Public Service Commission is to be consulted it should be done.

10.18 In cases against employees of Government Undertakings etc., advice of the Vigilance Commission shall be obtained after the conclusion of the departmental inquiry regarding the findings on the charge and the penalty to be imposed both before arriving at the provisional conclusion and after receiving the representation of the charged employee.

10.19 The result of the action taken by the Head of the Undertaking etc. shall be reported to the Vigilance Commission together with a copy of the proceedings of the orders issued. (Vigilance Commission Procedural Instructions)

10.20 The CVO/VO concerned should render necessary assistance in processing the Anti-Corruption Bureau Report and expediting action.

11. Anti-Corruption Bureau, Assistance in Oral Inquiries

In cases enquired into/investigated by them, Anti-Corruption Bureau would render necessary assistance in the conduct of the oral inquiry by the Commissioner for Departmental Inquiries or the departmental Inquiry Officer. Departmental authorities should intimate the Director General, Anti-Corruption Bureau institution of disciplinary proceedings and enlist the co-operation of the Anti-Corruption Bureau.

12. Legal Assistance for the Bureau

12.1 The Bureau has Legal Branch consisting of 1 Chief Legal Adviser, 1 Additional Chief Legal Adviser, 6 Legal Advisors-cum-Special Public Prosecutors, 1 Government Counsel and 2 Additional Government Counsel. It functions under the supervision of the Chief Legal Adviser and over-all control and direction of the Director General.

12.2 The Special Public Prosecutors and Government Counsel are entrusted with the conduct of cases before the Courts of Special Judges for Anti-Corruption Bureau cases and the Tribunal for Disciplinary Proceedings.

12.3 Besides conducting prosecution before the Courts of Special Judge, the Special Public Prosecutors give Part-II comments on Final Reports in Registered Cases of the Ranges.

12.4 The Additional Chief Legal Adviser conducts prosecution in important complicated cases before the Special Judge for Anti-Corruption Bureau and inquiries before the Commissionerate of Inquiries and offers comments in cases of acquittals.

12.5 The Standing Counsel appointed by the Government maintains liaison with the A.P. Administrative Tribunal, High Court and Supreme Court and looks after and pursues all appeals and appears personally and argues before the Administrative Tribunal and the High Court. He also conducts cases entrusted to him before the Special Judge and offers opinion in cases when required.

13. Consultation with Law Department

The Government have instructed the Departments of Secretariat that Anti-Corruption Bureau reports may not be referred to the Law Department for advice as a matter of course and they may do so only where specific issues of law are involved. (U.O. Note No. 910/SC.D/85-1 dt. 26-8-85 G.A. (SC.D) Department; U.O. Note No. 670/SC.D/87-1 dt. 29-6-87 G.A. (SC.D) Department; U.O. Note No. 2782/SC.E/96-1 dt. 30.6.97 G.A. (SC.E) Dept.; G.O.Ms.No.448 G.A. (SC.E) Dept. dt. 23-10-97)

14. Anti-Corruption Bureau Reports, classified privileged documents

14.1 Anti-Corruption Bureau Reports and such other confidential communications of Government are classified documents and their leakage and unauthorised coming into possession thereof constitute misconduct in terms of rule 14 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 as also an offence under section 5 of the Official Secrets Act, 1923. They should therefore be handled carefully and accounted for and steps taken to guard against any leakage.

14.2 There should not be any leakage of official correspondence in general and copies should not be granted of official correspondence. Suitable action should be taken against those responsible for any lapses.

14.3 Reports of Anti-Corruption Bureau are classified, privileged documents and privilege should be claimed from production in Court/ Tribunal and other authorities.

14.4 Government stressed on the need to guard against misplacement of the report and unauthorised persons getting access and against leakage. The reports should be handled with care and accounted for properly.

14.5 The Anti-Corruption Bureau report should not be furnished to any authority for remarks, much less to the officials involved for submitting representations or for the purpose of preparing their defence or for any other purpose, by the Tribunal for Disciplinary Proceedings or the departmental authorities. Departments of Secretariat are required to ensure that officials involved in cases do not gain access to officers dealing with the files in the department except at the level of Chief Vigilance Officer or get information of the movement of files. No reference should be made to the Anti-Corruption Bureau report in the charges framed against the employee. Part-B of the Anti-Corruption Bureau report should be sent only to the charge-framing authority. The charge-framing authority should not call for remarks of Heads of Department or any other authority on Part-B report, except on the procedure being

followed. (Memo.No.490/SC.E/87-1 G.A. (SC.E) Dept. dt.13-3-87; U.O. Note No. 664/SC.D/87-1 dt. 29-6-87 GA (SC.D) Dept.; Memo.No.44/SC.D/88-1 G.A.(SC.D) Dept. dt.1-2-88; Memo.No.215/SC.D/89-1 G.A.(SC.D) Dept. dt.3-4-89; U.O. Note No.2397/SC.F/89-1 dt.25-9-89 GA (SC.F) Dept.; U.O. Note No. 1298/SC.D/91-1 dt.30-8-91 GA (SC.D) Dept.; U.O. Note No.43/SC.D/92-1 dt.25-1-92 GA (SC.D) Dept.; U.O.Note No.1211/Spl.B/99-2 G.A. (Spl.B) Dept. dt.23-2-2000; U.O.Note No. 757/SPL.B/2001-1 dt. 18-7-2001 G.A. (SPL.B) Dept.)

15. Anti-Corruption Bureau not to be identified as source

While making references to Heads of Department about enquiries made by the Anti-Corruption Bureau or while issuing orders in cases of corruption against Government servants etc. the source of investigation should not be divulged. Instead of saying, 'it has been ascertained by the Anti-Corruption Bureau', expressions such as, 'it has been ascertained by discreet enquiries through the appropriate departments' may be used.

16. Anti-Corruption Bureau officials to meet the Collector

The officers of the Anti-Corruption Bureau should meet the Collectors periodically, not less than once in a month and appraise them personally with the progress of enquiries and the state of corruption in public services in the District and follow any lines of action as may be decided upon, as a result of the discussions. (Memo.No.3301/SC.D/66-9 G.A. (SC.D) Dept. dt. 24-8-68)

17. Constitution of High Level Committee

17.1 The State Government have constituted a 11-member High Level Committee with the Chief Secretary as Chairman and the Director General, Anti-Corruption Bureau as one of the members in order to ensure cohesive and prompt action by all concerned in taking anti-corruption related measures. The Committee will meet once a month or as often as necessary. (G.O.Rt.No. 1625 G.A. (Spl.B) Dept. dt. 4-4-2001; G.O.Rt.No. 4242 G.A. (Spl.B) Dept. dt. 27-9-2001)

17.2 Departments of Secretariat are required to review the

vigilance, disciplinary and criminal cases, every quarter periodically at the level of Secretary to Government, Heads of Department, Chief Executives of Public Enterprises and other authorities and all appointing authorities. (U.O.Note No.1801/Spl.B/2000-1 dt. 21-8-2000 G.A.(Spl.B) Dept.)

18. Periodical Reports to Vigilance Commission

18.1 Anti-Corruption Bureau shall send Monthly Reports and Annual Report on the progress and disposal of enquiries undertaken and criminal prosecutions launched in courts of law etc. to the Government, marking a copy to the Vigilance Commission.

18.2 The Bureau shall send Monthly Reports in the form of an abstract by the 15th of every month, to the Vigilance Commission. (Vigilance Commission Procedural Instructions)

19. Supply of Report and Orders to Anti-Corruption Bureau

In all cases where disciplinary action is initiated on the basis of a report received from the Anti-Corruption Bureau, a copy of the report of the Inquiry Officer and orders passed by the disciplinary authority should be furnished to the Anti-Corruption Bureau. However, it would not be necessary to provide the whole record of the disciplinary proceedings. The Anti-Corruption Bureau should not reopen or review the action taken by the disciplinary authority and utilise the record only for internal analysis and record. (G.O.Rt.No.977 G.A.(Spl.B) Dept. dt.26-2-2003)

20. Appreciation Reports

Besides dealing with general matters relating to policy, procedure, organisation, statistical returns, the Research and Planning Cell of the Bureau also attends to preparation of appreciation reports on modes of corruption in Government departments and Government Undertakings and preparation of notes for taking steps for eradication of corruption, revision of Anti-Corruption Bureau Manual, preparation of notes and reviews on general matters as may be required, keeping watch over security arrangements in the Head Office and Ranges and work relating to annual programme of work etc.

CHAPTER IV

BRIBERY, CORRUPTION, CRIMINAL MISCONDUCT

(PREVENTION OF CORRUPTION ACT, 1988)

1. Introduction

The Prevention of Corruption Act, 1988 (Act No.49 of 1988) which came into force on 9-9-88 incorporated the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1952 and secs. 161 to 165-A of the Indian Penal Code with modifications, enlarged the scope of the definition of the expression 'Public Servant' and amended the Criminal Law Amendment Ordinance, 1944. The 1988 P.C. Act thereby widened the coverage, strengthened the provisions and made them more effective. With the coming into force of the P.C.Act, 1988, P.C.Act, 1947 and Criminal Law Amendment Act, 1952 were repealed and secs. 161 to 165A of the Indian Penal Code omitted. The salient aspects of the Act are dealt with below.

2. Public Servant

2.1 'Public Servant' is a unique term in anti-corruption law, being the deciding factor at the threshold, of one's liability, depending on his being a public servant.

2.2 The term 'public servant' was not defined under the Prevention of Corruption Act, 1947 and the Act adopted the definition of the term under sec.21 of the Indian Penal Code. The P.C. Act of 1988 provided a wider definition in the Act itself under cl. (c) of sec.2. Section 21 I.P.C. is a valid provision; still but it does not apply to the P.C.Act, 1988. The following are the salient aspects of the new definition.

2.3 While under sec.21 IPC, the emphasis is on the authority employing and the authority remunerating, under cl. (c) of sec. 2 of the P.C.Act, the emphasis is on public duty. Public duty has

been defined under cl.(b) of sec.2 of the Act to mean a duty in the discharge of which the State, the public or the community at large has an interest. Section 2(c) of the P.C.Act or for that matter sec.21 IPC does not define the term 'public servant' as such; it enumerates the functionaries who are to be treated as 'public servants'. The enumeration in the sub-clauses is not mutually exclusive.

2.4 Thus, the definition of 'public servant' has been enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the Government, or from a Government Corporation/Company, the employees of universities, Public Service Commissions, and Banks etc. Section 2(c) of the Prevention of Corruption Act, 1988, defines the public servants as under—

"(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance form the Central Government or any State Government, or local or other public authority.

Explanation 1: Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2: Wherever the words, "Public Servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation".

2.5 A Minister, Prime Minister and Chief Minister inclusive, is decidedly a public servant in terms of cl.(12) of sec. 21 IPC itself, which corresponds to cl.(i) of cl.(c) of sec. 2 of the 1988 Act. The Supreme Court held that a Minister is appointed and dismissed by the Governor and is therefore subordinate to him, that he gets salary for the public work done or the public duty performed by him and that the said salary is paid to him from the Government funds (M.Karunanidhi vs. Union of India, 1979 Crl.L.J.773: AIR 1979 SC 598).

2.6 M.L.A., it was however held, is not a public servant under Sec.21 IPC but he comes within the purview of the new cl.(viii) of cl.(c) of sec. 2 of the 1988 P.C.Act as, as held by the High Court of Orissa, an M.L.A. "holds an office" and "performs public duty" (Habibulla Khan vs. State of Orissa, 1993 Crl.L.J. 3604). In the appeal, the Supreme Court proceeded "assuming" that M.L.A. is a public servant (Habibulla Khan vs. State of Orissa 1995 Crl.L.J.2071). In a later decision in the case of P.V. Narasimha Rao vs. State (C.B.I.), 1998 Crl.L.J.2930 (decided on 17-4-1998), a 5-judge Bench of the Apex Court laid down that a Member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties are in the nature of public duties. An MP would therefore fall within the ambit of sub-cl.(viii) of cl.(c) of section 2 of the Prevention of Corruption Act, 1988 even though there is no authority who can grant sanction for his prosecution under section 19(1) of the Act. Sanction is not necessary for the court to take cognizance of the offences and the prosecuting agency shall, before filing a charge sheet for offences punishable under

sections 7,10,11,13 and 15 of the Act against an M.P. in a criminal court, obtain the permission of the Chairman of the Rajya Sabha or Speaker of the Lok Sabha as the case may be.

3. Penal Provisions — Sections 7 to 15

3.1 The penal provisions of the 1988 Act are contained in Secs. 7 to 15. The table shows the corresponding old provisions:

Sections of P.C.Act, 1988	Sections of I.P.C.
7	161
8	162
9	163
10	164
11	165
12	165A
	P.C.Act, 1947
13	5(1)(2)
14	5(3)
15	5(3A)

3.2 The penal provisions are dealt with below.

4. Section 7 — obtaining of illegal gratification

4.1 This section corresponds to sec. 161 I.P.C.

4.2 A public servant or a person expecting to be a public servant renders himself liable —

i) if he accepts or obtains or agrees to accept or attempts to obtain from a person as gratification for himself or for any other person;

ii) if such gratification is not a legal remuneration due to him;

iii) if he accepts, obtains or agrees to accept or attempts to obtain such gratification as a motive or reward for —

a) doing or forbearing to do an official act, or

b) showing or forbearing to show favour or disfavour to anyone, in the exercise of his official functions, or

c) rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company or with any public servant named or otherwise.

4.3 It is not necessary that the public servant must himself have the power or must himself be in a position to perform the act or show favour or disfavour for doing or showing which the bribe has been given to him nor is it necessary that the act for doing which the bribe is given should actually be performed. It is sufficient if a representation is made that it has been or that it will be performed and a public servant who obtains a bribe by making such representation renders himself liable under this section even if he had or has no intention to perform and has not performed or does not actually perform that act. It is not necessary that favour was in fact shown to the person who offered the bribe. It is sufficient if the person giving the gratification is led to believe that the matter would go against him if he did not give the gratification.

4.4 A public servant arrogating to himself a power which he does not possess, for the exercise of which he receives a bribe, is liable under this section.

4.5 A public servant accepting a donation for a public purpose, such as a donation to a public institution or donation for any charitable or religious purpose in which he is interested would amount to an offence under this section if the motive for such payment was for showing favour to the donor in his official acts or if the donation was made as a reward for a favour shown in the past. Where, however,

such donation is made to a public servant independently of his doing any official act, no offence is committed.

4.6 A public servant cannot justify his acceptance of a bribe by urging that the order passed by him was nevertheless a just one and against the very person from whom he had received the bribe. It is an offence even if the act done for which the bribe is given is a just and proper one.

4.7 The word 'gratification' is not defined but the explanation clarifies that it "is not restricted to pecuniary gratifications or to gratifications estimable in money". The word is used in its larger sense as connoting anything which affords satisfaction or pleasure to the senses, taste, appetite or the mind.

4.8 The word 'motive' refers to a future act and the word 'reward' to a past favour.

4.9 Under this section, 'obtaining' a bribe is an offence as also 'accepting', the difference between the two terms being obvious. An attempt to obtain and agreeing to accept the bribe is a substantive offence under this section.

4.10 It is an offence under this section if the person obtaining the gratification is expecting to be a public servant, but the expectation should be real.

5. Section 11 — Obtaining valuable thing

5.1 This section corresponds to sec. 165 IPC.

5.2 Under this section, it is an offence for a public servant to accept or to obtain or agree to accept or to attempt to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or from any person he knows to be interested in or related to the person so concerned.

5.3 Under sec.7, the gratification is taken as a motive or reward but under sec.11, the question of motive or reward is not material. The mere taking of a valuable thing without consideration or for an inadequate consideration from a person having any connection with the official functions of the public servant constitutes an offence.

5.4 Section 11 prohibits a public servant from taking an unconscionable advantage out of a bargain with a person with whom he comes in contact officially. It does not prohibit purchases by a public servant at a fair price from a person with whom the public servant may be transacting business on behalf of Government in his official capacity.

5.5 Here, as in the case of sec.7, attempt to obtain and agreeing to accept a valuable thing is a substantive offence.

6. Section 12 — Abetment of Secs. 7,11

6.1 This section corresponds to sec. 165-A IPC.

6.2 Under this section, the offering of a bribe or a valuable thing to a public servant without consideration or for an inadequate consideration is a substantive offence in itself.

6.3 The relevant factor to consider is the state of mind of the person when he offers a bribe or a valuable thing. As soon as there is an instigation to a public servant to commit an offence under Sec.7, an offence under Sec.12 is complete, irrespective of whether the public servant did not accept or consent to accept the money or whether he was or was not in a position to do the act or to show a favour or disfavour.

6.4 The bribe giver is dealt with under this section. It is an abetment of the offences under secs. 7 and 11. The offender need not be a public servant and if he happens to be one, it is incidental.

7. Sections 8,9 — Gratification for influencing Public Servant

7.1 These sections correspond to secs. 162, 163 IPC.

7.2 Under these sections, it is an offence for a person to accept any gratification as a motive or reward for improperly influencing a

public servant by corrupt or illegal means in the case of an offence under sec. 8, or by the exercise of personal influence in the case of offence under sec.9. Though these sections cover all persons, whether private persons or public servants, in effect these provisions are made use of only when the offender is other than a public servant. If the person committing an offence under these sections is a public servant, the offence falls under sec.7.

7.3 The middleman who obtains money for getting the public servant to do the official act, show a favour or render any service etc. as referred to in sec. 7 is liable under sec. 8 where he induces the public servant by corrupt or illegal means and under Sec.9, where he induces the public servant by exercise of personal influence.

8. Section 10 — Abetment of Secs. 8,9

8.1 This section corresponds to sec. 164 IPC.

8.2 The section makes abetment by a public servant of the offences mentioned in secs. 8 and 9 a substantive offence.

8.3 Under this section, the public servant is liable where he is a consenting party in the commission of the offence under sec. 8 or 9.

9. Section 14 — Habitual commission of Secs. 8,9,12

9.1 This section corresponds to sub-sec. (3) of sec.5 of the P.C.Act, 1947.

9.2 It provides punishment for habitual commission of offences punishable under secs. 8,9,12 of the P.C. Act, 1988.

10. Section 13 — Criminal Misconduct

10.1 This section corresponds to sec. 5 of the P.C. Act, 1947.

10.2 The section lays down the offences of criminal misconduct under cls. (a) to (e) of sub-sec. (1) punishable under sub sec. (2), corresponding to cls. (a) to (e) of sub-sec.(1) and sub-sec (2) of sec. 5 of the P.C. Act, 1947. Under the Act, offences

under sec. 13 alone are named 'criminal misconduct' and offences under the remaining provisions are not given a name. So, criminal misconduct as a term does not cover offences under the Act, other than the offences under sec. 13.

10.3 (i) Clauses (a) (b) of Section 13(1)

10.3.1 Those clauses correspond to cls.(a) and (b) of sec. 5(1) of the P.C. Act, 1947.

10.3.2 These are offences of habitual commission of offences described under secs. 7 and 11 respectively.

10.4 (ii) Clause (c) of Section 13(1)

10.4.1 This clause corresponds to cl.(c) of sec. 5(1) of the P.C.Act, 1947.

10.4.2 It provides that if a public servant dishonestly or fraudulently misappropriates himself or allows any other person to misappropriate any property entrusted to him in his official capacity, he is guilty of criminal misconduct.

10.4.3 This offence is analogous to the offence under sec. 409 IPC. However, whereas under sec. 409 IPC, a public servant is guilty only if he commits the criminal breach of trust himself, under this clause, he is guilty whether he himself misappropriates or allows any other person to misappropriate property entrusted to him in his official capacity. Another difference between the two offences is that while under sec. 409 IPC, the punishment may extend upto 10 years, under this clause the punishment extends upto 7 years alone and under the former provision no minimum sentence is prescribed but under the latter a minimum imprisonment of 1 year is stipulated. Yet another difference is that for prosecution for an offence under this clause, sanction of the competent authority is required, but not under sec. 409 IPC.

10.4.4 In cases which fall both under sec. 409 IPC and under this clause, the public servant may be proceeded against under the I.P.C. or the P.C. Act as considered appropriate in each case or

under both the provisions. The gravity of the offence and other relevant matters will have to be taken into consideration in exercising the discretion. In such cases, where the public servant is prosecuted under the P.C.Act alone, a question arises whether on his acquittal of that charge, the public servant can be tried under sec. 409 IPC. The Supreme Court held that there can be no bar to a trial and conviction under sec. 409 IPC after the acquittal of the accused of an offence under this clause.

10.5 (iii) Clause (d) of Section 13(1)

10.5.1 This clause corresponds to cl.(d) of sec.5(1) of the P.C.Act, 1947.

10.5.2 The effectiveness of the provision under cl.(d) of sec. 5(1) of the P.C.Act, 1947 was somewhat blunted by the judicial pronouncements and the said clause has therefore been split up into 3 parts in order to make the original intention of the legislature more clear. Each of the three limbs (i), (ii) and (iii) of the clause constitutes an offence of criminal misconduct in itself.

10.5.3 Under this clause, it is an offence of criminal misconduct if a public servant—

i) obtains for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means;

ii) obtains for himself or for any other person any valuable thing or pecuniary advantage by abusing his official position; or

iii) obtains for any person any valuable thing or pecuniary advantage without any public interest while holding office as public servant.

10.5.4 The first two limbs are out of splitting up of the old clause (d), while the last limb is a newly carved out offence of Criminal Misconduct.

10.5.5 Motive or reward has no relevance for an offence under this clause.

10.5.6 Under this clause, obtaining of a valuable thing or pecuniary advantage need not be for the public servant. It constitutes an offence under this clause if, for instance, the public servant awards a work to a contractor of his choice manipulating tenders and deliberately deviating form the laid-down procedure.

10.6 (iv) Clause (e) of Section 13(1)

10.6.1 This clause corresponds to cl.(e) of sec. 5(1) of the P.C.Act, 1947.

10.6.2 It provides that if a public servant or some person on his behalf is or has at any time during the period when the public servant was in office, been in possession of assets disproportionate to his known sources of income for which the public servant cannot satisfactorily account, he is guilty of criminal misconduct.

10.6.3 An explanatory note, incorporated for the first time in the 1988 P.C. Act, clarifies that "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

10.6.4 This is a unique provision, whereby the mere possession of assets disproportionate to known sources of income constitutes an offence of criminal misconduct without any need to establish a specific act of bribery or corruption in the conventional sense.

11. Section 15 — Attempt of Sec. 13(1)(c)(d)

11.1 This section corresponds to sub-sec. (3A) of sec. 5 of the P.C.Act, 1947.

11.2 It provides punishment for attempt to commit an offence referred to in cl.(c) or (d) of sec. 13(1), thus making attempt a substantive offence.

12. Presumption of motive or reward — Section 20

12.1 Section 20 (corresponding to sec. 4 of the P.C.Act, 1947) provides a presumption of law as per which it is obligatory for the

court to make certain presumptions against the accused. When it is proved that the accused who is charged with an offence punishable under sec. 7 or sec. 11 or clauses (a) or (b) of sub-sec. (1) of sec. 13 has received any gratification other than legal remuneration or any valuable thing, the court shall presume under sec. 20(1) that the gratification or the valuable thing was received with a motive or as a reward as is mentioned in sec. 7 or for an inadequate consideration. The prosecution has to prove the receipt of gratification or the valuable thing by the accused and when receipt of such gratification or valuable thing is admitted by the accused or otherwise proved, the prosecution is not required to prove affirmatively the motive or reward or that the valuable thing was received without adequate consideration. If the accused wants to contend that he had not accepted the gratification with the motive or as a reward or the valuable thing for inadequate consideration, it would be for him to establish. The burden of proof lying upon the accused will be satisfied if he establishes his case by a preponderance of probability and not by the test of proof beyond a reasonable doubt.

12.2 Under sub-sec.(2) of sec.20, a similar presumption is to be raised against the accused charged under sec. 12 or under sec. 14(b) when it is proved that any gratification or valuable thing has been given or attempted to be given to a public servant.

13. Punishment

13.1 (i) Sections 7 to 12

13.1.1 Under secs. 7 to 12, an imprisonment extending upto 5 years is provided and a minimum of 6 months stipulated. Under the corresponding secs. 161,162,164,165,165-A I.P.C. the sentence is upto a maximum of 3 years and under sec. 163 upto 1 year imprisonment. No minimum is prescribed under any of the sections. Further, the punishment is either imprisonment or fine under secs. 161 to 165A IPC, whereas under secs. 7 to 12 the punishment is imprisonment and also fine. Thus, whereas earlier even fine alone could be imposed, now under the 1988 Act, imprisonment is compulsory with a mandatory minimum of 6

months. No discretion lies with the Court to impose a lesser sentence than 6 months.

13.2 (ii) Section 13(2)

13.2.1 Sub-section (2) of section 13 prescribes punishment for the offence of Criminal Misconduct under cls. (a) to (e) of sub-sec.(1). It prescribes a punishment extending upto 7 years and a minimum of 1 year. The court has no discretion to impose a lesser imprisonment under the 1988 Act, whereas it could do so under the 1947 Act.

13.3 (iii) Sections 14, 15

13.3.1 The offence under sec. 14 is punishable with imprisonment upto 7 years with a mandatory minimum of 2 years and with fine. Earlier, under sec. 5(3) of P.C.Act, 1947, the statutory minimum is 1 year imprisonment.

13.3.2 The offence under sec. 15 is punishable with imprisonment upto 3 years and fine. No statutory minimum imprisonment is prescribed. Earlier, under sec. 5(3A) of P.C.Act, 1947, it is 3 years imprisonment or fine or both.

14. Commensurate Fine — Section 16

While imposing fine under sec.13(2) or sec.14, the court shall take into consideration the amount or value of property obtained by the accused by committing the offence or the extent of disproportionate assets acquired by him as the case may be, as per sec.16 (corresponding to sec. 5(3B) of P.C.Act, 1947).

15. Investigation — Sections 17,18

15.1 The offences under the Act, secs. 7 to 15, cannot be investigated except by an officer not below the rank of a Deputy Superintendent of Police, an Inspector authorised by the State Government or in the case of the Special Police Establishment, of an Inspector of Police, without the order of a Magistrate, nor make an arrest without a warrant, as per sec.17. Under the 1947 P.C.Act, the restriction of investigation did not extend to secs. 162, 163, 164 IPC (corresponding to secs. 8,9,10 of the 1988 Act), but the 1988 Act covers all offences under the Act.

15.2 In the Anti-Corruption Bureau, Inspectors of Police are authorised by the State Government to investigate offences punishable under the P.C.Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant, in terms of the first proviso to sec.17 of the Act and as such are competent to investigate offences under the Act. (G.O. Ms.No.10 G.A. (SC-E) Dept. dt.7-1-1999; G.O.Ms.No.163 G.A. (Spl.C) Dept. dt. 28-5-2003)

15.3 The Investigating Officer in addition requires the order of a Police Officer not below the rank of Superintendent of Police, to investigate an offence falling under cl.(e) of sub-sec.(1) of sec.13, as per the second proviso to sec.17. The I.O. has power to inspect bankers' books and obtain certified copies, and for exercising this power, authorisation is required specifically in his favour, by an officer of or above the rank of a Superintendent of Police, as per section 18.

16. Sanction of Prosecution — Section 19

16.1 Sanction is required, of the Central Government, the State Government or the authority competent to remove the public servant from his office, as the case may be, for the Court to take cognizance of the offences under secs. 7,10,11,13 and 15 as per sec.19. These are offences where the accused is a public servant. A higher authority is competent to issue a sanction order. No sanction is required under the Act, where at the time the court takes cognizance of the offences, the accused ceases to be a public servant.

16.2 The 1988 Act has, for the first time, laid down that no court shall stay the proceedings or reverse or alter a finding, sentence or order on the ground of absence of, or any error, omission or irregularity in, the sanction unless it has occasioned a failure of justice, taking into consideration whether the objection could and should have been raised at an earlier stage in the proceedings. This provision is aimed at meeting a situation where cases ended in acquittal at an advanced stage or on conclusion of

the trial on the sole ground of a defect in the sanction.

17. Trial — Sections 3,4,5,6,21,23,27

17.1 The offences punishable under the Act are triable exclusively by a special Judge appointed by the Central Government or the State Government under sec.3, as per sub-sec.(1) of sec.4. A special Judge can try a conspiracy, attempt and abetment of the offences under the Act and any other offences with which the accused is charged at the same trial (sec.3(1)(b), sec.4(3)). An Assistant Sessions Judge, an Additional Sessions Judge or a Sessions Judge can be appointed as a special Judge. A Special Judge can be appointed for an area, for a case or for a group of cases. A special Judge takes cognizance of the offences without committal proceedings and follows the procedure for trial of warrant cases (sec.5(1)). A special Judge can tender pardon (sec.5(3)).

17.2 A special Judge shall try an offence committed by a public servant in relation to the contravention of any special order referred in sub-sec (1) of sec.12-A of the Essential Commodities Act, 1955 or of an order referred to in cl.(a) of sub-sec.(2) of that section in a summary way and in the case of conviction the sentence shall not exceed one year (sec.6(1)).

17.3 In a charge for an offence under cl.(c) of sub-sec.(1) of sec.13, it shall be sufficient to describe in the charge the property involved and the dates between which the offence is committed without specifying particular items or exact dates and it shall be deemed to be a charge of one offence provided the time included does not exceed one year (sec.23).

17.4 A person charged with an offence punishable under the Act is a competent witness for his defence and can give evidence on oath in disproof of the charges made against him or a co-accused, as provided under sec. 21 of the 1988 Act (corresponding to sec.7 of the 1947 Act).

17.5 The Court of special Judge is deemed to be a court of Session for certain purposes and a special Judge is deemed to be a Magistrate for certain other purposes. An appeal from the special Judge lies direct to the High Court (sec.27).

17.6 A specific provision is incorporated in the 1988 Act, for the first time, that a Special Judge shall as far as practicable hold the trial on day-to-day basis (sec.4(4)).

17.7 Under the 1988 Act under sec.5(6), a special Judge, while trying an offence under the Act, is vested, for the first time, with the powers and functions of a District Judge under the Criminal Law Amendment Ordinance, 1944.

18. Bribe giver not liable for prosecution — Sec. 24

A statement made by a person in any proceeding against a public servant for an offence under secs. 7 to 11, 13 or 15 that he offered or agreed to offer any gratification other than legal remuneration or any valuable thing to the public servant shall not subject him to a prosecution under sec.12 (sec.24).

19. Agency competent to investigate

The Anti-Corruption Bureau is the agency empowered to investigate cases under the Prevention of Corruption Act, 1988 in the State.

20. Other offences by Public Servants

20.1 There are offences other than those under the Prevention of Corruption Act, 1988 committed by public servants, under secs. 166, 167, 168, 169, 409, 420, 468, 477A of the Indian Penal Code, which include criminal breach of trust, cheating, forgery and falsification of accounts.

20.2 These cases are investigated by the Crime Investigation Department or the Police Department depending on the nature and complexity of the case.

CHAPTER V

MISCONDUCT

1. Conduct Rules lay down what to do and what not to do

Conduct Rules lay down clear principles as to what the Government/employer expects a Government servant/employee to do and not to do in his official life and also in his private life in so far as it is likely to impinge on his official life.

An employee is required

(i) to maintain absolute integrity;

(ii) to maintain devotion to duty;

(iii) to do nothing which is unbecoming of an employee;

(iv) to ensure the integrity and devotion to duty of his subordinates, where he holds a supervisory post (All India Services);

(v) to act in his best judgment except when acting under the direction of his official superior;

(vi) to perform the task assigned to him within the time set for the purpose with the quality of performance expected of him (All India Services);

(vii) not to adopt dilatory tactics or wilfully cause delays in disposal of the work assigned to him in his official dealings with the public or otherwise;

(viii) not to act in a discourteous manner in the performance of his official duties.

Conduct Rules impose restrictions on his activities

(i) in taking part in politics and elections;

(ii) in joining associations;

(iii) in participating in demonstrations and strikes;

(iv) in connection with press and radio;

(v) in criticising government;

(vi) in giving evidence before committees;

(vii) in communicating information;

(viii) on public demonstrations in his honour;

(ix) in vindication of acts and character;

(x) in canvassing outside influence.

Conduct Rules impose restrictions on his monetary transactions

(i) in movable, immovable and valuable property;

(ii) in investments;

(iii) in lending and borrowing;

(iv) on receipt of gifts;

(v) on acceptance of contributions;

(vi) on speculation in shares;

(vii) not to sublet, lease or otherwise allow occupation by any other person, of Government accommodation allotted to him.

(viii) requiring a Government servant to render full and true account of the cash found in his possession at any time and such account shall include particulars of the means by which and the sources from which such cash was acquired.

(ix) requiring a Government servant on duty not to keep cash in his possession beyond a specified sum and to declare the cash in his possession in the manner prescribed.

Conduct Rules forbid him/impose restrictions, in his private life

(i) on incurring habitual indebtedness or insolvency;

(ii) in engaging himself in private trade or employment;

(iii) in giving or taking or demanding dowry;

(iv) on entering into a bigamous marriage (even if permissible under personal law) or marriage with other than an Indian National;

(v) on consuming intoxicating drinks and drugs and appearing in a state of intoxication in a public place;

(vi) in regard to violation of Government's policy regarding age of marriage;

(vii) in regard violation of Government's policies regarding preservation of environment, protection of wild life and cultural heritage;

(viii) in regard violation of Government policies regarding prevention of crime against women;

(ix) from employing to work any child below the age of 14 years (All India Services).

Conduct Rules impose restrictions in relation to members of his family against

(i) using his position or influence to secure employment for them in any company or firm;

(ii) permitting them to make investments;

(iii) permitting them to accept gifts.

2. Conduct Rules — salient aspects

2.1 The employee must maintain devotion to duty and in the performance of his duties maintain absolute integrity and his conduct must not be one which is unbecoming of an employee.

2.2 It is not necessary in order to establish a charge of want of absolute integrity that passing of illegal gratification must be established.

2.3 Government have the right to expect that every Government servant will observe certain standards of decency and morality in his private life and cannot permit them to commit any outrage in their private lives provided it falls short of a criminal offence.

2.4 Misconduct covers acts committed not only in the discharge of one's duties but also acts done outside the employment like mismanagement or misappropriation of funds of Co-operative Societies, Institutions, clubs etc. in his capacity as an office-bearer or a functionary.

2.5 Moral turpitude or misconduct of unbecoming conduct could relate to an activity outside the scope of the employment. Moral turpitude is not limited to acts of sex and unnatural relationship. It means anything done contrary to justice, honesty, modesty or good morals, and contrary to what a man owes to a fellow man or to society in general. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. The tests are: (i) whether the act was such as could shock the moral conscience of society in general; (ii) whether the motive which led to the act was a base one; (iii) whether on account of the act having been committed the perpetrator could be considered to be a depraved character or a person who was to be looked down by the society.

2.6 It is not possible to have an exhaustive list of actions which would be unbecoming of a Government servant. There are well understood and well recognised norms of conduct of morality, decency, decorum and propriety becoming of a Government servant.

2.7 If the act of the Government servant (employee) brings down the reputation of himself, the office which he occupies and of the Government (employer), disciplinary action can be taken.

2.8 CCA/D&A Rules lay down that any of the penalties be imposed for good and sufficient reasons. Whether there are good and sufficient reasons is a matter which would have to be considered by the disciplinary authority. False declaration of caste,

age, educational qualification at the time of entry into service, and neglecting his wife and children are considered good and sufficient reasons for taking action.

2.9 Action can be taken against a Government servant in respect of misconduct committed by him in his previous or earlier employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. When such action is taken, the charge should specifically state that the misconduct alleged in such that it renders him unfit and unsuitable for continuance in service.

2.10 Action can be taken in respect of functions which are quasi-judicial in character and even in respect of judicial functions. What is in question is not the correctness or legality of the order but the conduct behind it.

2.11 Words like 'misappropriation' should be given their common dictionary meaning, but not the definition of the word in the Indian Penal Code.

2.12 Prevention of Corruption Act, 1988 explained 'known sources of income' as income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. Compliance with the said provisions assumes utmost importance in a charge of misconduct of possession of disproportionate assets.

3. Responsibility of Supervisory Officers

3.1 A public servant is expected to keep his character above board and maintain a high standard of integrity. It is therefore the primary responsibility of the immediate superior officers, Heads of Office and Heads of Department to take all possible steps aimed at preventive vigilance to check corruption and to provide honest and efficient administration. The supervisory officers in the departments concerned should discharge this primary responsibility and take all possible steps to ensure the integrity and devotion to duty of all employees under their control and authority. The Departments of Secretariat and Heads of Department should be

alert and vigilant, take cognizance of the lapses noticed, enquire into allegations levelled against the staff and officers working under them or their administrative control promptly on their own and avoid referring to the Anti-Corruption Bureau in a routine manner. (Memo. No. 84/V&E/87-1 dt.13-3-87 G.A. (V&E) Dept.)

3.2 A specific rule of conduct has been laid down as sub-rule (5) of rule 3 of A.P.C.S.(Conduct) Rules, 1964 that every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority. (G.O.Ms.No.381 G.A. (Ser.C) Dept. dt.18-12-2003)

4. Devotion to duty — clarified

A specific rule of conduct has been laid down by way of explanation under rule 3 of the A.P.C.S.(Conduct) Rules, 1964 that a Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty. (G.O.Ms.No.381 G.A. (Ser.C) Dept. dt.18-12-2003)

5. Sexual Harassment, Moral Turpitude etc.

Conduct Rules prohibit a Government servant from indulging in any act of sexual harassment of any woman at her work place which includes such sexually determined behaviour, whether directly or otherwise, as physical contact and advances, demand or request for sexual favours, sexually coloured remarks, showing any pornography or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

6. Prolonged Absence

According to F.R. 18, and rule 5-A of the A.P.Leave Rules, 1933, no Government servant should be granted leave of any kind for a period exceeding five years and willful absence from duty not

covered by grant of any leave shall be treated as 'dies non' for all purposes viz. increment, leave and pension as per note-1 thereunder. No inference can be drawn from these rules that disciplinary action against a Government servant cannot be taken unless he is continuously absent for more than five years without any sanctioned leave. It is not necessary for the competent authority to wait for a period of five years for initiating disciplinary action against the Government servant who remained absent without any leave. Government directed that in all cases of unauthorised absence to duty for a continuous period exceeding one year, the penalty of removal from service shall be imposed on the Government employee, after duly following the procedure laid down under the CCA Rules. (Memo.No.C-9101-4/8/FR.I/91 Finance & Planning (Fin.Wing.F.R.I) Dept. dt.25-12-91; G.O.Ms.No.260 G.A. (Ser.C) Dept. dt.4-9-2003)

7. Engaging private person

Government clarified that Rule 12 of the A.P.C.S. (Conduct) Rules, 1964 clearly spells out that no Government servant should engage in any employment or work other than that connected with his official duties and that no manual prescribed to engage a private person to perform official duties during the course of departmental activity. It is illegal and also amounts to misconduct to indulge in such activities. (Memo.No.101/Spl.B/ 2000-4 G.A.(Spl.B) Dept. dt. 17-4-2001)

8. Annual Property Returns, scrutiny of

Government reiterated instructions that Controlling/ Supervisory Officers, CVOs, VOs should ensure timely submission of Annual Property Returns, and immediately on receipt scrutinise them thoroughly and satisfy themselves about the genuineness of the transactions and sources of acquisition and obtain necessary clarifications, and deprecated the practice of simply filing the returns. Government decided that competent authorities should acknowledge the receipt of statements of transactions of sale or purchase of property in the prescribed proformae (Form Nos.39 to 44 of Part II of Volume II). (Memo.No.190/Ser.C/88-2 G.A.(Ser.C) Dept. dt.6-8-88; Memo.No.10304/Ser.C/2000 G.A. (Ser.C) Dept. dt.27-3-2000)

CHAPTER VI

COMPLAINTS

1. Sources of Information

1.1 Information about corruption, misconduct or malpractices on the part of Government servants comes to light from various sources such as:

i) Complaints received by an administrative authority;

ii) Complaints received by the Vigilance Commission;

iii) Complaints received and intelligence gathered by the Anti-Corruption Bureau;

iv) Departmental inspection and stock verification reports;

v) Scrutiny of annual property statements;

vi) Scrutiny of transactions reported under the Conduct Rules;

vii) Irregularities in accounts revealed in the routine audit of accounts, such as tampering with records, over-payments, misappropriation of money, materials etc;

viii) Audit reports on Government accounts and on the accounts of public undertakings, corporate bodies etc;

ix) Reports of Estimates Committee, Public Accounts Committee and Committee on Public Undertakings;

x) Proceedings of the State Legislature;

xi) Complaints and allegations appearing in the Press;

xii) Income Tax raids etc.,

1.2. The manner in which complaints should be dealt with has been elabvorately explained in Chapter II. Information gathered from reports, returns, newspapers etc., may be considered as if they are complaints and dealt with in the same way as letters of complaint.

1.3 Apart from information gathered from outside sources, the Chief Vigilance Officer should devise and adopt such other methods as he may consider appropriate and fruitful in the context of the natur of work handled in his organization for collecting information about any possible malpractices and misconduct among the employees of his organisation. Information gathered in such a manner should also be reduced to writing and registered in the Viglance Complaints Register at a suitable stage.

1.4 The matters in which the Vigilance Commission should be consulted during the course of inquiry and investigation has been elaborately dealt with in the relevant paragraphs of this Manual.

2. Source Information, securing of

2.1 The Anti-Corruption Bureau has full powers of collecting source information against all categories of officers at all levels. (Memo.No.163/SC.E/83-2 G.A.(SC.D) Dept. dt.30-3-83)

2.2 Securing of source informations should receive utmost importance and top priority as on it depends in no small measure the success of the anti-corruption drive of the Bureau. Officers of the Bureau, Investigating Officers in particular, should develop effective intelligence system and set up sources and collect fruitful information of corruption in high places in notoriously corrupt departments and public sector undertakings. Particular attention should be paid in securing information for laying of traps and registration of cases of disproportionate assets. They should take prompt notice of allegations of corruption published in the local press and pamphlets, besides information from other sources mentioned above.

2.3 Great care should be taken to see that they do not become instruments in the hands of unscrupulous elements out to malign honest public servants and bring them to trouble. Utmost secrecy should be maintained and at no time should the name of the informant be disclosed.

3. Anonymous and Pseudonymous Complaints

The Government have since decided in the light of the orders issued by the Central Vigilance Commission that no action should at all be taken on any anonymous or pseudonymous petitions or complaints, received against the cadre and non-cadre officers of the State Government and they must just be filed. (Circular Memo. No.706/Spl.A3/99 Genl.Admn. (Spl.A) Dept., dated 28-10-1999)

4. Voluntary Organisations, Press, Citizens, Co-operation of

4.1 Co-operation of responsible voluntary public organisations in combating corruption should be welcomed. No distinction should, however, be made between one organisation and another. Nor should any one organisation be given any priority or preference over others. However, the identity and, if necessary, the antecedents of a person, who lodges complaints on behalf of a public organisation may be verified before action is initiated.

4.2 Private voluntary organisations or individuals should not, however, be authorised to receive complaints on behalf of administrative authorities as such authorisation will amount to treating them, to that extent, as functionaries of the administrative set-up. It would not be permissible, or prudent to authorise any non-official person or organ to undertake any of the responsibilities or duties of administrative authorities or of the Vigilance and Enforcement department.

4.3 Responsible newspapers do not usually publish wild allegations against individuals, and those who have allegations to make for public or private reasons may not go to editors or reporters of papers. Some papers with national circulation and many more with local circulation do publish allegations against individuals, and reports about actual or suspected fabricated cases of corruption etc. Prompt action is necessary to deal with such reports, verify the truth of the allegations, respond appropriately to the reports in order to instill confidence in the public through the columns of the paper and to take appropriate and expeditious action thereon.

4.4 The editors and reporters of the more responsible newspapers may receive information about corruption through their numerous contacts with people in different walks of life and should be able to help in the detection and prevention of corruption. How far a particular reporter or a public spirited person is trustworthy is, however, a matter of judgment depending on a number of factors about which it will be difficult to lay down a general rule. However, administrative authorities should welcome the help of editors and reporters of responsible newspapers and other responsible citizens in checking and detecting corruption and should deal with any information given to them in an appropriate manner. Where information is furnished in confidence, the confidence should be respected.

5. Public legally bound to give information of corruption, breach of trust

Every person aware of the commission of or of the intention of any other person to commit offences relating to illegal gratification punishable under sections 7 to 12 of the Prevention of Corruption Act, 1988 (corresponding to sections 161 to 165A I.P.C.) or an offence relating to criminal breach of trust by public servant punishable under section 409 I.P.C. shall forthwith give information to the nearest Magistrate or police officer, of such commission or intention as per sec. 39 Cr.P.C.

6. Representations by MLAs / MPs

The MLAs and MPs while on tour in their respective constituencies will be receiving representations from the public and they may pass them on to the concerned officers. The Collectors, Heads of Departments should take prompt action on such representations. In case they are not competent to settle the issues, they should send proposals to the authority concerned. (Memo.No.56/PA&GB/85-1 G.A.(PA&GB) Dept. dt.12-7-85) Where an oral inquiry is instituted as a result of a complaint or information given by a member of the Legislature, the Legislator may be invited by the Head of Department / Department of Secretariat during the

inquiry and his evidence should be taken into account and his help sought in the conduct of the inquiry.

7. Allegations involving lack of integrity alone to be referred to Anti-Corruption Bureau

Government have instructed the Departments of Secretariat and Heads of Department to refer only important complicated cases and cases involving lack of integrity to the Anti-Corruption Bureau for enquiry/investigation and to deal with departmental irregularities and administrative lapses by themselves. The Anti-Corruption Bureau on their part should return unsuitable cases of the latter category if received. (Memo. No.4106/ SC.C/65-3 dt.21-6-66 GA (SC.C) Dept.; Memo. No.289/ SC.D/84-1 dt.1-5-84 G.A (SC-D) Dept. and Memo. No.127/SC.E/84-6 dt.24-12-84 GA (SC.E) Dept.)

8. Discreet Enquiry or Regular Enquiry at discretion of Anti-Corruption Bureau

In all cases referred to or received by it, the Anti-Corruption Bureau shall conduct discreet enquiry (DE) or regular enquiry (RE) as it may consider necessary and expedient, and forward its report to the Vigilance Commission with its findings and recommendations in duplicate for orders as to the further action to be taken. While forwarding petitions/complaints to the Bureau, the mode of enquiry, whether DE or RE need not be mentioned and the choice should be left to the Bureau. (U.O.Note No.1150/ SC.D/83-2 G.A.(SC.D) Dept. dt.25-7-83)

9. Departments and Parallel Enquiry

9.1 Government have laid down that all Departments of Secretariat and Heads of Department should see that no parallel enquiry is taken up by them under any circumstances when the Anti-Corruption Bureau is seized of the matter on any specific complaint. They should hand over all connected records to the Anti-Corruption Bureau and co-operate with the officers of the Anti-Corruption Bureau during the course of the enquiries, where

the Vigilance Commission gives a direction to the Bureau to conduct Discreet or Regular Enquiry. If the enquiry is exclusively with reference to the records available, the Department may however take it up and frame charges. But in the matter of investigation especially where corruption is involved, the Bureau should undertake the enquiry. However in cases where the department has conducted the enquiry and reached the stage of oral enquiry after framing charges under relevant disciplinary rules and the departmental inquiry is in progress, the Bureau need not take up the case afresh for investigation.

9.2 Where the Anti-Corruption Bureau is conducting an enquiry/investigation, no other authority shall cause parallel enquiry without obtaining the advice of the Vigilance Commission. Whenever an Investigating Officer comes to know that a parallel departmental enquiry is contemplated on the same allegation, he should inform the Head Office immediately. He should not address the Department direct. (Memo. No.320/SC.D/95-3 dt.10-11-95 GA (SC.D) Dept.; Memo.No.2848/SC.D/66-2 dt.28-10-66 G.A.(SC.D) Dept.; Memo.No.263/SC.D/94-2 dt. 4-1-95, G.A.(SC.D) Dept.; Vigilance Commission Procedural Instructions)

10. Complaint, original to Investigating Agency

Government have decided that original complaint be sent to the Investigating authority, retaining a photocopy thereof, for taking action. In the Bureau, copies of complaints should be retained before the originals are sent to the Investigating Officer for enquiry/ investigation. (Memo.No.1354/Ser.C/85-1 dt.3-1-86 GA (Ser.C) Dept.)

11. Orders of Minister on complaint not to be communicated

Government have instructed that if, on the petition or complaint, there are orders or minutes of the Minister or Chief Minister or Secretary to Government etc., only a copy of the petition/complaint, omitting the orders/minutes should be sent to the Anti-Corruption Bureau or any other Agency, as the case may be. (U.O.Note No.1484/SC.D/77-1 dt.1-7-77 G.A. (SC.D) Dept.)

12. Action where allegations are against oneself

12.1 No Government servant should conduct enquiries on complaints received by him containing allegations against himself. (Memo. No.1818/Ser.C/74-1 dt.17-7-74 GA (Ser.C) Dept.)

12.2 No Government employee should either enquire into or deal with the case of a person who has had to do with an enquiry against him. (Memo.No.1132/Ser.C/85-2 dt.24-1-86 G.A. (Ser.C) Dept.)

13. Complaining against Superior Officers

Any allegation by a Government servant against a superior should be made to the officer immediately superior to the officer complained against. Government servants who fail to receive intimation of the action proposed to be taken on their representations addressed to higher authorities submitted to the forwarding authorities, may after the expiry of 2 months from the date of submission of the representation, submit a copy of their representation to the next higher authority. (Memo.No.697/ Ser.C.83/1 dt.21-11-83 GA (Ser.C) Dept. and Memo. No.2705/ Ser.C/74-1 dt.28-4-76 GA (Ser.C) Dept.)

14. Complaining to Lokayukta/Upa-Lokayukta against superiors

Government have decided that a subordinate officer, though he can make a complaint about alleged irregularities to an officer immediately superior to the officer complained against, cannot complain to the Lokayukta/Upa Lokayukta directly about the alleged irregularities committed by his superiors in the same organisation. If any such complaint is given it has to be construed as misconduct and disciplinary action taken under the provisions of the A.P. Civil Services (C.C.&A.) Rules. (Memo.No. 284/ Ser.C/ 84-1 dt.22-3-84 G.A. (Ser.C) Dept.)

15. Complaining to Vigilance Commission against Officers

Government have decided that Government employees should not be allowed to forward complaints about other officers

to the Vigilance Commission. A subordinate officer, though he can make a complaint about alleged irregularities to an officer immediately superior to the officer complained against, cannot complain to the Vigilance Commission directly about the alleged irregularities committed by his superiors in the same organisation. If any such complaint is given it has to be construed as misconduct and disciplinary action taken under the provisions of the A.P.Civil Services (C.C.&A.) Rules. (Memo.No.1072/65-1 dt.19-5-65 GA (Ser.C) Dept. and Memo.No. 697/Ser.C/ 83-1 dt.21-11-83 GA (Ser.C) Dept.)

16. Complaints received by Vigilance and Enforcement Department

Complaints received in the Vigilance and Enforcement department will be registered and initially examined to decide, according to the nature of each complaint whether,

(a) it does not merit any action and may be filed;

(b) it should be sent for inquiry and disposal/report to the administrative department concerned;

(c) it should be sent to the Anti-Corruption Bureau for enquiry/investigation; or

(d) the Vigilance and Enforcement department should undertake the enquiry itself.

17. Action where complainant turns hostile

Where, in the opinion of the Vigilance Commission, any person after making a complaint against a Public Servant, of corruption/ lack of integrity, there is reason to believe that he acted in a manner jeopardising the course of inquiry, the Commission may advise the Government/authority concerned to prosecute the complainant. (Vigilance Commission Procedural Instructions)

18. Action against persons making false complaints

18.1 While genuine complainants should be afforded protection against harassment or victimisation, serious notice should be taken if a complaint is, after verification, found to be false, malicious or

vexatious. There should be no hesitation in taking severe departmental action or launching criminal prosecution against such complainants.

18.2 The Vigilance Commission takes initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants, with the object of protecting public servants against persons making malicious, vexatious or totally unfounded complaints against public servants as they would result in harassment and demoralisation of the services.

18.3 A false complainant can be prosecuted under Sec.182 I.P.C. and the Court takes cognizance of the offence only on a complaint in writing of the public servant to whom such a false complaint was made or of some other public servant to whom he is subordinate, as per sec.195(1)(a) Cr.P.C.

18.4 Complaints charging public servants and servants under the employ of public undertakings, with corruption, lack of integrity, misconduct, malpractices or misdemeanour may be made to:

i) Chief Secretary to Government and Secretaries to Government,

ii) Vigilance Commission,

iii) Heads of Department,

iv) Director General, Anti- Corruption Bureau,

v) Collectors of Districts and

vi) Heads of Public Sector Undertakings concerned.

18.5 Whenever any false complaint against a Public Servant is made to any of these authorities, a complaint will have to be lodged in writing with a Court of competent jurisdiction by the authority to whom such false complaint was made or by some other public servant to whom the authority is subordinate. The Vigilance Commission advises appropriate action on its own

initiative when such cases of malicious, vexatious or totally unfounded complaints come to its notice while the Commission is dealing with the matters that come before it, or when a Department/Undertaking refers such a case to the Commission for advice, after considering the expediency or propriety of prosecuting the complainant and coming to a firm conclusion.

18.6 If a complaint of corruption or lack of integrity etc. against a public servant is found to be false, complete record should be sent to the Vigilance Commission, which will advise whether the complainant should be prosecuted in a court of law or some other appropriate action be taken against him. Prosecution should not be allowed to be barred by limitation. Public Prosecutors/Addl. Public Prosecutors in the Districts should offer their opinion promptly, so that action can be taken in time to prosecute the complainant for making a false complaint. (G.O.Ms.No.421 dt.3-8-93 GA (SC.D) Dept.; Vigilance Commission Procedural Instructions; Memo.No. 3426/ SC.D/66-9 dt.1-7-68 GA (SC.D) Dept. & Memo. No. 1936/Cts.C/79-4 dt.1-5-80 Home (Courts-C) Dept.)

18.7 If the person making the false complaint is a public servant, it may be considered whether departmental action should be taken against him as an alternative to prosecution.

19. Legal Aid to Govt. servant for proceeding against complainant

Where there is good reason to believe that the allegations made against a Government servant are false or malicious and he wishes to take legal proceedings against the persons making them, the Head of Department or the District Head of Office, in which the Government servant is employed, as the case may be, may arrange for the necessary legal aid by the appropriate law officer of the Government. The sanction of the State Government or of the Head of Department, as the case may be, is necessary for granting legal aid in cases where the person defamed is the Head of Department or the District Head. (G.O.Ms.No.677 dt.30-5-61: GA (Ser-D) Dept.)

CHAPTER VII

SURPRISE CHECKS

1. Objective of Surprise Checks

Surprise check of offices known for rampant corruption is one of the measures taken by the Anti-Corruption Bureau to bring to light corrupt activities, collection of mamools and harassment of the common man at the cutting edge by the officers manning such offices, with the dual object of preventing the malpractices and punishing the guilty. The Anti-Corruption Bureau has been concentrating primarily on revenue-earning departments, particularly check posts of the Departments of Transport, Commercial Taxes and Excise and offices of Registration & Stamps and Treasuries, welfare hostels run by the Welfare Department and hospitals and Primary Health Centers of the Medical and Health Department. In the course of surprise checks, the Bureau undertakes verification of cash possessed by the officials with reference to the cash declared by them.

2. Surprise checks, alone by department, jointly by Anti-Corruption Bureau

2.1 The departmental Vigilance Officers should conduct Surprise Checks at places and points of corruption identified by them and Joint Surprise Checks in co-ordination with the officers of the Anti-Corruption Bureau. Dy. Supdts. of Police and Inspectors should assist the departments, whenever their assistance is sought, for conducting joint surprise checks.

2.2 The Anti-Corruption Bureau should conduct surprise checks on their own initiative in cooperation with the officers of the concerned departments. Departmental officers have been instructed by the Government to extend cooperation to the Bureau in this regard. (Memo. No. 2170/SC.D/83-5 G.A. (SC.D) Dept. dt. 21-7-84)

2.3 Surprise checks may be conducted by the Investigating

Officers of the Bureau after obtaining prior permission of the Director General.

3. Identification of target areas

3.1 Specific information of specific irregularities should be secured through sources while undertaking surprise checks. The rules and regulations applicable and the procedures prescribed and practiced in the target office should be studied with particular reference to known deviations and malpractices, and the ideal time and date determined in relation to the type and nature of the corrupt activity sought to be detected in the particular office, field unit etc.

3.2 Surprise checks should be carried out in revenue-earning and expenditure- incurring departments, departments identified as corruption-prone and where complaints are received. Remote areas should not be lost sight of. The checks should be conducted periodically on hostels and offices of the Social Welfare department to unearth misuse of funds and detect corrupt practices. Senior level departmental officers of the concerned departments should be associated with the checks and contact should be established unobtrusively taking care to see that they do not get prior knowledge of the actual operation. Checks should not be undertaken in extraordinary situations such as during an employees' strike. (Memo.No.2025/SC.D/91-2 G.A. (SC.D) Dept. dt.30-12-91)

4. Conducting of check and recording of proceedings

4.1 Two independent public servants should be secured as mediators to witness the proceedings of the check. The target officer and the senior-most member of the office should be secured and associated with the check.

4.2 The Government directed that all Principal Secretaries to Government/Secretaries to Government, Heads of Department, District Collectors and all other officers concerned should respond positively without fail to the requisitions made by the Bureau officials

for utilisation of the services of Government employees under their control as mediators in organising surprise checks and extend full co-operation. (Memo.No.2491/SC.E1/98-1 G.A. (SC.E) Dept. dt. 20-11-1998)

4.3 The check should be thorough and explore all avenues on the basis of the information available depending on the type of malpractices suspected.

4.4 All relevant records should be secured and scrutinised. Official records and material in the office can be collected on production without a formal search. Except in the case of serious irregularities, records of day-to-day use need not ordinarily be seized. The mediators and the Anti-corruption bureau officer should affix their initials on all relevant records. The officer in charge of the office or the senior-most officer present should be required in writing to keep the records in his personal custody, so that they are not tampered with and are produced whenever required. Material documents of importance should however be seized.

4.5 Where unaccounted money recovered is suspected to be illegal gratification obtained by the public servant, the visitors present at the time of the check should be screened and their statements recorded and a gist incorporated in the mediators report. All witnesses should be examined and their statements recorded separately and referred to in the mediators report. The version of the departmental officers should be elicited on the omissions and commissions noticed and incorporated in the mediators report. The mediators report should be self-contained and bring out all salient aspects of the check.

5. Conducting of follow-up searches

If material secured during the check discloses acquisition of disproportionate assets or commission of an offence of corruption and it is considered necessary to conduct a search of the residence of the public servant, the Dy.Supdt. of Police/Inspector should inform the Director General and seek

instructions, and the Director General may, where satisfied, permit the registration of an R.C. and conducting of search with warrant.

6. Report of Check and action thereon

6.1 The report on the check should bring out the salient aspects of the check and should state whether the material available discloses the commission of a criminal offence or only a departmental misconduct and a specific recommendation made on the course of action to be taken. The report should be sent to the Head Office along with a copy of the mediators' report with utmost urgency, if necessary, through a special messenger. An R.E. or even an R.C. can be registered following a surprise check if the Director General/Director is satisfied on the basis of the available material.

6.2 In all cases, the enquiry or investigation should be completed within 2 months.

7. Advice of the Vigilance Commission

The A.C.B will submit the surprise check report to the Vigilance Commission under copy to the Department concerned. The Commission upon consideration of the material available render suitable advice to the Department concerned on the further course of action to be taken on the report. The Department shall initiate expeditious action thereon.

8. Declaration of Cash at Check Posts etc.

8.1 Government directed that all Departments of Secretariat who have got check-posts and offices under their Heads of Department dealing with cash transactions to take necessary action to issue instructions through the concerned to the officials in check-posts and Sub-Registry Offices, Transport Offices etc, as desired by the Director, Anti-Corruption Bureau to facilitate verification whether the money found at the time of the check on the person of the officers, actually belongs to them or is a bribe amount collected from parties (U.O.Note No. 1515/SC.D/83-1 G.A. (SC.D) Dept. dt. 18-8-83).

8.2 Government prescribed the following procedure to be observed by all officers and staff of District Treasury Offices/Sub-Treasury Offices/Assistant Treasury Offices and Pension Payment Offices of Treasuries and Accounts Department while declaring their personal cash (Memo.No.12400-A1/162/OP.SC/87 Finance & Planning (Fin.Wing. OP.Spl.Cell) Dept. dt. 4-12-87):

i) The total amount of cash brought by an employee from his house to office every day must be declared by him in a register and deposited in the cash chest kept for the purpose, along with the register.

ii) The officers and staff members may be allowed to keep upto Rs.10 to meet incidental expenses etc. and the fact may be made clear in the declaration register.

iii) The employee may be permitted to take the money deposited, at the time of leaving the office.

iv) Inspecting officers of Treasuries and Accounts Department should check the declaration register at the time of inspection of the Treasury offices.

8.3 Finance department considered it not expedient to require all members of the staff where Government taxes, revenues etc. are collected to declare their personal cash at the time of reporting for duty everyday in the prescribed register and that employees who are actually dealing with cash transactions need declare their personal cash before they enter to perform their duty in the offices/ check posts. Accordingly it ordered that staff members who deal with cash (shroffs) in District Treasuries and Sub-Treasuires shall declare their personal cash every day. (Memo.No. 1085/SC.D/87-1 G.A. (SC.D) Dept. dt. 20-4-88; Memo.No.12400-A1/162/OP.SC/87 Finance & Planning (Fin.Wing. OP.Spl.Cell) Dept., dt. 13-6-88) The matter was re-examined by the Finance Department in detail in the charged circumstances and it was decided that the staff of the employees of Treasuries and Accounts, Pension Payment Offices, P.A.O, State Audit, APGLI, Commssioner of Small Savings

and Pay and Accounts Offices under the control of Works and Projects which are under the control of Finance Department in the District and other offices i.e., other than the Directorates should declare their personal cash at the time of reporting for duty. However, in Directorates the staff who deals with passing of payment of bills should also declare their personal cash. The total amount of cash brought with him by the employee should be declared by him. It is decided to restrict the possession of personal cash at the time of reporting for duty to 200/- (Rupees two hundred only) for each person and it should be recorded n the prescribed Register. If any one carries more than two hundred rupees, he should record the reasons in detail in the personal cash declaration register for carrying out such huge amount. The amounts should be entered both in figures and words. It was further ordered that the Inspecting Officers should check-up these personal cash declaration registers during their inspection.

8.4 Government restricted the possession of personal cash at the time of reporting to duty at the Check Post to Rs. 200 for each employee and required that he should record reasons in detail in the personal cash declaration register if the amount exceeds Rs.200. (U.O.Note No.1224/SC.D/91-1 G.A. (SC.D) Dept., dt.8-10-91)

8.5 The declaration of personal cash should be recorded in both figures and words. (U.O.Note No. 943/SC.D/92-1 G.A. (SC.D) Dept. dt. 9-7-92)

8.6 The Transport Commissioner communicated the Government's instructions in his Memo. No.19/32000/X1/91, dt. 20-11-91 to all Joint Transport Commissioners, Secretaries of the RTAs, Dy.Transport Commissioners, RTOs, Principals of Driving Schools and Flying Squads for compliance. Further, in Memo.No. 4/31311/H1/91, dt.10-2-92 all the MVIs and AMVIs working in regular stations and in flying squads were asked to indicate the amount of personal cash on their person, on the backside of the triplicate copy of the last V.C.R. written the previous day.

8.7 Commissioner, Prohibition and Excise laid down the following procedure to be observed by the staff of Excise and Prohibition Stations:

i) to declare their personal cash at the time of reporting for duty at the Excise and Prohibition Station every day in the prescribed register;

ii) to restrict the possession of personal cash at the time of reporting for duty at the Station to Rs.200 for each person; and

iii) to declare the cash possessed by them at the time of reporting for duty in the prescribed register both in figures and words. (Memo.No.3646/SC.E/95-1 GAD dt.30-12-95; Circular No. 19/95/ CPE/SR dt. 7.2.1996; Memo.No.1790/SC.E1/ 98-1 GAD, dt. 21-8-98 of Commissioner of Prohibition and Excise, Hyderabad).

8.8 The Commissioner, Prohibition & Excise issued circular No.2099/CPE/98 dt.20-9-2001 enclosing a copy of his above-mentioned circular dt.7-2-96 for strict compliance.

8.9 A.P. Beverages Corporation Ltd. issued instructions to Depot Managers to open a register called 'Register for declaration of amounts by the employees of APBCL with machine numbered pages with prescribed columns at the depot and directed that all the employees working at the I.M.L. depot including the Excise supervisory staff shall declare the cash held by them at the time of reporting at the depot and that the Depot Manager shall countersign the register and the register shall be made available to Inspecting Officers for scrutiny. (Letter No. IML/APBCL/Cash.reg/98-99/1296 dated 9-10-1998 of M.D., APBCL, Hyderabad)

8.10 The Commissioner and Inspector General of Registration & Stamps, in his circular Memo.No.X2/10708/94 dt. 30-12-97 stipulated that the punishment imposed should be commensurate with the gravity of offence and that in all cases of surprise checks where unaccounted cash is found with the

employee or in the premises of the office or with any unauthorised person in the office, the normal presumption should be that it is illegal amount obtained as bribe from the parties, the onus of disproving lying on the charged officer, and that in all cases where charges are held proved, stringent punishment should be awarded including removal from service, to bring in better standards in administration.

8.11 In order to provide legal backing to the executive instructions relating to declaration of cash by Government servants, Government have amended Rule 8 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 as follows:

8(a) The Government of any authority empowered by them in this behalf may, require a Government servant to render full and true account of the cash found in his possession at any time and such account shall include particulars of the means by which and the sources from which such cash was acquired.

8(b) The Government or any authority empowered by them in this behalf may, by general or special order require a Government Servant on duty not to keep cash in his possession beyond a specified sum and to declare the cash in his possession in the manner prescribed.

Government are yet to issue notification in pursuance of the above provisions.

9. Where cash not to be seized

The personal cash of the staff members of the above mentioned offices who are not dealing with cash, is not liable for seizure on the ground that it was not declared as personal cash in the prescribed register. Where the undeclared cash or excess amount found over the declared amount is claimed to be personal cash and the claim is found to be genuine, the personal cash should not be seized. Instead, the numbers of such currency notes and the instructions violated may be incorporated in the mediators report.

10. Engaging private person

Government clarified that Rule 12 of the A.P.C.S. (Conduct) Rules, 1964 clearly spells out that no Government servant should engage in any employment or work other than that connected with his official duties and that there is no provision anywhere to engage a private person to perform official functions. It is illegal and amounts to misconduct to indulge in such activities. (Memo.No.101/ Spl.B/ 2000-4 G.A.(Spl.B) Dept. dt. 17-4-2001)

11. Depositing of unclaimed amounts

11.1 Unclaimed amounts seized should be deposited in the Government Treasury in a sealed cover for safe custody and the sealed cover may be withdrawn for purposes of the enquiry. The amount seized should be credited to Government Account after disposal of the case or inquiry under the head "065-Other Administrative services — other receipts."

11.2 Government directed that all District Treasury Officers/ Sub-Treasury Officers should accept sealed packets deposited by the Anti-Corruption Bureau officers of the rank of Deputy Supdt. of Police for safe custody. (Memo.No. 33663-C/42/TFR/88 Fin.&Plg. (FW-TFR) Dept. dt. 31-7-89)

12. Final Disposal of cash and records

A Memo should be filed before the Inquiry Officer at the Departmental Inquiry for orders on the disposal of the cash, records and properties seized during the ccheck. This step should be taken before the conclusion of the inquiry and it should be ensured that the Inquiry Officer makes a specific recommendation in the Inquiry Report for the return of records to the department and crediting of unclaimed cash to Government account or alternatively handing it over to the Investigating Officer for crediting to the Government account. (Memo.No. 3/29292/X1/93 of STA, Hyderabad dt.24-7-93; Memo.No.5/26418/X1/92 of Transport Commissioner, A.P., Hyderabad dt.21-7-95; U.O.Note No. 680/SC.E/96-1 G.A. (SC.E) Dept. dt. 8-4-96)

13. CM's instructions regarding surprise checks

The C.M. has emphasised the need to carry out surprise inspections at least four times each month for improving the quality of service delivered to the public. Ministers should systematically carry out inspections of their own departments and Districts assigned to them and Secretaries and Heads of Departments should conduct surprise inspections for their departments and Supervisory Officers should carry out inspections, besides their own departments, of other departments in the District assigned to them. Collectors would be required to carry out surprise inspections of various departments within their districts. The C.M. has directed to gear up performance of Government agencies and Departments by communicating particulars of records to be maintained in each office to all offices concerned and to design standard inspection proformae taking care to ensure that they are capable of computerisation and circulate to all concerned. (Circular No. 42050/ AR&T.III/97-7 G.A. (AR&T.III) Dept. dt. 26-7-97)

CHAPTER VIII

PRELIMINARY ENQUIRIES

1. Salient aspects

1.1 Whenever a Disciplinary Authority receives information or complaint about misconduct committed by an employee, he may initiate disciplinary action against the employee, if the allegations warrant the taking of such action. It is open to the Disciplinary Authority to straightaway initiate disciplinary action, if the information or the complaint discloses prima facie material to substantiate the allegation. Otherwise, he may make enquiries himself or direct any other officer to conduct a preliminary enquiry and submit a report to him for the purpose of deciding further action in the matter. This action of collecting material is called “Preliminary Enquiry”. Preliminary enquiry is not a precondition for taking departmental action. It is not to be mistaken for the regular inquiry under the disciplinary rules.

1.2 Preliminary enquiry is a fact-finding enquiry. The object of preliminary enquiry is to ascertain the truth or otherwise of the allegations contained in the information or complaint and to collect necessary available material in support of the allegations, and thereafter to decide whether there is justification to embark upon departmental action. There is no prescribed procedure for conducting preliminary enquiry, and suitable procedure can be followed. It may be held ex parte behind the back of the employee and it is not necessary to obtain his explanation unless it is considered necessary for any purpose. The delinquent employee has no right to be heard at this stage. Neither Fundamental Rights and provisions of Art. 311 of the Constitution of India nor principles of natural justice apply to a preliminary enquiry. During the preliminary enquiry, evidence, oral and documentary, should be collected. The material secured during the preliminary enquiry cannot be the basis for taking action of arriving at a finding on the charge or imposition of a penalty. It only enables the competent authority to decide the further course of action viz. to drop action

or proceed to take action, depending on the material available. (It may be noted that "preliminary enquiry" is spelt with the letter 'e' and "regular inquiry" with the letter 'i')

1.3 Preliminary enquiry encompasses any enquiry or investigation, by whatever name it is called, which is conducted as a prelude to the holding of a regular inquiry.

2. Agency for conducting Enquiries

2.1 When a decision is taken to have an enquiry made into allegations contained in a complaint, it will be necessary to decide whether the allegations should be enquired into departmentally or whether a police investigation is necessary.

2.2 Generally, allegations of the types enumerated below should be entrusted for investigation to the Anti-Corruption Bureau or other appropriate investigating agency;

(i) allegations of offences like bribery, corruption, forgery, cheating, criminal breach of trust, falsification of records etc.;

(ii) possession of assets disproportionate to known sources of income;

(iii) cases where allegations cannot be verified without making enquiries from non-officials and examining non-Government records, books of accounts etc.;

(iv) other cases of a complicated nature requiring police investigation like bigamy involving public servants.

2.3 Here it must be remembered that cases under the Prevention of Corruption Act should be referred to the Anti-Corruption Bureau. Offences by public servants under the I.P.C. shall be referred to the local police or to the CID depending on the seriousness of the case.

2.4 Where the allegations relate to misconduct other than criminal offence or to a departmental irregularity or negligence and the alleged facts are capable of verification or enquiry within the Department/Office, the enquiry should be made departmentally.

2.5 In certain cases the allegations may be of both types. In such cases it should be decided in consultation with the Anti-Corruption Bureau or other investigating agency as to which of the allegations should be dealt with departmentally and which should be investigated by the Anti-Corruption Bureau or other investigating agency.

3. Preliminary Enquiry by Departmental Agencies

3.1 Where it is decided that the allegations contained in a complaint should be looked into departmentally, the Vigilance Officer should proceed to make a preliminary enquiry to determine whether prima facie there is substance in them.

3.2 The preliminary enquiry could be made in various ways depending on the nature of the allegations and the needs of the situation:

(a) If the allegations contain information which can be verified from documents, files or other departmental records, the Vigilance Officer should, without loss of time, secure such records, for personal inspection. If the records examined are found to contain evidence supporting the allegations, they should be taken over and retained in personal custody to guard against their being tampered with. If the records are required for taking any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the record, the original being retained by the Vigilance Officer. If it does not serve the purpose, the officer requiring the original papers should be made responsible for their safe custody and authenticated copies obtained by the Vigilance Officer for the purpose of the enquiry.

(b) Where Government employees are in a position to furnish relevant material, the Vigilance Officer should interrogate them and obtain their written statements or

record their oral statements and obtain their signature. Where considered necessary, any material facts disclosed by the witnesses should be verified with reference to documents.

(c) Where it is found necessary to make enquiries from employees of any other department or office, the Vigilance Officer will seek assistance of the department concerned for facility to interrogate the persons concerned and record their written statements.

(d) In complaints pertaining to execution of works etc., the Vigilance Officer will find it useful to make a site inspection or a surprise check to verify the facts on the spot and to take suitable steps to ensure that evidence is not tampered with.

(e) If during the course of the enquiries it becomes necessary to collect evidence from non-official persons or to examine any documents in their possession, the matter should be entrusted to the Anti-Corruption Bureau or other investigating agency for investigation.

(f) If the public servant complained against is in charge of stores, equipment etc and there is a possibility of his tampering with records, the Vigilance Officer may consider whether the public servant concerned should not be transferred immediately and take necessary action in that regard.

3.3 During the course of preliminary enquiry, the public servant concerned may be given an opportunity to offer his explanation to see whether he is able to satisfactorily explain the material available against him. There is no need to make available to him documents at this stage. An opportunity, however, may not have to be given where a decision to institute departmental proceedings is to be taken without any loss of time, as in a case where the public servant is due to superannuate soon and it is necessary to issue the charge sheet before his retirement.

3.4 Normally, the preliminary enquiry will be made by the Vigilance Officer himself, but the administrative authority may be asked to entrust the enquiry to any officer considered suitable in the circumstances of the case. It is advantageous to entrust the enquiry to a technical officer if it involves examination and appreciation of technical data or documents. Similarly, the administration may entrust an enquiry to an officer of a sufficiently higher status, if the public servant complained against is of a senior rank.

3.5 The officer conducting the enquiry should prepare a self-contained report. The report should embody the explanation offered by the suspect public servant and material if any to meet his defence. The fact that an opportunity was given to the officer concerned should be mentioned in the report, even if the officer did not avail of it. The vigilance organisation should simultaneously take into possession all relevant documents so that they are readily available if and when departmental action is instituted.

3.6 The report should be submitted to the disciplinary authority who will decide whether on the basis of the facts disclosed therein, the complaint should be dropped or whether disciplinary proceedings should be instituted against the public servant or administration of a warning or caution would serve the purpose.

3.7 The decision whether departmental action should be instituted against a public servant should be taken by the authority competent to award appropriate penalty as specified in the Classification, Control and Appeal Rules or relevant Discipline and Appeal Rules. Where a public servant is transferred to another post before a decision is taken, the decision should be taken by the disciplinary authority of the latter post. The Chief Vigilance Officer should keep a close watch on the progress of preliminary enquiries to ensure that the processing of enquiries is done as expeditiously as possible.

4. Government servants under suspension or shortly to retire

4.1 It is essential to ensure that action is taken in all cases of Government servants on verge of retirement for completion of necessary enquiries with utmost expedition well ahead of their superannuation.

4.2 In cases of corruption, embezzlement and misappropriation of public money and other serious misconduct especially those having financial implications, the date of retirement of the official should be immediately brought to the notice of the Government or the concerned authorities so that the responsibility of the officials in such cases can be determined well in advance of the date of their actual retirement or before they leave the Government service. Care should be taken to see that the officials concerned are kept under suspension if considered necessary and proceedings are instituted long before the date of their retirement. Any failure in this regard is viewed seriously and disciplinary action taken against those responsible.

4.3 Similarly, enquiry/investigation in cases of Government servants under suspension should be given highest priority so that the period of suspension is kept to the barest minimum.

5. Resignation pending Enquiry/Investigation

Where an officer against whom an enquiry or investigation is pending, whether placed under suspension or not, submits his resignation, such resignation should not normally be accepted. Where, however, the acceptance of resignation is considered not detrimental to public interest for the reason that the offences do not involve moral turpitude or the evidence is not strong enough to justify the assumption that if the proceedings are continued the officer would be removed or dismissed from service or the proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation, the competent authority should decide taking all aspects and circumstances into consideration.

CHAPTER IX

DISCREET ENQUIRY

1. First step on receipt of complaint, by Anti-Corruption Bureau

1.1 Every Complaint or Source information should be examined to determine whether it requires action by way of verifying the allegations or it has to be referred to the departmental authorities concerned for disposal or whether it should be filed.

1.2 In case the allegations require to be verified by the Anti-Corruption Bureau, it should be further decided whether a Discreet Enquiry, Regular Enquiry or a Registered Case should be taken up depending on the nature of the allegations, the material furnished in the Complaint and other factors.

2. Taking up Discreet Enquiry

2.1 A Discreet Enquiry is exploratory in nature and should be ordered where it is considered necessary to verify the allegations but there is no sufficient material to register a regular case or take up a regular enquiry.

2.2 Orders of the Director General are required to take up a Discreet Enquiry. In respect of All India Service officers including Select List Officers and Heads of Department, Chief Secretary to Government has to be approached through the Vigilance Commission and the Chief Secretary conveys decision after obtaining the advice of the Committee constituted for the purpose. (G.O.Rt.No.140 G.A. (Spl.C) Dept. dt.9-1-2004; G.O.Rt.No.157 G.A. (Spl.C) Dept. dt.9-1-2004; Memo No.14/Spl.C/2004-1 G.A. (Spl.C) Dept. dt.9-1-2004)

2.3 The Director General may order the taking up of a Discreet Enquiry on complaints received or on information secured. In addition, it is taken up in Joint Surprise Checks undertaken by the Bureau. It may also be ordered by the Government, the Lokayukta/Upa-Lokayukta and by the Vigilance Commission. (Vigilance Commission Procedural Instructions and Memo.No. 404/ SC.D/96-1 dt.6-5-96 G.A (SC.D) Dept.)

3. Scope of Discreet Enquiry—examination of witnesses, access to documents

The Discreet Enquiry should be conducted with utmost secrecy and should be very discreet. Witnesses should normally be contacted through sources or otherwise indirectly. Where it becomes necessary to contact them directly, the purpose of the enquiry should be suitably camouflaged. Willingness of witnesses to make statements may be ascertained but actual statements should not be recorded. The scope of the Discreet Enquiry does not permit collection of records either. The Government have however permitted the Anti-Corruption Bureau to peruse the records, vide orders in Memo. No.1964/SCD/73-4 GA (SCD) Dept. dt. 15-3-75. Nothing prevents the I.O. from approaching the Head of Department/Head of Office to ascertain matters pertaining to the allegations. But, the Suspect Official should under no circumstances be approached.

4. Complainant/M.L.A. be given opportunity to substantiate allegations

Information should be elicited from the complainant in respect of the allegations made by him against any Government official. Whenever an M.L.A. gives a written complaint against a Government servant, he may be examined during the enquiry so that he may furnish material in support of his allegations. (Memo. No. 1112/Ser.C./74-2 dt.6-7-74 GA (Ser.C) Dept.; Memo No.132/Ser.C/77-1 dt.21-1-77 GA (Ser.C) Department; Memo No.104/Ser.C/81-1 dt.7-2-81 GA (Ser.C) Department)

5. Verification of general reputation of Public Servants concerned

Investigating Officers should confidentially ascertain the general reputation of the public servants involved in Discreet Enquiries. The general reputation should be verified by making confidential and discreet enquiries not only with the official superiors and subordinates but also members of the public who have contacts

with him in the ordinary course of business, taking care at the same time to avoid those who may have motive to speak against the official. The result of such verification should be reported in the D.E. Report.

6. Time limit for completion

The Discreet Enquiry should be completed within two months of receipt of the complaint or information.

7. Conversion into Regular Enquiry/Registered Case

Where in the course of a Discreet Enquiry, the Bureau is satisfied that there exists a case for criminal prosecution or there is a likelihood of collecting evidence to deal with the officer, the Bureau shall register a Registered Case and take up investigation so as to obviate the necessity of going through the same process of regular enquiry over again and the resultant delay and exclude the possibility of witnesses being won over or evidence disappearing or being tampered with. Where there is no such prospect, the enquiry should as far as possible be finalised in a Discreet Enquiry itself, except where for any specific reason it is considered necessary to convert it into a Regular Enquiry.

8. Report of Anti-Corruption Bureau in Discreet Enquiries

The Anti-Corruption Bureau shall forward its report in Discreet Enquiries in the prescribed proforma to the Vigilance Commission with a copy to the G.A. (SC.F) Dept. and the concerned Department/Government Undertaking/Government Company etc. However, where it is taken up by the Bureau suo motu and there is no basis to proceed further in the matter, the report need be sent only to the Vigilance Commission. (Vigilance Commission Procedural Instructions)

9. Advice of Vigilance Commission

9.1 The Vigilance Commission will consider whether or not a regular enquiry is called for. If a regular enquiry is considered necessary by the Vigilance Commission against Public Servants

other than those concerning members of All India Services and Heads of Departments, it will authorise the Bureau to conduct a regular enquiry under intimation to the General Administration (SC.F) Department and the concerned Department/Government Undertaking/Government Company and such other Institution as may be notified by the Government from time to time. If, however, a regular enquiry is not considered necessary the Commission will advise the Department/Government Undertaking/Government Company/ such other Institution as may be notified by the Government from time to time concerned as to further action.

9.2 In respect of cases concerning Members of the All India Services and Heads of Departments, if a regular enquiry is considered necessary by the Commission, it will authorise the Bureau to conduct a regular enquiry only after consultation with the Chief Secretary to Government under intimation to the General Administration (SC.F) Department and Department of Secretariat concerned. If, however, no regular enquiry is considered necessary the Commission will advise the Chief Secretary to Government as to further action.

9.3 In a discreet enquiry, the possible course open is to drop action where there is no material at all or to take departmental action in major penalty proceedings or minor penalty proceedings and in case of major penalty proceedings, to place it before the Tribunal for Disciplinary Proceedings or to the Commissionerate of Inquiries or have an inquiry conducted by the department. Where the allegation constitutes a criminal offence, there may be a need to take up investigation by converting the enquiries into a Registered Case, to secure material.

9.4 The Bureau will send Part 'B' report in duplicate for instituting disciplinary proceedings before the Tribunal or the Commissionerate of Inquiries or the departmental inquiring authority. It will also assist the department in framing charges and an officer of the Bureau will act as Presenting Officer before the TDP etc.

CHAPTER X

REGULAR ENQUIRY

1. Taking up Regular Enquiry, by Anti-Corruption Bureau

1.1 A Regular Enquiry is an open enquiry as distinct from a Discreet Enquiry. A Regular Enquiry is taken up on conversion of a Discreet Enquiry or on the basis of a complaint direct, depending on the nature of allegation, the material available and other factors. A Regular Enquiry may become necessary where there is need for further exploration to be on a firmer ground before taking up regular investigation by way of a Registered Case.

1.2 The Director General of Anti-Corruption Bureau shall authorise a Regular Enquiry. In respect of All India Service officers including Select List officers and Heads of Department, Chief Secretary to Government is addressed through the Vigilance Commission for permission and the Chief Secretary after obtaining advice of the Committee constituted for the purpose conveys decision on the proposal (G.O.Rt.No.140 G.A. (Spl.C) Dept. dt.9-1-2004; G.O.Rt.No.157 G.A. (Spl.C) Dept. dt.9-1-2004; Memo No.14/Spl.C/2004-1 G.A. (Spl.C) Dept. dt.9-1-2004)

2. Examination of witnesses, production of documents

2.1 As soon as orders for conducting a Regular Enquiry are received, the Inspector will identify and draw up lists of distinct allegations to be enquired into, witnesses to be contacted and examined and documents required to be secured for scrutiny.

2.2 Statements of witnesses should be recorded in one's own hand and language under signature. Where the witness does not know to write, the statement should be got recorded by a reliable person with proper attestation. Correct and clear address of the witness should be placed on record.

2.3 Documents should be requisitioned under the signature of the Range Deputy Superintendent of Police and taken possession of under acknowledgement. When records are required

to be obtained from the Government, the Range Deputy Superintendent of Police should submit a report to the Director-General, who would address the Government in the matter.

3. Examination of official involved

The employee should be given an opportunity to explain the circumstances appearing against him and he may be allowed access to documents required by him if they are considered relevant. The defence version should be fully and properly verified to arrive at the truth and, as the case may be, material secured to meet the defence.

4. Time limit for completion

A Regular Enquiry should be completed within a period of 4 months. Where the enquiry prolongs beyond 4 months, superior officers should review the case and take measures to expedite its finalisation.

5. Conversion into a Registered Case

5.1 Where the enquiries disclose the commission of a criminal offence and there is prima facie material or prospect of securing evidence, the Regular Enquiry may be considered for conversion into a Registered Case to enable the taking up of a full-fledged investigation invoking the provisions of law. No report is required to be furnished in a case where a regular enquiry is converted into an R.C. Only an intimation to that effect will suffice.

5.2 While converting the case, allegations if any which merit departmental action alone, should be finalised in a Regular Enquiry itself.

6. Report of Anti Corruption Bureau

6.1 The Anti-Corruption Bureau may send a preliminary report recommending to place the official under suspension or to transfer him to a non-focal post pending enquiry. The Vigilance Commission will tender appropriate advice which is considered by Government immediately and instructions issued.

6.2 Anti-Corruption Bureau shall forward Regular Enquiry report (Part-A) in the prescribed form in duplicate on completion of the enquiry against members of the All India Services and Select List Officers to the Chief Secretary through the Vigilance Commission with an advance copy to the Chief Secretary, in the prescribed proforma in duplicate.

6.3 In respect of others, the report shall be forwarded to the Principal Secretary/Secretary or Head of Government Undertaking, Government Company etc. through the Vigilance Commission with advance copy to G.A. (SC.F) Department and Principal Secretary/Secretary. In cases involving employees of Government Undertakings etc. advance copies may be sent to Head of the Government Undertaking etc. also. The Chief Secretary/Principal Secretary/Secretary/Head of Department/ Undertaking etc. may forward his comments, if any, to the Commission within 2 weeks from the date of receipt of the copy of the report from the Anti-Corruption Bureau.

7. Advice of Vigilance Commission

7.1 The Vigilance Commission will process the report and tender advice on the same which may be to drop action where there is no material at all; or to take departmental action for major penalty proceedings or minor penalty proceedings, and in the case of major penalty proceedings, to place it before the Tribunal for Disciplinary Proceedings or to the Commissionerate of Inquiries or have an inquiry conducted by the department itself. Where the allegation constitutes a criminal offence in the opinion of the Vigilance Commission, there may be a need to request the Anti Corruption Bureau to take up regular investigation by converting the enquiry into a Registered Case to secure material.

7.2 In the event of Commission advising initiation of major penalty proceedings, it may suggest to the Government to refer the case to the Tribunal for Disciplinary Proceedings for enquiry and report under Section 4 of A.P.C.S (Disciplinary Proceedings Tribunal) Act, 1960. The Departments of Secretariat, shall, while

referring the case to the Tribunal for Disciplinary Proceedings for enquiry, send a copy of such reference to the Vigilance Commission. In all cases, the final report of the Tribunal for Disciplinary Proceedings shall be sent to the Vigilance Commission in duplicate together with all the relevant records by the administrative department of the Secretariat for its advice both before arriving at the provisional conclusion and after receiving the representation of the delinquent officer and before arriving at a final conclusion in respect of the penalty to be imposed on the Government servant concerned. The Vigilance Commission will examine the record and forward the same to the concerned administrative department of Secretariat with advice as to further action. A copy of the final orders issued by the Government in all such cases shall be furnished to the Vigilance Commission.

7.3 Where the Vigilance Commission is of the opinion that inquiry by the Tribunal for Disciplinary Proceedings, is not necessary the Commission may advise taking departmental action in accordance with the procedure laid down in the A.P.C.S(CCA) Rules, 1991, against the officers concerned, through the Commissionerate of Inquiries or departmental inquiry authority having regard to the facts and circumstances of the case. After conclusion of the inquiry, the concerned department shall forward to the Vigilance Commission a report of its conclusion together with relevant records for such advice as the Vigilance Commission may think fit on a consideration of the conclusions of the disciplinary authority and the relevant records in the case. A copy of the orders issued by the Government may be furnished to the Commission.

7.4 In respect of reports against servants in the employ of Government Undertakings etc., the Vigilance Commission may advise the Head of the Undertaking to conduct departmental inquiry for major penalty or minor penalty. In major penalty proceedings the advice of the Vigilance Commission shall be obtained after conclusion of the departmental inquiry regarding the finding on the delinquency and the penalty to be imposed on the charged officer, both before arriving at the provisional conclusion and after receiving

the representation of the delinquent officer. The result of the action taken on the advice of the Vigilance Commission should be reported by the Head of the Undertaking together with a copy of the proceedings of orders issued in the case.

8. Regular Enquiry has legal sanction

The Supreme Court has observed, in the case of P. Sirajuddin vs. State of Madras (AIR 1971 SC 520), that before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegation by a responsible officer and that the lodging of such a report against a person, specially one who occupied the top position in a department even if baseless would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. There is thus no objection to the holding of enquiry before taking up of regular investigation, and it is even necessary.

CHAPTER XI

REGISTERED CASES

1. Registration of an R.C., by Anti-Corruption Bureau

When it is decided to take up investigation, following a regular surprise check or a Discreet or Regular Enquiry or directly on the basis of a complaint, information or otherwise, an F.I.R. is recorded under Sec. 154 Cr.P.C. as a Registered Case (R.C.).

2. Permission to register an R.C.

2.1 For registration of a case administrative permission of the Director General is required.

2.2 In respect of All India Service officers including Select List Officers and Heads of Department, the Director General sends a confidential report to the Chief Secretary to Government through the Vigilance Commission for prior orders to register a case and the Chief Secretary places the matter before the appropriate Committee constituted for the purpose under his chairmanship to examine and accord clearance for investigation relating to All India Service Officers, in G.O.Rt.No.140 G.A. (Spl.C) Dept. dt.9-1-2004. The Committees will be chaired by the Chief Secretary. The Special Chief Secretary to Government, Coordination & GPM&AR will be a member on all the Committees and Chief Commissioner of Land Administration & Special C.S. will be a member in the Committee in respect of IAS Officers, the D.G. & I.G. of Police in respect IPS Officers and the Principal Chief Conservator of Forests in respect of IFS Officers. The cases of Heads of Departments who are non-cadre officers will be considered by a Committee consisting of the Chief Secretary, Chief Commissioner of Land Administration & Special Chief Secretary and the Special Chief Secretary (Coordination & GPM&AR). The Committees will resolve the cases placed before them within a specified period of 30 to 45 days with reasons and communicate the decision to the Vigilance Commission. A representative of the investigating agency, Anti-Corruption Bureau or Vigilance & Enforcement Department will

present the case before the Committee. The Secretary to Government, GAD (Political) will be the Convenor for the Committees. (G.O.Rt.No.157 G.A. (Spl.C) Dept. dt.9-1-2004; Memo No.14/Spl.C/2004-1 G.A. (Spl.C) Dept. dt.9-1-2004)

3. First Information Report

3.1 First Information Report should incorporate an exact copy of the complaint. The complaint should be signed by the person giving the complaint. Where there is no complainant as such or it is decided not to divulge his identity, the F.I.R. can be registered on the basis of information secured from a source, naming the 'State: ACB' as the complainant. Registration of an F.I.R. on the basis of source information is not possible in the case of a trap. In case of conversion, the information originally received should be reproduced in the F.I.R. with an indication that the information was verified in a D.E. or R.E. as the case may be.

3.2 F.I.R. should contain the full name of the accused, father's name, age, occupation, place of residence, time and date of commission of the offence, the manner in which the offence was committed, names and particulars of witnesses, motive for the commission of the offence and in case of property offences, particulars of the property etc. In case the name of the accused is not known, his description should be given.

3.3 The F.I.R. along with the complaint in original should be sent to the jurisdiction Special Judge for Anti-Corruption Bureau Cases without delay .

3.4 As soon as possible, the investigating officer shall report the case to the Vigilance Commission and the superior officers of the accused officer's department. He may seek orders for placing the officer under suspension or for transfer to a non-focal post. A preliminary report is furnished by the Director General, Anti-Corruption Bureau on the case to the Department through the Vigilance Commission. The Vigilance Commission tenders its advice on interim suspension or transfer as the circumstances warrant.

4. Powers of Investigation

4.1 The powers to investigate are derived from the Criminal Procedure Code, 1973. Under sec. 156 Cr.P.C., all officers of and above the rank of an officer incharge of a Police Station have statutory authority to investigate a cognizable offence. Under sec. 157(1) Cr.P.C. such officers are also empowered to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for locating and arresting the offender. The powers and duties of a police officer making an investigation are laid down in secs. 157 to 175 Cr.P.C.

4.2 The Prevention of Corruption Act imposes certain restrictions in respect of investigation of offences under the Act. Officers not below the rank of a Dy.Supdt. of Police, an Inspector of the Special Police Establishment and an Inspector of Police authorised by the State Government alone are empowered to investigate offences under the P.C. Act without the order of a Magistrate and make arrest without a warrant as per sec. 17 of the P.C.Act. In the Anti-Corruption Bureau, Inspectors of Police are authorised by the State Government to investigate offences punishable under the P.C.Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant, in terms of the first proviso to sec. 17 of the Act and as such are competent to investigate offences under the Act. (G.O. Ms.No.10 G.A. (SC-E) Dept. dt.7-1-1999; G.O.Ms.No.163 G.A. (Spl.C) Dept. dt. 28-5-2003)

4.3 However, the officers competent as above should in addition obtain an order of an officer not below the rank of a Superintendent of Police to investigate an offence under cl.(e) of sub-sec. (1) of sec. 13 of the P.C. Act, as per the second proviso to sec. 17 of the Act.

5. Types of cases which Anti-Corruption Bureau can investigate

5.1 The Anti-Corruption Bureau is authorised to investigate

cases against Government servants and other Public Servants who are employees of the various State Public Undertakings, Statutory Corporations, Government Companies and Local Authorities i.e., all paid employees working in Municipalities, Zilla Parishads, Panchayats and Institutions manned by such local bodies. The Bureau can take up cases of corruption involving University employees including Registrars when referred to them. (G.O.Ms.No. 369 dated 21-7-82 G.A. (SC.D) Dept.)

5.2 The Anti-Corruption Bureau has power and jurisdiction to investigate offences under the Prevention of Corruption Act, 1988 and while investigating such offences, may also investigate any other offence committed by the accused public servant in the course of the same transaction. If any misappropriation of public funds comes to light, the Bureau itself should deal with it instead of entrusting the case to the C.I.D. Where private persons are involved along with public servants, investigation may be conducted against the private persons also.

6. Departments to assist Anti-Corruption Bureau

Government have instructed all departments of Secretariat and all Heads of Department and through them the subordinate offices to extend full co-operation to the Anti-corruption bureau Officers at every stage of investigation on priority basis so as to enable them to complete investigations early. They were also required to see that officials co-operate with the Anti-Corruption Bureau Officers in furnishing required information and appearing before I.Os. for giving their defence version. (Memo. No. 574/SC.D/86-1 dt.21-5-86 G.A.(SC.D) Dept.; Vigilance Commission Procedural Instructions; Memo. No. 2490/SC.E/96-2 dt.30-12-97 G.A. (SC.E) Dept.)

7. Accused Officer not to be sanctioned leave

Government servants against whom Anti-Corruption Bureau are making investigation should not be granted leave, except under exceptional circumstances so as to prevent them from tampering with the course of investigation. (G.O.Ms.No.677 dt.30-5-61 GA (Ser-D) Dept.)

8. Final Report of the Anti Corruption Bureau

8.1 In cases investigated into by the Anti-Corruption Bureau, suo motu or otherwise, where the Director- General, Anti Corruption Bureau, is satisfied that there is a case for criminal prosecution, he shall forward his report in duplicate in Form No.VIII together with other relevant records, if any, to the administrative department of Secretariat/Undertaking etc., concerned through the Vigilance Commission with a copy to the administrative department of Secretariat and to the Head of the Department/Undertaking/ Company and an advance copy to the General Administration (SC.F) Department. The administrative department of the Secretariat/Head of the Department/Undertaking/Company shall, on receipt of the copy of the report of the Anti-Corruption Bureau, forward its/his comments, if any, to the Vigilance Commission within two weeks from the date of its receipt by the Department/Head of the Department/Undertaking/Company. The departments of Secretariat, while forwarding their comments, shall indicate the designation of the authority empowered to sanction prosecution.

8.2 In cases investigated by the Anti Corruption Bureau suo-motu or otherwise, where the Director General, Anti-Corruption Bureau, is satisfied that there is case for taking action other than criminal prosecution, he shall forward his report in duplicate in Form No.VIII together with other relevant records, if any, to the administrative Department of Secretariat/Undertaking etc., concerned through the Vigilance Commission with a copy to the administrative department of the Secretariat and to the General Administration (SC.F) Department. In the report, the Anti Corruption Bureau may suggest whether the delinquent officer may be placed on his defence before the Tribunal for Disciplinary Proceedings or he may be proceeded against departmentally without indicating the specific penalty. The administrative department of Secretariat/ Head of the Department/ Undertaking etc., shall, on receipt of the copy of the report of the Anti-Corruption Bureau, forward its/his comments, if any, to the Vigilance Commission within two weeks from the date of its receipt by the administrative department of

Secretariat/Head of the Department/Undertaking etc. On consideration of the report of the Anti-Corruption Bureau, the Commission will advise the Department/Undertaking etc., on the nature of the proceedings to be instituted.

9. Advice of the Vigilance Commission and action thereon

9.1 In all cases where the Commission, after considering the regular/final reports, advises for launching criminal prosecution, the concerned Principal Secretary/Secretary to Government or the concerned Head of the Government Undertaking etc., shall take action to issue sanction of prosecution within a period of forty five(45) days from the date of receipt of the regular/final report with the advice of the Commission.

9.2 Where the Vigilance Commission is of the opinion that a case does not warrant the filing of a criminal prosecution, it may advise the Government to refer to the Tribunal for Disciplinary Proceedings for enquiry and report under Section 4 of A.P.C.S (Disciplinary Proceedings Tribunal) Act, 1960. The Departments of Secretariat, shall, while referring cases to the Tribunal for Disciplinary Proceedings for enquiry, send a copy of such reference to the Vigilance Commission. In all cases, the final report of the Tribunal for Disciplinary Proceedings shall be sent to the Vigilance Commission in duplicate together with all the relevant records by the administrative department of the Secretariat for its advice both before arriving at the provisional conclusion and after receiving the representation of the delinquent officer and before arriving at a final conclusion in respect of the penalty to be imposed on the Government servant concerned. The Vigilance Commission will examine the record and forward the same to the concerned administrative department of Secretariat with advice as to further action. A copy of the final orders issued by the Government in all such cases shall be furnished to the Vigilance Commission.

9.3 Where the Vigilance Commission is of the opinion that a case does not warrant filing of criminal prosecution or inquiry by the Tribunal for Disciplinary Proceedings, as the case may be, the

Commission may advise taking departmental action in accordance with the procedure laid down in the A.P.C.S. (CCA) Rules, 1991, against the officers concerned, through the Commissionerate of Inquiries or departmental inquiry authority. After conclusion of the inquiry, the concerned department shall forward to the Vigilance Commission a report of its conclusion together with relevant records on the further course of action on a consideration of the conclusions of the disciplinary authority and the relevant records in the case.

9.4 In respect of reports against servants in the employ of Government Undertakings etc., the Vigilance Commission may, if satisfied that a criminal prosecution is inexpedient, advise the Head of the Undertaking etc. to conduct departmental inquiry. The advice of the Vigilance Commission shall be obtained after conclusion of the departmental inquiry regarding the findings on the delinquency and the penalty to be imposed on the charged officer, both before arriving at the provisional conclusion and after receiving the representation of the delinquent officer. The result of the action taken on the advice of the Vigilance Commission by the Head of the Undertaking etc., shall be reported to the Vigilance Commission together with a copy of the proceedings of orders issued in the case.

CHAPTER XII

INVESTIGATION — BASIC PROVISIONS

1. Investigation — what it means

1.1 'Investigation' includes all the proceedings under the Criminal Procedure Code for the collection of evidence conducted by a Police Officer. All offences under the Indian Penal Code shall be investigated according to the provisions of the Criminal Procedure Code. All offences under any other law shall also be investigated as per the provisions of Cr.P.C. but subject to any enactment dealing with such offences. (Secs. 2(h), 4 Cr.P.C.)

1.2 Nothing contained in the Cr.P.C. shall, in the absence of a specific provision to the contrary, affect any special or local law or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law (Sec. 5 Cr.P.C.). Offences punishable under the Prevention of Corruption Act, 1988, though cognizable under the Cr.P.C., cannot be investigated by a Police Officer below the rank of a Deputy Superintendent of Police except an Inspector of the Special Police Establishment or an Inspector of Police authorised by the State Government, without the order of a Magistrate, as per sec. 17 of the said Act.

2. Steps in investigation

2.1 The Supreme Court recognised the following as steps in investigation:

i) proceeding to the spot;

ii) ascertainment of the facts and circumstances of the case;

iii) discovery and arrest of the suspected offenders;

iv) collection of evidence relating to the commission of the offence which may consist of –

a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit;

b) the search of places or seizure of things and documents considered necessary for the investigation and to be produced at the trial; and

v) formation of the opinion as to whether, on the material collected, there is a case to place the accused before the Magistrate for trial and if so, taking the necessary steps for the same by the filing of a charge sheet under sec. 173 Cr.P.C. (R.N.Rishbud vs. State of Delhi, 1955 Cr.LJ SC.527)

2.2 Investigation is collection of facts to accomplish a three-fold aim to identify and locate the guilty party and to provide evidence of his guilt. Criminal investigation is a search for people and things useful in reconstructing the circumstances of the illegal act. It is a probing from the known to the unknown backward in time. The aim of investigation is not merely to find the truth, but by all possible means to discover the actual facts and to effect the arrest of the real offender.

2.3 The tools of investigation are referred to as 3 "I"s, viz., Information, Interrogation and Instrumentation. By the application of these three "I"s, the investigator gathers the facts which are necessary to establish the guilt of the accused in a criminal trial. The hall-mark of an Investigator again are 3 "I"s, viz. Industry, Integrity and Impartiality.

3. Evidence

'Evidence' means and includes (i) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry, which constitute oral evidence and (ii) all documents produced for the inspection of the court, which constitute documentary evidence. Evidence may be given of facts in issue and relevant facts. Fact means and includes (i) anything, state of things or relation of things, capable of being perceived by the senses and (ii) any mental condition of which any person is conscious. A fact is said to be proved when

the Court believes it to exist or considers its existence so probable that a prudent man ought to act upon the supposition that it exists. No particular number of witnesses is required for the proof of any fact. (secs. 3, 134 Evidence Act)

4. Burden of proof

'Burden of Proof' in establishing a case lies on the prosecution The burden may shift as evidence is introduced by one side or the other. (sections 101, 102 Evidence Act)

5. Offence — Cognizable, non-cognizable

'Offence' means an act or omission made punishable by any law (sec .2(n) Cr.P.C.). Offences are of two categories, cognizable and non-cognizable. Cognizable offence means an offence for which a Police Officer may arrest without warrant and non-cognizable offence means an offence which a Police Officer has no authority to arrest without warrant (sec.2 (c)(1) Cr.P.C.). Whether an offence is cognizable or non-cognizable is given in the First Schedule of the Criminal Procedure Code, in respect of the Indian Penal Code, offence by offence. As provided in the same schedule, an offence under other laws is cognizable if it is punishable with imprisonment for 3 years and upwards and it is non-cognizable if it is punishable with imprisonment for less than 3 years or with fine only. This classification is however subject to any provision in any other law to the contrary (secs 4(2), 5 Cr.P.C.) and an offence which is non-cognizable as per the Schedule may be deemed to be a cognizable offence and vice versa under specific provision in any other law. The classification of offences into cognizable and non-cognizable is of importance because the power of a police officer to register and investigate an offence rests on it.

6. Registration of F.I.R. — Examination of witnesses and accused

6.1 Information relating to the commission of a cognizable offence given to an officer in charge of a police station (sec. 2(o)

Cr.P.C.) shall be registered and investigated. The First Information Report may be given by the aggrieved person or some other person on his behalf or by a person who has witnessed the commission of offence or a person who may come to know about the offence. Or, the officer in charge of a police station may register the F.I.R. on his own knowledge or information. On registering the F.I.R. a copy shall be given to the complainant free of cost. In case of refusal by the Station House Officer, the Superintendent of Police if satisfied shall investigate the case himself or direct investigation by any subordinate officer. A case is deemed to be a cognizable case, if atleast one offence is cognizable. Other offences even if non-cognizable can be investigated along with the cognizable offence. (secs. 154(1)(3), 155(4), 156(1), 157(1) Cr.P.C.)

6.2 Investigating Officer has power to require any person residing within his own or adjoining station limits, to appear before him. A woman or a male below 15 years can be asked to appear only at the place of his or her residence (sec. 160 Cr.P.C.). Failure to comply with the order renders the person liable for prosecution under sec. 174 I.P.C.

6.3 Investigating Officer can examine and record statements of persons acquainted with the facts and circumstances of the case, including the accused person. Separate and true statements should be recorded wherever statements are recorded. They should be unsigned. The witnesses are bound to answer truly all questions other than those which are likely to incriminate them (secs.161(1) (2) (3), 162(1), 163 Cr.P.C.). Refusal to answer any question relating to the matter under investigation renders the witness liable under Sec. 179 I.P.C. No person accused of any offence should be compelled to be a witness against himself. (Art. 20(3) of the Constitution of India)

6.4 Accused person should be examined for his version. It serves a dual purpose; it may clarify certain aspects and indicate the likely defence.

7. Statements under Sec. 164 Cr.P.C.

Investigating Officer can get statements of witnesses and confession of accused recorded by competent magistrate during the course of investigation or at any time before the commencement of the trial (sec. 164 Cr.P.C.). However, no person who is not an accused can straight away go to a magistrate and require him to record a statement which he proposes to make (Jogendra Nahak vs. State of Orissa, 1999(6) Supreme 379).

8. Identification parade

Investigating Officer can hold a test identification parade where the accused is not previously known to the witnesses. (ser. 164 Cr.P.C.)

9. Accomplice and pardon

An accomplice shall be a competent witness against an accused person, and conviction can follow upon the uncorroborated testimony of an accomplice (sec. 133 Evidence Act). But at the same time, illustration (b) of sec.14, Evidence Act administers a caution that accomplice is unworthy of credit unless corroborated in material particulars. A Chief Judicial Magistrate or a Metropolitan Magistrate may, with a view to obtaining evidence, tender a pardon to an accomplice during investigation or trial where the offence is punishable with imprisonment of 7 years or more or triable exclusively by a Court of Sessions or a Special Judge and he shall be examined as a witness. A Magistrate of First Class trying the offence can do so during the trial. (sec. 306 Cr.P.C.)

10. S.H.O.'s power to secure production of documents

A Station House Officer can issue a written order to any person for production of any document or other thing in his possession considered necessary for the purpose of investigation. In respect of any document, parcel or thing in the custody of a postal or telegraph authority, only a District Magistrate, Chief Judicial Magistrate, Court of Session or a High Court can order such delivery but in the meanwhile, any other

Magistrate or Commissioner of Police or District Superintendent of Police can ask for its location and detention. (secs. 91(1), 92(1) (2), 93 Cr.P.C.)

11. Search

11.1 An Investigating Officer can conduct a search where, in his opinion the thing cannot otherwise be obtained without undue delay, without a warrant from a Magistrate, in his own station limits or another police station limits or cause a search to be conducted.

11.2 Search proceedings are required to be prepared recording the ground for conducting the search without warrant and specifying the thing for which the search is made, before commencing the search. The search will have to be conducted in the presence of two or more independent and respectable inhabitants of the locality. Omission to assist the police officer in this regard constitutes an offence under Sec.187 I.P.C. Search list is to be prepared and delivered to the occupant or his representative. (secs. 165, 166, 100(4) (5) (6) Cr.P.C.)

12. Seizure

Police Officer has power to seize property found under circumstances which create suspicion of the commission of an offence. (sec. 102(1) Cr.P.C.)

13. Arrest

Investigating Officer can arrest a person concerned in a cognizable offence without warrant at his discretion. However, no arrest can be made without a warrant for an offence under the Prevention of Corruption Act by a Police Officer below the rank of a Deputy Superintendent of Police except an Inspector of Police of the Special Police Establishment or an Inspector of Police authorised by the State Government in this regard (sec.17 P.C.Act, 1988). If the person forcibly resists or attempts to evade the arrest, the police officer may use all means necessary to effect the arrest and for the purpose of effecting the arrest, can gain ingress into any place and pursue such person anywhere in India. He can

search the person arrested and seize articles and offensive weapons. The arrested person cannot be detained by the I.O. in custody for more than 24 hours, exclusive of the journey time from the place of arrest to the court. (secs. 41, 46, 47, 48, 51, 52, 57 Cr.P.C., Art. 22 of Constitution of India)

14. Medical examination of accused for evidence

A Police Officer not below the rank of a Sub- Inspector of Police can get the arrested accused person examined by a Medical Officer for evidence of the commission of an offence. (sec.53 Cr.P.C.)

15. Bail

15.1 Offences are bailable or non-bailable as shown in the First Schedule of Cr.P.C. or by any other law (sec. 2(a) Cr.P.C.). Any person concerned in a bailable offence shall be released on bail if he is prepared to give bail or where thought fit, on his executing a bond without sureties. Any person concerned in a non-bailable offence may be released on bail by the S.H.O. after recording reasons in writing unless there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or in certain other circumstances. The I.O. shall intimate the person arrested, particulars of the offence for which he is arrested or the ground for the arrest and in the case of a bailable offence his entitlement to be released on bail and to arrange for sureties. (secs. 436, 437(1) (4), 50 Cr.P.C.)

15.2 A court of Session or a High Court can grant anticipatory bail to a person concerned in a non-bailable offence imposing certain conditions, and in case of arrest of such a person thereafter without warrant, the S.H.O. shall release him on bail. (sec. 438 Cr.P.C.)

16. Case Diaries

The Investigating Officer shall maintain a diary of proceedings in the investigation day-to-day. Court may send for

and use diaries during trial not as evidence, but to aid it, in the trial. Accused is not entitled to call for or see them unless the police officer uses them to refresh his memory or the Court uses them for the purpose of contradicting the police officer. (secs.172 Cr.P.C., 145, 161 Evidence Act.)

17. Privilege of Police officer not to divulge source

A police officer shall not be compelled to disclose the source of information as to the commission of any offence. (sec.125 Evidence Act)

18. Completion of investigation - submission of Charge Sheet or Final Report

Investigation shall be completed without unnecessary delay. As soon as the investigation is completed, the Investigating Officer should submit a report to the court, charge sheet or final report, as the case may be. When sufficient evidence is available during the investigation of a case, Station House Officer shall send the accused under custody to a magistrate or in case the offence is bailable take security from him for his appearance before the court. The complainant shall be informed of the action taken. (secs.173, 170 Cr.P.C.)

19. Superior officer has power of Station House Officer

Police Officers superior in rank to an officer-in- charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. (sec. 36 Cr.P.C.)

20. Superior officer's power to direct further investigation

On receipt of the Final Report, a superior police officer can direct the S.H.O. to conduct further investigation. (sec. 173(3) Cr.P.C.)

21. Sending of documents, copies etc. with Charge Sheet

The police officer, in case of prosecution, shall forward to the court all documents and statements of prosecution witnesses. The police officer, where convenient may furnish copies of statements of prosecution witnesses and copies of prosecution documents to the accused. (sec. 173, 207 Cr.P.C.)

22. Further investigation after Charge Sheet

Investigating officer can continue further investigation after submission of the charge sheet or final report and take further action. (sec.173(8) Cr.P.C.)

23. Joinder of charges

23.1 For every distinct offence, the accused person shall be tried separately subject to the following exceptions. (sec. 218 Cr.P.C.)

i) 3 offences of the same kind within one year. (sec. 219 Cr.P.C.)

ii) Every offence committed in one series of acts in the same transaction. (sec. 220 (1) Cr.P.C.)

iii) Where acts alleged constitute different offences, all such offences. (sec.220 (3) (4)

iv) Alternative offences or all offences in case of doubt as to which offence was committed. (sec.221 Cr.P.C.)

v) Offences of criminal breach of trust or dishonest misappropriation covering a period of one year. (sec. 212 Cr.P.C.)

vi) Offence of falsification of accounts in respect of criminal breach of trust or dishonest misappropriation covered under sections 211 or 219 Cr.P.C. (sec. 220(2) Cr.P.C.)

23.2 Persons may be charged and tried together where they are accused of same offence committed in the same transaction etc. (sec.223 Cr.P.C.)

24. Sanction of prosecution

24.1 Consent of the State Government or District Magistrate is necessary for the court to take cognizance of an offence of criminal conspiracy to commit an offence punishable with less than 2 years imprisonment (sec. 196 Cr.P.C.).

24.2 Previous sanction of the Central or State Government, as the case may be, is required for the court to take cognizance of an offence alleged to have been committed in the discharge of official duties by a public servant not removable except by the Government (sec. 197 Cr.P.C.).

24.3 Prior sanction is required for the court taking cognizance of offences under sections 7,10,11,13,15 of the Prevention of Corruption Act, 1988 (sec. 19 P.C. Act).

25. Limitation

Period of limitation is imposed for the taking of cognizance of offences by the court, 6 months if the offence is punishable with fine only, 1 year if punishable with imprisonment not exceeding 1 year and 3 years if punishable with imprisonment exceeding 1 year but not exceeding 3 years. In deserving cases, court can condone delay. The period of limitation commences on the date of the offence, or the first day on which the offence comes to the knowledge of the person aggrieved or to any police officer or the first day on which the identity of the offender is known to the person aggrieved or the police officer (secs. 468 , 474, 469 Cr.P.C.). The offences under the P.C.Act are not barred by limitation except an offence under sec. 15, as they are punishable with imprisonment exceeding 3 years. The Economic Offences (Inapplicability of Limitation) Act, 1974 excluded certain offences from the operation of the said limitation.

26. Public legally bound to give information of corruption, breach of trust

Every person aware of the commission of or of the intention of any other person to commit offences relating to illegal gratification punishable under sections 7 to 12 of the Prevention of Corruption Act, 1988 (corresponding to sections 161 to 165A I.P.C.) or an offence relating to criminal breach of trust by public servant punishable under section 409 I.P.C. shall forthwith give information to the nearest Magistrate or police officer, of such commission or intention as per sec. 39 Cr.P.C.

CHAPTER XIII

PRODUCTION OF DOCUMENTS

1. Securing of documents

1.1 Records or articles can be taken into possession during investigation without a formal search. A Station House Officer can issue a written order to any person for production of any document or other thing in his possession considered necessary for the purpose of investigation (sec. 91 Cr.P.C.).

1.2 A proper recovery memo in the prescribed form attested by two respectable witnesses and the person from whom they are taken should be prepared on the spot. The records and articles, each one of them, should be got initialed and numbered by them to meet any contention of substitution and manipulation. Signature of the accused should not be obtained except in acknowledgement of receipt of a copy of the memo.

2. Postal documents

In respect of any document, parcel or thing in the custody of a Postal or Telegraph Authority, a District Magistrate, Chief Judicial Magistrate, Court of Session or a High Court alone can order delivery. In the meanwhile any other Magistrate or Commissioner of Police or District Superintendent of Police can ask for its location and detention (sec. 92 Cr.P.C.).

3. Production of documents of Banks and Public offices

It should be considered as sufficient compliance of an order under Sec. 91 Cr.P.C. by Banks or public offices if the required documents or books are shown or produced at the bank premises or in public offices, as the case may be. Investigating Officers should not insist on production of the records at any other place. While exercising the powers under sec. 91 Cr.P.C. or while taking possession of documents, records etc. required for the investigation, Investigating Officers should not cause unnecessary hardship or dislocation of work to the persons or offices concerned.

4. Access to Bankers' Books

4.1 Under sec.18 of the Prevention of Corruption Act, 1988, a Police Officer, empowered to investigate under sec. 17 of the Act, where he has reason to suspect the commission of an offence under the said Act, considers it necessary for the purpose of investigation or inquiry, may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person. The I.O. can take or cause to be taken certified copies of the relevant entries therefrom and the bank shall be bound to assist the I.O. in the exercise of his powers under the section.

4.2 An I.O. can exercise this power, where he is below the rank of a Superintendent of Police, only if he is specially authorised in this behalf by an officer of or above the rank of a Superintendent of Police.

5. Information (Documents) required from other States, Central Govt.

5.1 Director General, Anti-Corruption Bureau as Head of Department, can correspond direct with Heads of Department in all other States and with the Central Government on purely routine (including routine technical matters) and non-controversial matters on reciprocal basis. All such direct correspondence should be scrutinised with special care and issued over the Director General's signature. (G.O. Ms.No.582 dt.20-9-68 GA (Pol.D) Dept.)

5.2 Under no circumstances should subordinate officers correspond directly with officers of other State Governments. If any information or records are required from departments of other States, Investigating Officers should send a report to the Head Office so that action can be taken to obtain the information and records from the State concerned.

6. Production of documents by Departments

6.1 Government have issued the following instructions

regarding the supply of documents (records) of the State Government Departments to the Anti-Corruption Bureau:

i) Top secret documents should be handed over only to Gazetted Officers not below the rank of Dy. Supdt. of Police.

ii) Secret and confidential documents should be given to Gazetted Officers including an Inspector, if he is specifically authorised by the Dy. Supdt. of Police to obtain them.

iii) A temporary receipt should be obtained whenever classified (top secret, secret and confidential) documents are handed over.

iv) Originator of the classified documents should be informed.

v) Where original documents cannot be handed over for any reason, photostat or attested copies should be supplied and a certificate issued by an officer of appropriate rank that the originals are in safe custody out of the reach of the suspect official and will be produced whenever required.

vi) An Inspector of Police can give a requisition to the Head of Department/ Head of Office for supply of secret and confidential records when the enquiry/investigation is against an N.G.O., and a Gazetted Officer of not below the rank of a Dy.Supdt of Police alone should requisition records from the Head of the Department/ Head of Office in an enquiry/ investigation against a G.O.

vii) Documents of Government may be furnished when requisitioned by the Director General if they are relevant and strictly essential and there is sufficient justification. A Dy. Supdt. of Police should approach the Head Office where documents from the Government are required but not the Government direct.

viii) In the case of extremely confidential or privileged documents prior orders of the Governmentshall be obtained.

ix) There are certain classified documents held in the personal custody of officers which cannot be made over at their discretion and such documents will not be handed over by them. In case of doubt, the matter may be referred to the Chief Secretary to Government and express clearance obtained.

x) If in any disciplinary proceeding, return of the documents (files) taken by the Anti-Corruption Bureau. cannot be awaited and urgent action is called for, Departments of Secretariat, Heads of Department or Collectors may obtain authenticated extracts or photostat copies of relevant documents for pursuing disciplinary proceedings or attending to any other urgent matter.

xi) Documents shall be supplied within a fortnight or at the most within a month of receipt of the requisition from the Anti-Corruption Bureau.

6.2 Whenever it is required to peruse property statements and service registers of a Member of an All India Service, a letter in writing should be furnished to the Secretariat Department, quoting the orders of the Government wherein permission for Discreet or Regular Enquiry by the Anti-Corruption Bureau is accorded. Such references may be made in the name and designation of the Director General, Anti-Corruption Bureau only. (Memo. No.1300/ SC.D/73-1 dt.6-9-73 GA (SC.D) Department; Memo No. 443/SC.D/ 78-2 dt.3-6-78 GA (SC.D) Dept.; Memo.No.2331/SC.D/82-1 dt.18-12-82 GA (SC.D) Dept.; Vigilance Commission Procedural Instructions; Memo. No.2331/ SC.D/82-7 dated 23-6-83 GA (SC.D) Dept.; Memo. No. 143/SC.D/88-5 dt.9-5-88 GA (SC.D) Dept.; Govt. Memo.No. 265/SC.X/ 96-1 dt. 26.2.1996 GA (SC.X) Dept.)

7. Documents required in a Regular Enquiry

Documents should be requisitioned under the signature of the Range Deputy Superintendent of Police and taken possession of under acknowledgement. When records are required to be obtained from the Government, the Range Deputy Superintendent of Police should submit a report to the Director-General, who would address the Government in the matter. (Memo.No.1300/SC.D/73-1 dt.6-9-73 GA (SC.D) Dept.)

8. Perusal of documents in a Discreet Enquiry

Officers of the Anti-Corruption Bureau may peruse documents during a Discreet Enquiry, vide orders of Government in Memo. No.1964/SC.D/73-4 G.A. (SC.D) Dept. Dt.15–3-75.

9. Audit Documents

The following are consolidated instructions of Government on obtaining of documents from audit offices.

i) Original audit documents will be made available to the Investigating Officers freely at the audit offices for the purpose of perusal and taking of copies, including photo copies.

ii) In a majority of cases, the facility of inspection of the original documents within the audit office and the taking of copies (including photo copies) will be found to be adequate for the purpose of police investigation, including identification of handwriting. Even where the original documents have to be shown to witnesses during investigation, it may be possible in many cases to have that carried out at the audit office.

iii) There may be some cases where it will be necessary to obtain the original documents and in such cases, the Investigating Officer should report to the Director General, who will address the Accountant General to hand over the documents required, to the I.O. The

I.O. should mention that copies including photo copies would not serve the purpose. In cases where documentsare voluminous, copies may be made through micro-filming instead of photo copies provided it is economical.

iv) The Branch Officer incharge of administration in each Audit office is nominated as Liaison Officer for arranging delivery of original documents to the I.O. on proper requisition from the Director General, Anti-Corruption Bureau, who is the competent authority.

v) Before handing over the original documents to the I.O. the photo copies of vouchers should be compared with the originals and certified to be correct by the Accounts Officer and the Investigating Officer.

vi) There will be no difficulty in getting the original records if they are retained in the District Treasury Offices and Sub-Treasuries for the purpose of record only, after audit.

vii) If the audit records are required only for the purpose of identification of signatures or handwriting, the I.O. can take immediate steps to get them examined by the experts and return the bills for the purpose of audit with a request to retain them for production in the Court whenever they are called for.

viii) In some cases, it is likely that the documents may not have been forwarded to the audit office but may still be with the Treasury Offices or other departmental offices, which render accounts directly to the audit office. In such cases, the following procedure is envisaged.

ix) In cases where it is considered that the documents need not be seized immediately, the I.O. should make a list of the documents and make a request in writing to the Treasury office etc. to forward the documents in a sealed cover to the head of the audit office intimating that these documents are required by the Anti-Corruption Bureau The

documents could then be obtained by the I.O. from the audit office.

x) In cases where it is necessary to seize the documents immediately, the I.O. should submit a written request together with the list of documents and obtain delivery thereof from the Treasury Office etc. In such cases, the I.O. must take immediate steps to furnish photo copies to the Treasury offices etc. for being submitted to the Audit Office in lieu of the original documents for facility of work in the Treasury office. The original documents may be taken over only where there is an absolute need like showing them to a number of witnesses who live at different places. (Memo.No.78/1/Accts/91 dt.22-6-91 Fin. & Plg. (FW-Accts) Dept.)

10. Incometax records

10.1 It is permissible under the Incometax Act, 1961 subject to the provisions of any notification issued under sec.138(2) of the Act to obtain any information in respect of the assessment of any assessee and also ask for the inspection of assessment records or any other information contained therein either by making an application under sec. 138(1) of the Act, or by sending a requisition under sec.91 Cr.P.C. By Notification No. S.O. 6101 dated 8-1-85 issued by the Government of India, Ministry of Finance (Department of Revenue) communicated by the State Government with Memo.No. 1800/SC.D/84-2 G.A. (SC.D) Department dated 30-1-85, the Central Government authorised all Class-I officers of the Anti-Corruption Bureau, Hyderabad for the purposes of sub clause (ii) of clause (a) of sub-sec (1) of sec. 13 of the Income Tax Act, 1961. By a further notification, S.O.No. 6196 communicated by the State Government with endorsement No. 245/SC.D. G.A (SC.D) Department dated 4-5-85, the Central Government specified the Director, Anti-Corruption Bureau, Hyderabad and any other officer authorised by him in writing in respect of a specific case for the purpose of sub cl.(ii) of clause (a) of sub-sec (1) of sec. 138 of the Incometax Act, 1961.

10.2 In pursuance of these two notifications, the Investigating

Officers of the Anti-Corruption Bureau can requisition during R.Es. the required information through the Head Office by filing an application in the prescribed form No. 46 in duplicate in terms of section 138(1)(b) of the Incometax Act read with rule 113 of the Incometax Rules.

10.3 In R.Cs., I.Os. can invoke inherent powers vested in them as officer in charge of a police station and make written requisition under sec. 91(1) Cr.P.C. to the Incometax Officers in whose possession the required incometax documents/files are available, to make them available for perusal and scrutiny. Where copies of the Incometax documents/files are required, the I.Os. should take possession and take photo copies thereof and return the originals.

10.4 The Commissioners of Incometax of Andhra Pradesh in a Joint Circular Memo Hqrs I/Con/84-85 dated 30-4-85 clarified to all Incometax Officers in the State that as advised by the Law Ministry, section 91 Cr.P.C. gives definite power to an Officer-in-charge of Police Station for the purpose of seeking production of documents and that the office of the Director and District Offices of the Anti-Corruption Bureau are notified as police stations and that sec. 138 of the Income-tax Act is an enabling provision and does not create a bar and any requisition from the Anti-Corruption Bureau officer will have to be complied with.

10.5 Investigating Officers of the Anti-Corruption Bureau should obtain the requisite information as a rule by sending a requisition under section 91 Cr.P.C. instead of making an application under sec. 138(1) of the Incometax Act, 1961. In R.Es. however, a requisition should issue in form No. 46 alone.(Memo.Hqrs/1/Con/84-85 dt.30-4-85 of Commr of IT to all ITOs. and Lr.Rc.Con.Vig. No.1/88 (Vol.III) dt.9-11-89 of IT Dept to Anti-Corruption Bureau.)

11. Privilege for production of documents in Court

11.1 Privilege can be claimed for production of documents before court as per the provisions of sections 123 and 124 of the Evidence Act. Sec.123 provides that no one shall be permitted to

give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Head of Department, who shall give or withhold such permission as he thinks fit. Sec.124 provides that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.

11.2 Sec. 162 of the Evidence Act enjoins that a witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection as to its production or its admissibility, that the Court shall decide the validity of any such objection and may inspect the document unless it refers to matters of State or take other evidence to enable it to determine on its admissibility. Thus, if a document comes within the ambit of sec. 123 of Evidence Act, the Court cannot inspect it, though it can take other evidence to determine the character attributed to the document. But, if the document falls within the scope of sec 124, the Court can inspect it to determine the claim of privilege. Under Sec. 123 the discretion vests with the Head of Department and under Sec. 124 the public officer has to decide as to whether a disclosure will or will not be against the public interest.

11.3 When a public officer is summoned to produce a document in respect of which he desires to claim privilege, he is bound to produce it in court under sec. 162 of the Evidence Act and then claim privilege. When once the court finds that the document is of the kind in regard to which privilege can be claimed, the question whether disclosure of contents would be against public interest and whether the privilege should be claimed for it or not, is entirely within the discretion of the Head of Department or the public officer concerned. If, on the other hand, the court holds that the document does not relate to any affairs of State or that it is not a communication made in official confidence, no privilege can be claimed.

11.4 The Government servant who is to attend a court as witness with official documents should, where permission under sec.123 has been withheld, be given an affidavit in Form No. 37 of Part II of Volume II prescribed for the purpose duly signed by the Head of Department. The witness should, when he is called upon to give evidence, explain that he is not at liberty to produce the document before the court or to give any evidence derived therefrom. He should, however, take with him in a sealed cover the papers which he has been summoned to produce. For claiming privilege under sec.124, the person through whom the documents are sent should carry with him an affidavit of the Government servant who is summoned to produce the documents, issued in Form No.38 of Part II of Volume II prescribed for the purpose. He should take with him the documents but should not hand them over to the court unless the court directs him to do so, and submit the affidavit. Privilege should be claimed and the documents should not be shown to the opposite party and should not be marked as exhibits in any proceedings. (U.O.Note No.6929/ 58-1 Law Dept. dt.14-4-58)

CHAPTER XIV

ATTACHMENT AND FORFEITURE OF PROPERTY (CRIMINAL LAW AMENDMENT ORDINANCE, 1944)

1. Object of the Ordinance

1.1 The Criminal Law Amendment Ordinance, 1944 was promulgated by the Central Government with the object of effectively tackling corruption.

1.2 It provided for preventing the disposal or concealment of money or other property procured by means of offences punishable under sec. 161 or 165 I.P.C., secs. 406, 408 or 409, secs. 411 or 414, 417 or 420 I.P.C. and any attempt to commit or any abetment of any of the said offences or conspiracy to commit any of them. The Prevention of Corruption Act, 1947 was added to the schedule when it was enacted and the Prevention of Corruption Act, 1988 was substituted on 9-9-1988 and secs.161, 165 I.P.C. were omitted therefrom.

2. Ordinance survives

The Ordinance was promulgated on 23-8-1944 during the period of emergency, 27-6-1940 to 1-4-1946, by the Governor General under sec.72 of the Government of India Act and as such it is a permanent law by virtue of sec. 3 of India and Burma (Emergency Provisions) Act, 1940, which omitted the limitation of six months duration for the life of an Ordinance. It is thus one of the few Ordinances that survived the 6 months limitation and remained on the Statute Book on a permanent footing.

3. Ordinance applies to all offences under P.C.Act, 1988 and some other offences

3.1 The Ordinance, in its application, is not confined to an offence of disproportionate assets but extends to all other offences punishable under the P.C. Act, 1988. As such, attachment proceedings can be launched not only in respect of an offence

referred to under cl. (e) of sub-sec.(1) of sec.13 but also in respect of the other clauses thereof and secs. 7 to 12, 14 and 15 of the P.C.Act, 1988 as well.

3.2 In addition, the Ordinance extends to offences of criminal breach of trust (secs. 406, 408, 409 I.P.C.), where the property in respect of which the offence is committed is property entrusted by the Central or State Government or a Department of any such Government or a local authority or a Corporation established by or under a Central Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government Company or a Society aided by such Corporation, authority, body or Government company or a person acting on behalf of any such Government or department or authority or Corporation or body or Government Company or Society. The Ordinance further extends to offences of cheating (secs. 417, 420 I.P.C.) and receiving and assisting in concealment of stolen property (secs. 411, 414 I.P.C) with similar restrictions as above. The Ordinance also covers offences of conspiracy to commit or any attempt to commit or any abetment of any of the offences specified above.

4. Government, Central or State, can apply for Attachment

Where the State Government has reason to believe that any person has committed any of the scheduled offences, at any stage, whether or not any court has taken cognizance of the offence, the State Government may authorise the making of an application for attachment of money or other property, as per sec.3 of the Ordinance. Sub-sec. (1) of sec.3 of the Ordinance has been amended by the P.C.Act, 1988 vesting power in the Central Government also to authorise the making of an application, besides the State Government.

5. What can be attached

The attachment can be of the money or other property which the State Government believes the said person to have procured by means of the offence or if such money or other property cannot for any reason be attached, of other property of the said person of

value as nearly as may be equivalent to that of the aforesaid money or other property.

6. Deposits in Bank can be attached

The District Judge has jurisdiction to issue an interim order of attachment of moneys procured by commission of a scheduled offence and deposited in a Bank. Such money in the hands of the Bank does not cease to be attachable although its identity is lost by getting mixed up with the other moneys of the Bank, so long as it is not converted into anything else and remains liable to be paid back in cash to the depositor or to his order (K. Satwant Singh vs. Provincial Government of Punjab, AIR 1946 Lah 406).

7. Property of mala fide transferees liable for attachment

Where the assets available for attachment are not sufficient and where he is satisfied that the transfer of the property to the transferee was not in good faith and for consideration, the District Judge has power to order the attachment of so much of the transferee's property equivalent to the value of the property transferred, as per sec. 6 of the Ordinance.

8. Jurisdiction vests in District Judge and in Special Judge trying the offence

The court having jurisdiction to entertain the application for attachment of property under the Ordinance is the court of the District Judge within the local limits of whose jurisdiction the suspect ordinarily resides or carries on his business. A Special Judge while trying an offence punishable under the said Act can exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, as per sub-sec. (6) of sec. 5 of the P.C.Act, 1988.

9. Order of attachment of property

The District Judge is empowered under sec.4(1) of the Ordinance, as also the Special Judge trying an offence punishable under the P.C.Act, 1988, to pass an ad interim order of attachment

of the money or other property and to make the ad interim order of attachment absolute, under sec. 5 of the Ordinance.

10. Duration of Attachment

The order of attachment remains in force for 3 months as per cl.(a) of sec.10, but the period has been raised to one year by the P.C.Act, 1988 as per cl.(b) of sec. 2 thereof. Where a court has taken cognizance of the scheduled offence, the order of attachment continues in force until orders are passed by the Judge, as per cl.(b) of sec. 10 of the Ordinance.

11. Forfeiture of property

The District Judge or a Special Judge trying an offence punishable under the P.C.Act, 1988 has power to order forfeiture of the attached property on the termination of the criminal proceedings where the final judgment or order of the criminal court is one of conviction as per sub-sec.(3) of sec. 13 of the Ordinance.

12. Action to be taken in terms of the Ordinance

12.1 The provisions of the Ordinance can be invoked in respect of offences of disproportionate assets, criminal breach of trust, besides others enumerated in the schedule even before the registration of an F.I.R. if material is available and the State Government (or the Central Government) has reason to believe that a scheduled offence has been committed, even where no court has taken cognizance of the offence. The Special Judge trying the case (or the District Judge in whose jurisdiction the person resides or carries on business) has jurisdiction to make an order of attachment. The order of attachment remains in force for one year and in case a court has taken cognizance, the order of attachment continues in force until orders are passed by the Judge.

12.2 The Anti-Corruption Bureau or any other Investigating Agency should initiate action in this regard and obtain authorisation of the State Government and apply for attachment at the earliest opportunity soon after the registration of an F.I.R. and conducting of searches, and certainly before filing of the charge sheet in a

court of law. The Chief Vigilance Officers of the administrative department should see that orders of the Government are issued expeditiously to file application for attachment in the Special Court/ before the District Judge having jurisdiction. The Anti-Corruption Bureau ordinarily sends a draft format for the purpose to the Department.

12.3 The property is liable to be forfeited where the Special Judge trying the offence (or the District Judge) orders forfeiture of the attached property on the termination of the criminal proceedings where the final judgment of the court is one of conviction. There can be no question of forfeiture unless the criminal case ends in conviction. Thus, whereas an order of attachment can be obtained on the mere belief of the Government that a scheduled offence has been committed, forfeiture can be ordered only where the criminal proceedings result in conviction.

12.4 Government issued instructions that if any employee commits any of the offences under sec. 406 (criminal breach of trust) or sec. 408 (criminal breach of trust by clerk or servant) of sec. 409 (criminal breach of trust by clerk or servant etc.) of the IPC in respect of property belonging to Government, action can be taken under the Ordinance. (U.O.Note No. 646/Ser.C/80-1 G.A.(Ser.C) Dept. dt.21-7-80)

13. Other related provisions

The provisions of sec. 452(1) Cr.P.C. for confiscation of property at the end of the trial and imposition of fine commensurate with the offence committed under sec. 16 of the Prevention of Corruption Act, 1988 should be kept in view as additional measures.

14. Attachment of property in misappropriation cases

Section 3 of the Criminal Law Amendment Ordinance, 1944 contemplates that if any person commits any offence punishable under sec. 406 (criminal breach of trust) or sec. 408 (criminal breach of trust by clerk or servant) or sec. 409 (criminal breach of trust by public servant etc) of the I.P.C., the Government may,

whether or not any court has taken cognizance of offence, authorise the making of an application to the District Judge concerned for attachment of the money or other property which the State Government believe the said person to have procured by means of the said offence or if such money or property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property. The Government have directed that if any Government employee commits any of the offences, aforesaid in respect of property belonging to Government, action may be taken for the attachment of the said property or any other property of the said employee of value as nearly as may be equivalent to that of the property, in the manner specified in sec. 3 of the said Ordinance. Departments are empowered to take stringent action accordingly to safeguard Government interest for which they have to move the District Judge having jurisdiction to attach the property of the accused officer pending investigation/trial and eventual confiscation. (U.O.Note No.646/Ser.C/80-1 G.A. (Ser.C) Dept. dt. 21-7-80)

15. Attachment of property in Disproportionate assets cases

Government advised the Director General, Anti-Corruption Bureau to submit along with preliminary report in disproportionate assets cases investigated, where the disproportionate assets is not marginal, proposals for attaching property under relevant sections of Criminal Law Amendment Ordinance, 1944. (Memo.No.596/Spl.B/2000-6 G.A. (Spl.B) Dept. dt.20-6-2002). The Department will be expected to accord permission to file an application before the Special Court for Anti-Corruption Bureau cases for attachment of properties of the accused officer pending investigation/trial.

CHAPTER XV

TRAPS

1. Object of laying a Trap

One of the principal modes of detecting an offence of bribery is to lay a trap against the public servant and catch him in the very act of commission of the crime. The object of laying a trap is thus admittedly collection of evidence against the offender and the degree of success depends upon the amount of incriminating material secured during the trap. There should therefore be proper planning on basic aspects like ensuring the presence of the official concerned.

2. Complaint

2.1 A prior demand of bribe and a complaint from the aggrieved person are a prerequisite for a trap. The complaint should be in writing in the hand of the complainant under his signature. Where he is an illiterate or is unable to write, it can be written by any other person under his attestation with an endorsement that it was read over and admitted by him to be correct and his signature or left thumb impression obtained. The date and time of its receipt should be noted thereon by the official receiving the complaint.

2.2 The complaint should contain all essential particulars like name and designation of the public servant, the bribe amount demanded and agreed upon, part-payment if any made, date, time and place where they met and names of persons if any present at that time. It should also mention the date, time and place decided for payment and the bribe amount agreed upon.

2.3 Setting up of a decoy is deprecated. Where there is no demand of bribe and he is only suspected to be in the habit of taking bribes and he is tempted with a bribe just to see whether he would accept it, courts held that it would be “an illegitimate trap”.

2.4 It is considered not desirable that an Anti-Corruption Bureau official should figure as a complainant in a trap case.

2.5 The complainant will be informed that he should secure the money required for payment as bribe and keep himself in readiness for a trap and should contact the Investigating Officer at a given time for further instructions so that in the meanwhile the complaint could be verified.

3. Verification of Complaint

3.1 A swift secret verification of the complaint should be conducted about the bonafides and veracity of the information by questioning the complainant and checking up the background of the complainant and the public servant and their relationship. The Investigating Officer should decide the mode of verification depending on the nature of the complaint, the status of the complainant and the public servant, and such other factors. The scope of false implication of a honest public servant by a recalcitrant subordinate or a defaulting contractor facing penal action should be carefully verified and ruled out as also machinations of a scheming rival out to eliminate an inconvenient senior in the path of promotion. The verification should be real and effective.

3.2 The complainant's reliability and commitment to the cause of truth should be assessed and he should even be forewarned of the undesirable consequences of his turning hostile at a later stage.

3.3 The particulars should be cross-checked with documents if any produced by the complainant and wherever possible with official record to which access could be had without compromising secrecy. Where information on any of the material aspects is deficient or uncertain, an exploratory probe should be had by sending the complainant along with an accompanying witness to elicit the required information.

3.4 Financial dealings between the complainant and the public servant should be ascertained, as there is scope on the one hand of the public servant coming forward with a loan theory of the bribe money representing a loan taken or repayment made and on the other of the complainant foisting a false case.

3.5 It should be ensured that the name and designation of the public servant are correct by verifying. Mistaken identity of the public servant should be guarded against.

3.6 The verification should be placed on record, the fact of having verified the complaint and Investigating Officer's satisfaction that the complaint needed to be acted upon.

4. Prior permission required

4.1 Where the Investigating Officer is satisfied that the complaint is well-founded he should report to the Director General and obtain administrative permission for registration of a case and laying of a trap, including against a private person. Those outside Hyderabad, besides sending a report should contact over telephone, taking care to maintain secrecy.

4.2 In respect of members of the All India Service including select list officers and Heads of Departments, the Director General should approach the Chief Secretary to Government, and the Chief Secretary would obtain the orders of the Chief Minister before communicating the prior permission. (Vigilance Commission Procedural Instructions and Memo. 404/SC.D/96-1 dt.6-5-96 G.A (SC.D) Dept.)

5. Registration of First Information Report

5.1 On receipt of permission of the Director General, the Investigating Officer should register a First Information Report incorporating the complaint under secs. 7 and 15 of the Prevention of Corruption Act, 1988 in case of demand and under Sec.13(1)(d) read with Sec. 13(2) also in case of prior part-payment of bribe.

5.2 The verification done should be incorporated in the F.I.R.

5.3 The F.I.R. together with the complaint in original should be despatched to the Special Judge for Anti-Corruption Bureau Cases concerned in a name cover requesting to keep the F.I.R. in his personal custody until the trap is laid.

6. Independent Witnesses

6.1 A person may be chosen to accompany the complainant and witness the transaction of demand and obtaining of the bribe amount by the accused official and two mediators to witness and record the proceedings. None of them should be a relative, friend or an acquaintance of the complainant or inimical to the accused official, or a subordinate of the accused officer.

6.2 Where it is not possible to secure reliable private persons, services of two Government servants may be secured. Government have issued instructions directing that all Government servants particularly Gazetted Officers should extend full co-operation to the officers of the Anti-Corruption Bureau, whenever they are approached to assist or witness a trap, in Memorandum No. 4923/61-1 G.A. (Ser-D) Department dated 27-12-61. An authenticated copy may be shown while approaching for the assistance. The Head of Department or Head of Office should be approached to spare the services of two suitable officers of appropriate status without naming any particular person. They should preferably be from different offices and different departments. Those who had figured in a trap earlier and those not enjoying good reputation should be avoided. A certificate of utilisation may be issued to them at the end. (Memo.No.930/SC.D/74-3 dt.16-8-74 G.A.(SC.D) Dept.; Memo. No. 292/SC.D/75-4 dt. 26-8-75 GA (SC.D) Dept.; Memo. No.2491/SC.E1/98-1 dt.20-11-98 G.A.(SC.E) Dept.)

6.3 For administrative reasons, Government have advised that a Mandal Revenue Officer should not be taken outside his jurisdiction. (Memo.No.18/SC.D/94-3 dt.1-6-94 G.A.(SC.D) Dept.)

6.4 Government servants are taken as mediators in view of the practical needs of the situation but not because of instructions that they alone should be taken. There are no such instructions. This should be borne in mind while deposing in court during trial.

6.5 Where no other person is available, one of the Government servants may be set up as an accompanying witness.

7. Phenolphthalein Test

7.1 The significance of application of phenolphthalein powder is explained to the mediators and demonstrated. Phenolphthalein is a light white powder and slightly soluble in water. It is colourless in acid and neutral media and pink in alkaline medium. When the currency notes are treated with phenolphthalein powder, it adheres to the surface, hardly visible to the naked eye. Articles (valuable things), where involved, should also be treated with phenolphthalein powder.

7.2 A solution of sodium carbonate (washing soda) — an alkaline medium — is prepared in a glass tumbler and the person preparing the solution dips his fingers in it, on which the solution remains colourless. The person who has smeared the currency notes with phenolphthalein powder dips his fingers in the sodium carbonate solution upon which the colourless solution turns pink. These functions should be performed by two different persons and can be conveniently done by two of the assistants of the Investigating Officer.

8. Arrest of Accused Official

8.1 The accused official is arrested after the trap materialises. The Government issued instructions that in all cases of successful trap, the accused official should not be granted bail in a routine manner but sent to judicial remand. (Memo.No.492/Spl.B/2001-2 G.A. (Spl.B) Dept. dt. 29-5-2002)

8.2 During the course of investigation, if any information regarding acquisition of disproportionate assets by the public servant comes to light, a separate case under section 5(1)(e) of the Prevention of Corruption Act, 1947 should be registered and investigated

9. Search of premises

Normally an officer caught redhanded accepting bribe, may be deemed to be a habitual bribe-taker and possibly in possession of disproportionate assets which shall be looked for. Immediately

after the trap, the house of the public servant and relatives may be searched invariably in the presence of mediators and witnesses of the locality, documents relating to unaccounted money, currency notes, jewellery and the valuables, correspondence relating to investments, or official matters should be seized. Any official files or documents which reveal corrupt activities of the public servant should also be seized when found in the house. Lockers in banks may also be searched. A copy of the search list should be given to the officer. Seized articles should be sent to the Court. A separate case of disproportionate assets is made out by the Bureau if enough material is available.

10. Radio Message and Preliminary Report

10.1 After the Trap is laid, the Investigating Officer should forthwith send a Radio Message to the Head Office, superior officer to the accused, the District Collector, to the authority competent to suspend the accused, the Secretariat Department and the Vigilance Commissioner giving brief facts of the trap, followed by a preliminary report embodying all material facts within two days thereafter to the Head Office and Joint Director/Addl.Director, through a special messenger.

10.2 The Director General, Anti-Corruption Bureau should forthwith inform the Vigilance Commissioner, Chief Secretary to Government and the authority competent to suspend the accused official and the immediate superior authority of the accused official and furnish a preliminary report to them within a week of the date of the trap. (Vigilance Commission Procedural Instructions)

11. Placing Accused Officer under suspension

11.1 Trap is the most effective and successful way of catching corrupt officials in the act of receiving bribe where the rate of conviction is high. Corrupt officials have become cautious and alert and devised methods of avoiding being caught like engaging private persons, personal servants or subordinates to receive the bribe amounts, or getting the money placed unobtrusively without

themselves receiving it in their own hands, thereby avoiding physical contact with the phenolphthalein-smeared currency notes.

11.2 Government have decided that it would not be in the public interest not to suspend or delay the suspension of corrupt officials who receive bribes directly or indirectly and that it should be open to the disciplinary authority to suspend such officials pending investigation without waiting for advice of the Vigilance Commission. Government further directed that immediately on receipt of the wireless message against the official who is caught directly or indirectly in the act of accepting the bribe, irrespective of whether the phenolphthalein test yielded positive result or not, the official may be immediately placed under suspension. (Memo.No.177/ Spl.C/2003-1 dt. 13-5-2003 G.A. (Spl.C) Dept.) The Bureau should furnish along with the preliminary report, copies of the F.I.R. and mediators reports.

12. Transfer — expeditious action to be taken

12.1 Government directed that the trapped officers should be transferred out from the place of their work by the Head of the Department concerned/appointing authority/ competent authority immediately on receipt of intimation about the trap by them by way of radio message etc. from the Anti-Corruption Bureau, pending issue of orders of suspension. (Memo.No.2487/SC.E/98-1 G.A. (SC.E) Dept. dt. 19-11-98)

12.2 When transfer is decided, immediate action should be taken and the official relieved forthwith by making additional charge arrangement instead of resorting to normal relief and without granting any leave. (Memo.No.595/Spl.B/2000-1 G.A.(Spl.B) Dept. dt.21-8-2000)

13. Statements under Sec. 164 Cr.P.C.

Investigating Officer can get statements of witnesses and confession of accused recorded by competent magistrate during the course of investigation or at any time before the commencement of the trial (sec. 164 Cr.P.C.). But no person

who is not an accused can straight away go to a magistrate and require him to record a statement which he proposes to make (Jogendra Nahak vs. State of Orissa, 1999(6) Supreme 379).

14. Final Report

Trap is the most effective method of detection of corruption and provides the speediest action possible. The entire case unfolds itself at the very outset in the course of execution of the trap itself and not much remains to be done thereafter. Thus a trap case could and should be finalised and Final Report sent within a month of the date of registration to the Department concerned in the Secretariat through the Vigilance Commission proposing prosecution of the Accused if a case for prosecution is made out. Where no case is made out for prosecution the Bureau may advise placing the officer on his defence before the Tribunal for Disciplinary Proceedings or suggest departmental inquiry.

15. Advice of Vigilance Commission

The Vigilance Commission makes its recommendation on the final report of the Bureau taking into consideration comments of the Department if any. The recommendation may be to accord sanction for prosecution and if Commission considers that there is no case for prosecution, departmental inquiry through the T.D.P. or C.O.I or a departmental inquiring authority as may be decided by the Department.

16. Sanction for prosecution/Departmental action

16.1 When the Commission advises and Department decides to prosecute the accused officer, sanction for prosecution will be issued by the Department. Anti-Corruption Bureau assists the Department in this regard by furnishing a draft sanction order. Sanction shall be accorded within 45 days. Thereupon the Anti-Corruption Bureau shall file charge sheet within one month.

16.2 When the Commission advises departmental action instead of prosecution and the Department decides to do so the Anti-Corruption Bureau shall furnish Part ‘B’ report to the

or T.D.P. as the case may be within one month from the date of receipt of order. In such cases the Bureau assists the Department /T.D.P. in framing charges.

16.3 A trap case shall be finalised by the Bureau in all aspects within 8 months. (Memo.No.2045/Spl.B/2000-3 G.A. (Spl.B) Dept. dt.25-5-2001; Memo.No.177/ Spl.C/ 2003-1 dt. 13-5-2003 G.A. (Spl.C) Dept.)

17. Punishment

As soon as judgment is delivered by the Special Court convicting the accused officer and sentencing him, intimation shall be given forthwith and a copy of the judgment shall be furnished as early as possible to the Department by the Bureau with a request to take action for dismissal of the officer in case he is still in service or to withhold the entire pension and gratuity of the officer if he has retired in the meantime. The Department shall issue orders forthwith thereon keeping in mind the proviso to Rule 9 of the A.P.C.S. (CCA) Rules, 1991 and G.O.Ms No.2, GAD dated 4.1.1999 without waiting for an appeal being filed or decision in appeal. Officers responsible for delay in doing so shall be liable for disciplinary action and/ responsible for the avoidable expenditure incurred on the officer towards pay and allowances, or subsistence allowance or provisional pension during the period of delay from the date of conviction to the date of dismissal/removal.

18. Question of corroboration

18.1 Howsoever well-planned it be, traps do not conform to a set pattern in view of uncertain outside conditions and built-in precautions public servants routinely take, like not receiving the money in the hand, and as such corroboration in the conventional sense may not always be possible. On this aspect, the reappraisal by the Apex Court on the “scope, nature and extent of corroboration that is necessary in cases of bribery” in the case of M.O. Shamshuddin vs. State of Kerala, 1995(II) Crimes 282: II (1995) CCR 37 (SC) should be found helpful.

18.2 The Supreme Court held: “It is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The Court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case. In a case of bribe, the person who pays the bribe and those who act as intermediaries are the only persons who can ordinarily be expected to give evidence about the bribe and it is not possible to get absolutely independent evidence about the payment of bribe. However, it is cautioned that the evidence of a bribe giver has to be scrutinised very carefully and it is for the court to consider and appreciate the evidence in a proper manner and decide the question whether a conviction can be based upon or not in those given circumstances.”

18.3 In this case, a Tahsildar (A1) was trapped when he demanded Rs.500 as illegal gratification for issuance of a patta but instead of himself taking the money, he asked the complainant to give it to his Village Assistant (A2) and he did so. A2 received and put the money in his pant pocket, where from it was recovered by the Investigating Officer. To add to it, during the trial, the complainant and the accompanying witness did not unfold a consistent case in all respects, the former making efforts to exculpate A2 and the latter to exculpate A1 with the result the accompanying witness had to be treated as hostile.

18.4 Even then, the trial court as well as the High Court after carefully scrutinising the evidence of the complainant along with the evidence of the two mediators, held that the guilt of both the

accused was established beyond all reasonable doubt and convicted them for offences under sec.5(2) read with sec. 5(1)(d) of the Prevention of Corruption Act, 1947 and sec.161 I.P.C. read with sec.120-B I.P.C. The Supreme Court found no reason to come to a different conclusion and confirmed their conviction.

18.5 In another case, State of Maharashtra vs. Rambhau Fakira Pannase & Anr, 1994 Crl.L.J. 475 BOM, when the complainant approached him, the accused-Sub-Inspector of Police, instead of receiving the money, directed him to go with his Constable and the latter took him to a petrol pump, 2 kilometers away from the police station and got the marked notes exchanged there, where from the money was recovered by the Investigating Officer in pursuit. The High Court observed that "the device as adopted for accepting the bribe is novel and also ingenious" and held that even in the absence of direct evidence of corroboration, the circumstances are more reflective and speak with entire certainty than the oral words of person in dock and that normal rule of corroboration has application in the normal circumstances and looking to the peculiarity of the case, the circumstances that followed would render complete corroboration. The High Court of Bombay allowed the appeal and convicted the Sub-Inspector of Police and the Police Constable for offences under Secs.7,13(1)(d) read with Sec.13(2) of the Prevention of Corruption Act, 1988. The Supreme Court dismissed the appeal filed by the accused against their conviction and observed that the prosecution established the case against the Sub-Inspector and the Constable, that the Constable also played a very significant role in negotiating on the figure of the amount and further having the notes exchanged at the dictate of the Sub-Inspector and substantially abetted the crime. (Rambhau and another vs. State of Maharashtra, 2001 Cri.L.J. SC 2343)

18.6 In the case of M.Narsinga Rao vs. State of Andhra Pradesh, 2001 Cri.L.J. SC 515, a trap case, the Supreme Court upheld the conviction of the accused even though the complainant and accompanying witness turned hostile and two defence

witnesses were examined. The Supreme Court observed that proof of the fact depends upon the degree of probability of its having existed. The standard of proof required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

18.7 In the case of N. Rajarathinam vs. State of Tamil Nadu, 1996(6) SLR SC 696, the Supreme Court held that it is not a case of no evidence, where the charge is held proved on the sole testimony of the complainant even though 17 witnesses turned hostile.

18.8 In the case of Gangadhar Behera vs. State of Orissa, 2002(7) Supreme 276, the Supreme Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Miscarriage of justice arises from the acquittal of the guilty, no less than from the conviction of the innocent.

18.9 On the oft repeated plea of foisting, the Supreme Court observed with perspicacity, in the case of Satpal Kapur vs State of Punjab, AIR 1996 SC 107, that “had the Central Bureau of Investigation people been interested in foisting a case against the appellant and that too nakedly, it was no cause for the raid party to have created a drama of putting the notes into his pocket and in that way to have soiled his hands with phenolphthalein powder” and that “without any such ritual the case could have been foisted.”

18.10 The Supreme Court observed in the case of State of Madhya Pradesh vs. Shri Ram Singh, 2000 Cri.L.J. SC 1401 (a case of disproportionate assets) that the Prevention of Corruption Act was intended to make effective provision for the prevention of bribery and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its object. The Supreme Court held that procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and deciding cases under it.

18.11 Finally, any deviation in the course of events in a trap from the laid-down norm is a natural outcome and underscores the truthful presentation of the prosecution case and should be explained and exploited as such.

19. Action when bribe is offered

Dishonest, unscrupulous traders, contractors and such others attempt to bribe public servants to get official favours or to avoid official disfavour. Public servants must always be on their guard and should avail themselves of the assistance of the Anti-Corruption Bureau in apprehending such persons. It is not enough for the public servant to refuse the bribe and later report the matter to the higher authorities. When an attempt to bribe him is made, the proposed interview should be tactfully postponed to some future time, and the matter should in the meanwhile be reported to the local Anti-Corruption Bureau Officer in the quickest manner possible so that a trap can be laid against the bribe giver.

20. Trap where middlemen are involved

Trap can be laid where a middlemen demands gratification to influence a public servant by corrupt or illegal means or by exercise of his personal influence, as these acts constitute offences punishable under secs. 8 and 9 of the Prevention of Corruption Act, 1988. Abetment of these offences by the public servant constitutes an offence under sec.10 of the Act and he can also be proceeded against.

CHAPTER XVI

DISPROPORTIONATE ASSETS

1. What constitutes the offence

1.1 A Public Servant is said to commit the offence of Criminal Misconduct (of possession of disproportionate assets), "if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income", as laid down under clause (e) of sub-sec.(1) of sec.13 of the Prevention of Corruption Act, 1988.

1.2 A public servant thus renders himself liable under this provision —

(i) if he or any person on his behalf –

(a) is in possession of pecuniary resources or property;

(b) at any time during the period of his service;

(ii) if such pecuniary resources or property are disproportionate to his known sources of income;

(iii) if he cannot satisfactorily account for such disproportion.

1.3 The offence on the part of the public servant is his being in possession of assets disproportionate to his known sources of income and his not being able to account for the disproportion. The public servant commits the offence by no specific act of his, nor on any particular day relatable to any act of his. He commits the offence not merely by acquiring assets but by being in possession of assets and such assets of which he is in possession being disproportionate to his known sources of income. Acquisition of assets or possession thereof *per se* does not constitute an offence.

1.4 The assets are disproportionate, if on a given date chosen for the purpose, they are found to exceed the total savings he

meeting the total expenditure incurred by him. It is an offence only if the assets are disproportionate to his known sources of income.

1.5 The date of commission of the offence is the day chosen for the purpose, on which date it is established that the public servant is in possession of disproportionate assets whatever be the dates of acquisition of the assets.

1.6 This is a unique provision in the Prevention of Corruption Act, the possession of disproportionate assets itself constituting an offence of criminal misconduct, based on the unstated presumption that the assets to the extent they are disproportionate are acquired by corrupt or illegal means or by abuse of official position, without requirement of any proof thereof.

2. Working up information of disproportionate assets

2.1 Information secured of possession of disproportionate assets should be developed by means of secret verification without taking up a formal enquiry in a Discreet Enquiry or a Regular Enquiry, to maintain utmost secrecy upto the point of conducting searches. When tangible data, required material and information are available, a Registered Case should be taken up straight and simultaneous searches conducted of all places on the same day or immediately thereafter as the first step in the investigation.

2.2 A case may arise as an outcome of a search conducted in the course of a trap, in which event the necessary verification can be done in the trap case itself, before a separate case of disproportionate assets is registered.

3. Registration of F.I.R.

3.1 On receipt of necessary permission from the Director General, Investigating Officer should register a First Information Report under sec.13(2) read with sec. 13(1)(e) of the Prevention of Corruption Act, 1988.

3.2 The First Information Report should bring out that the accused public servant is in possession of assets prima facie

disproportionate to his known sources of income, as on a given date. Specific items of pecuniary resources and property (assets) in the possession of the accused public servant should be enumerated and their value given, which should be realistic, if not exact. The assets standing in the name of the accused public servant and those in the name of his dependents and others 'benami' should be identified as such. Incriminating aspects like non-reporting of the assets in the property returns, failure to obtain prior permission or non-reporting may be brought out.

3.3 An estimate of the total income of the accused public servant over a period of time and the total expenditure during the said period may be given and the likely savings arrived at.

3.4 The F.I.R. should end with a recital that the accused public servant is thus found in possession of pecuniary resources and property disproportionate to his known sources of income as on the date of registration of the F.I.R. or any other date chosen for the purpose, which discloses the commission of an offence under sec.13(1) (e) read with sec.13(2) of the Prevention of Corruption Act.

3.5 The Special Judge should be requested to keep the F.I.R. under his personal custody for a specified period to guard against leakage of information till searches are conducted.

4. How the offence is established, the arithmetic of it

4.1 The public servant commits the offence, if at any time during the period of his office he is in possession of pecuniary resources and property (assets) disproportionate to his known sources of income.

4.2 A suitable date, any day during the period of service, is chosen, the date of searches being most convenient for this purpose. The public servant commits the offence, if it is established that as on this date, the assets in his possession are disproportionate to his known sources of income. It is called the "date of check".

4.3 The period immediately preceding the date of check is the

"period of check". It could be the entire period of service or even a part of it.

4.4 The total value of the "assets" of which the public servant is in possession as on the date of check is worked out.

4.5 The total "income" from all sources earned by the public servant and the total "expenditure" incurred on all items during the period of check are worked out.

4.6 The value of assets in the possession of the public servant as on the "date of commencement of the period of check" is worked out.

4.7 The total "savings" during the period of check are arrived at by deducting the total expenditure from the total income.

4.8 The assets of which the accused public servant is in possession on the date of check are held to be disproportionate if their value exceeds the savings (taking into account the assets in his possession as on the date of commencement of the period of check), the degree of disproportion depending on the extent to which the assets are in excess.

5. Searches

Government directed that all Principal Secretaries to Government/Secretaries to Government, Heads of Department, District Collectors and all other officers concerned should respond positively without fail to the requisitions made by the Bureau officials for utilisation of the services of Government employees under their control as mediators in conducting searches in disproportionate Assets cases and extend full co-operation. (Memo.No. 2491/ SC.E1/98-1 dt.20-11-98 G.A.(SC.E) Dept.)

6. Proforma Statements I to VI of Property and Property Transactions to be obtained from the accused public servant by the competent authority

6.1 Particulars of property and transactions in property should be obtained from the accused public servant in 6 proforma

statements prescribed for the purpose, through the department, under the provisions of Rule 9(8) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964, Rule 16(5) of the All India Services (Conduct) Rules, 1968 or the corresponding provision of the Conduct Rules applicable to the employee.

6.2 The Investigating Officer should initiate action in this regard soon after the searches are conducted.

6.3 These Statements Nos. I to VI should be obtained in the proforma prescribed by the competent authority in exercise of the power vesting in him under the Conduct Rules, without indicating that they are required by the Anti-Corruption Bureau during the investigation. No reference should be made to the Anti-Corruption Bureau in the correspondence with the accused public servant at any stage whatsoever.

6.4 Statements Nos.I and II deal with immovable property, Statements Nos.III and IV with movable property and Statements Nos.V and VI with financial investments. Of them, Statements Nos.I, III and V deal with what is in possession as on the date of check, while Statements Nos.II, IV and VI deal with what is disposed of during the period of check including in respect of acquisitions made during the period of check.

6.5 The date of check and the period of check respectively as fixed should be mentioned in the heading of the proforma and specific mention should be made to this stipulation and pointed attention drawn by the competent authority in the covering letter calling for the particulars.

6.6 While approaching the departmental authorities, Anti-Corruption Bureau should on their part draw pointed attention to the date of check and the period of check and the requirement in this regard.

6.7 Government directed Heads of Department and District Collectors to furnish the 6 proforma statements to Investigating Officers within a fortnight ordinarily or at the most within a month

failing which they may take action against the accused officials under the Classification, Control and Appeal/Discipline and Appeal Rules and stop sanctioning enhanced subsistence allowance to the accused officials under suspension as the delay in finalisation of the investigation can be attributed to them.

6.8 While addressing Heads of Department and District Collectors for proforma statements, a specific mention should be made that the accused official may be instructed to approach the Investigating Officer for perusal of documents/records etc.

6.9 It should be made clear to the accused official that if he fails to submit the statements within the prescribed time, it will be construed that he does not intend to avail of the opportunity.

6.10 Investigating Officer should proceed with the investigation and finalise it without waiting indefinitely, where the accused official fails to furnish proforma statements in the time limit prescribed and further time given. Head Office should be kept informed of the non-receipt of the statements for taking necessary action at its end. If the statements are received subsequently before filing of the Charge Sheet they should be verified.

6.11 The proforma statements are furnished by the accused public servant to the departmental authorities in compliance with the requirement as provided under the Conduct Rules and as such are not hit by Sec.161 Cr.P.C. and are admissible in evidence.

6.12 These statements should be scrutinised thoroughly and subjected to check with evidence secured in the searches and in the course of investigation, and suppression of items outright or under-valuation of acquisitions and over-valuation of disposals should be unearthed and established. Non-compliance with the provisions of Conduct Rules in undertaking property transactions should receive particular attention. (Memo.No. 442/ SC.E/83-1 dt.27-12-83 GA (SC.E) Dept.; Memo. No.352/SC.E/84-1 dt.14-6-84 GA. (SC.E) Dept.; Memo.No.762/SC.D/86-1 dt.10-7-86 G.A. (SC.D) Dept.; U.O.Note No. 1336/SC.D/89-1 dt.27-11-89 G.A.(S.C.D) Dept.; Memo.No.700/SC.D/88-4 dt.13-2-89 G.A.(SC.D) Dept.)

6.13 Government directed all Heads of Department, Departments of Secretariat, District Collectors and the other concerned authorities to extend full co-operation to the Bureau Officers at every stage of enquiry, on priority basis. (Memo.No.2486/ SC.E/98-1 dt.17-11-98 GA (SC.E) Dept.)

7. Annual Property Statements and Reports of property transactions

7.1 The Annual property statements of the accused public servant for the period of check/service together with the correspondence on the subject should be obtained from the authorities concerned.

7.2 The reports submitted by the accused in respect of transactions in property, immovable and movable, seeking sanction, furnishing previous intimation or just reporting the transaction and reports in respect of gifts etc. in compliance with the various provisions of the Conduct Rules or orders on the subject during the period of check/service should be secured from the authorities concerned. The related files also should be obtained.

7.3 The record of annual property statements and the reports of property transactions, gifts etc. referred to above should be complete and a report should be obtained in writing from the authorities concerned about the completeness of the record furnished so as to meet any possible contention of the accused official of his having submitted any more statements or reports and establish the position as a matter of fact. This aspect assumes importance in view of the restrictive operation of the definition of the term “known sources of income” in the explanation under cl.(e) of sub-sec. (1) of Sec.13 of the P.C. Act, 1988 and could be a cause of controversy.

7.4 The proforma statements Nos. I to VI secured from the accused official during the investigation through the department may be scrutinised and references of sanction of the transactions, acknowledgment of reports, intimations etc. given therein should be verified.

7.5 Government reiterated instructions in their Memo.No. 10304/Ser.C/2000 G.A. (Ser.C) Dept. dated 27-3-2000 requiring the Controlling authorities and Vigilance Officers in each department to ensure that Government servants submit annual property returns and scrutinise them, and these instructions should be borne in mind.

8. Pay and Allowances — Evidence of Officers of Audit/ Accounts Department

8.1 Particulars of pay and allowances and financial transactions of the accused public servant during the period of check should be obtained from the Pay and Accounts Officer/ authority concerned.

8.2 These particulars are required month-wise, showing the gross amount and particulars of deductions of Income-tax, G.P.F. contribution, refund of G.P.F. advance, House rent and other deductions item-wise. G.P.F. advance, refundable and non-refundable, motor conveyance advance, house building advance and other advances drawn should be ascertained. These particulars should be furnished by a competent authority under signature and authentication.

8.3 It will not ordinarily be necessary to require the appearance of officials of the Audit/Accounts Office to prove the figures of salaries/allowances of a Government servant furnished over the signature of a responsible officer of the Audit/Accounts department.

8.4 No particular officer of the Audit/Accounts Office would be in a position to prove the correctness of numerous entries in a register made by various persons over a length of period. Figures of salaries/allowances will generally be relevant in cases where the charge relates to disproportionate assets. In such cases, the Investigating Officer would have satisfied himself about the correctness of the figures collected by him from Audit / Accounts Office and would have got the figures inspected by the Government servant. Cases in which the Government servant may question the correctness of the figures furnished by the Audit/Accounts

Officer will thus be rare. In any case, where the Government servant does so, he will also indicate the figures which are not acceptable to him which would be got verified from the Audit/Accounts Office. Where the figures of salary and allowances are disputed, the dispute cannot be settled by merely requiring the presence of the Accounts/Audit Officer. Therefore, normally an authenticated statement of pay and allowances furnished by the Audit/Accounts Officer concerned should be produced as sufficient proof of the correct amount drawn as salary and allowances by the Government servant.

9. Attachment of Property

9.1 The moment disproportionate assets are discovered after searches, the competent court should be moved for attachment of the assets as per sec. 3(1) of the Criminal Law Amendment Ordinance, 1944, without waiting for the filing of the Charge Sheet. What is required is that the Government has reason to believe that the accused officer has committed the offence. Investigating Officer should come up with proposals in this regard. For this purpose Director General Anti-Corruption Bureau, should send proposals for Government permission to file application for the same in the Special Court. Such permission shall be accorded immediately in order to prevent alienation of property pending investigation/trial.

9.2 Whenever accused officials involved in Anti-Corruption cases approach Heads of Department for permission to dispose of their immovable property or movable property (which is the subject matter of investigation/enquiry/charge) either during investigation, departmental enquiry or court trial, a decision by the appropriate authority should be taken only after consulting the Anti-Corruption Bureau. In all such cases, General Administration (SC.E) Department should be consulted before a decision is taken in the matter. The same procedure will apply to cases of All India Service officers also. (Memo.No.1387/ SC.D/89-2 dt.8-8-90 GA (SC.D) Dept.)

10. Known Sources of Income

10.1 The expression “known sources of income” has reference to sources known to the prosecution on a thorough investigation of

the case. It cannot be contended that the term means sources known to the accused. The prosecution cannot in the very nature of things, be expected to know the affairs, which are matters "specially within the knowledge" of the accused within the meaning of sec. 106 of the Evidence Act. (C.S.D. Swamy vs. State, AIR 1960 SC7:1960 Crl.L.J. 131)

10.2 Further, as defined (for the first time) in the P.C. Act, 1988, in the explanation under cl.(e) of sub-sec. (1) of sec.13, the term "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

10.3 It follows that the term does not include income which is derived from sources which are not lawful like income derived by understating the value of sale of property or money received as dowry. Similarly, income on house rent, gifts of value, agricultural income and the like are liable to be rejected if there is failure to comply with the provisions of Conduct Rules or orders on the subject or provisions of the Income Tax Act. Full use should be made of this statutory provision.

10.4 The 'statement of objects and reasons, accompanying the Bill (of the P.C. Act, 1988) mentioned that "a definition of the expression 'known sources of income' has been added to remove any ambiguity". The Supreme Court referred to this provision approvingly in the case of P. Nallammal etc vs. State, 1999(6) Supreme 516 and observed that as per the explanation, the known sources of income, for the purpose of satisfying the court, should be any lawful source and in addition the receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to the public servant at the relevant time.

11. Foreign currency, Foreign goods

11.1 Employees of the State Government are required to intimate receipt within 15 days thereof of any foreign currency or foreign goods exceeding Rs.10,000 in value from any person by

him or by any member of his family or any other person on their behalf in the prescribed form as per rule 6A of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 with effect from 8-8-1996.

11.2 This provision should be taken advantage of in meeting any contention of receipt of foreign currency or foreign goods as such a contention stands rejected at the very threshold in case of non-compliance with the requirement of this rule, in view of the definition of "known sources of income" as per explanation to cl.(e) of sub-sec.(1) of sec.13 of the P.C. Act, 1988.

12. Working out Disproportion — Quantum of disproportion required for action

12.1 The savings made by the accused public servant during the period of check are arrived at by deducting the total expenditure incurred by him during the period of check from the total income derived by him during the said period. The savings will be of minus value if the total expenditure exceeds total income.

12.2 The value of the assets in the possession of the accused at the commencement of the period of check will have to be taken into account and the value of the said assets should be added to the savings arrived at above.

12.3 The total of savings and the value of assets at the commencement of the period of check so arrived at should be deducted from the total value of the assets in the possession of the accused on the date of check to arrive at the quantum of disproportion. If the savings together with the value of the assets at the commencement of the period of check exceed the total value of the assets in his possession on the date of check or are equal or thereabouts, there is no disproportion.

12.4 The moot point for consideration is as to what is the quantum of disproportion that is required for taking action. The word "disproportionate" is not defined in the Act. The excess should be relatively large and a slight excess cannot constitute disproportion. Whether the assets are disproportionate to the known sources of income should be decided on the facts of each case and a rigid yard-stick cannot be applied.

12.5 In Krishnanand Agnihotri vs. State of Madhya Pradesh, AIR 1977 SC 796: 1977 Crl.L.J.566, the Supreme Court treated a sum of Rs. 900 withdrawn by the accused from his bank account as undisclosed expenditure, rejecting his contention that it represented monthly household expenses, and held that the said sum constituted an unexplained withdrawal and as such it is an undisclosed expenditure.

12.6 The Supreme Court further observed in the same case that on the facts of the case it would not be right to hold that the assets found in the possession of the accused are disproportionate where the excess was comparatively small, being less than 10% of the total income in that case. In the case of B.C. Chaturvedi vs. Union of India with Union of India vs. B.C. Chaturvedi, 1995 (5) SLR SC 778, the Supreme Court clarified that in the above-mentioned case, the said principle was evolved by the Supreme Court, to give benefit of doubt, due to inflationary trend in the appreciation of the value of the assets and that the benefit thereof appears to be the maximum, the reason being that if the percentage begins to rise in each case, it gets extended till it reaches the level of incredulity to give the benefit of doubt, that it could be inappropriate, indeed undesirable, to extend the principle of deduction beyond 10% in calculating disproportionate assets of a delinquent officer.

12.7 Government have laid down that in deciding whether a case of disproportionate assets is fit for prosecution, the Anti-Corruption Bureau must take into account the tenure of the service of the accused public servant, his general reputation, his habits and style of living and extent of disproportion and other facts and circumstances of the case. Considering the fact that it is not possible for a public servant to prove his defence with mathematical exactitude, it is desirable to take a liberal view of the excess of the assets over the receipts of the known sources of income and reasonable margin upto 10% of the total income of the public servant may be allowed while computing the disproportionate assets, after taking the above mentioned factors into consideration. The margin is applicable to cases of prosecution,

cases referred to the Tribunal for Disciplinary Proceedings or to the department, for departmental action. (Memo.No. 368/Spl.B/2002-1 G.A. (Spl.B) Dept. dt. 28-2-2003)

12.8 Where the case is considered not fit for prosecution in a court of law, still as per established norms, disciplinary proceedings can be taken. The possession of assets disproportionate to known sources of income constitutes failure to maintain absolute integrity and is misconduct in terms of rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964, Rule 3 of All India Services (Conduct) Rules, 1968 and corresponding provision in the Conduct Rules appli-cable to the public servant. (Memo.No.700/SC.D/88-4 dt.13-2-89 G.A. (SC.D) Dept.; Memo.No. 1444/SC.D/1990-1 dt. 17-1-91 G.A. (SC.D) Dept.; Memo No.223/SC.D/92-6 dt.15-3-93 GA (SC.D) Dept.; U.O.Note No.3362/SC.E/95-1 dt.29-1-96 GA (SC.E) Dept.; Memo.No.991/SC.E1/98-5 dt. 17-12-98 G.A. (SC.E) Dept.)

12.9 Simultaneous disciplinary proceedings can and should be taken on charges of contravention of Conduct Rules in respect of property transactions also. (State of A.P. vs. C.Muralidhar, 1998(1) SLJ SC 210) for failure to submit Annual Property Returns at all, or in time, for failure to obtain prior permission to acquire property where such permission is essential, or for failure to report a transaction where such reporting is sufficient. There is no legal objection to departmental enquiry being conducted while the Police are making an investigation.

12.10 The question whether the departmental proceedings can be finalised and orders issued even though the case is pending in a Court of Law was examined. Having regard to the decision of the Himachal Pradesh High Court in Khushiram Vs. Union of India [1973(2) SLR pp. 564, 565], it was considered that it is not obligatory that the departmental proceedings should be stayed when the case is pending in a Court of Law except when it is expedient to do so in the interest of fair play. It is necessary that criminal proceedings and departmental action should be processed without loss of time with a view to avoiding manipulations and loss of evidence.

12.11 To facilitate this the Government directed that the departmental officers should obtain photostat copies of the

documents and hand over the original to the Police, so that simultaneous action in regard to criminal proceedings and disciplinary action may be taken.

13. Private persons liable for abetment

The Supreme Court held in the case of P. Nallammal etc vs. State, 1999(6) Supreme 516 that in a prosecution for an offence under sec. 13(1)(e) of P.C. Act, 1988, of public servants, their kith and kin who are not public servants also could be arraigned as co-accused to face the said offence read with sec. 109 IPC.

14. Quantum of fine under secs. 13, 14 of P.C.Act, 1988

14.1 Section 16 of the Prevention of Corruption Act, 1988 provides that where a sentence of fine is imposed under sub-section (2) of sec. 13 or sec. 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in cl. (e) of sub-section (1) of sec. 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

14.2 This provision should be kept in view in fixing the fine commensurate with the offence committed.

15. Order for disposal of property at conclusion of trial

15.1 Section 452(1) Cr.P.C. vests power in the court to make an order for confiscation of property at the conclusion of the trial. This provision can be pressed into service for ordering confiscation of the property in a case of disproportionate assets under sec. 13(1)(e) of the P.C.Act, 1988 on the successful conclusion of the trial.

15.2 The Supreme Court, in the case of Mirza Iqbal Hussain vs. State of U.P., 1983 Cri.L.J. SC 154, held that the Special Judge trying an offence under the P.C.Act has the power to pass an order of confiscation under sec. 452 Cr.P.C.

15.3 This provision should be kept in view as an alternative measure to forfeiture of property under the Criminal Law Amendment Ordinance, 1944 or in addition to it.

16. Placing Accused Official under Suspension

16.1 In disproportionate assets cases, the accused official was not being placed under suspension immediately following the registration of the case, but transferred to a far-off non-focal post. Where he deliberately fails to co-operate with the investigating agency or tries to tamper with official records or influence witnesses or bring pressure on the Investigating Officer, the disciplinary authority was placing him under suspension at that stage based on the recommendation of the Bureau. The disciplinary authority was expected to consider and decide the desirability of placing the accused official under suspension when a charge sheet was filed in the court or a charge memorandum was served in major penalty proceedings. (Memo.No. 554/Ser.C/93-6 dt. 26.12.94 of G.A. (Ser.C) Dept.)

16.2 The Government examined the matter on the advice of the Vigilance Commission and on the recommendation by the High Level Committee on Anti-Corruption and advised the Director General, Anti-Corruption Bureau to submit along with the preliminary reports in disproportionate assets cases, other than where the disproportion is marginal, proposals for placing the accused officer under suspension, besides institution of proceedings for attachment property under the Criminal Law Amendment Ordinance, 1944. (Memo.No.596/Spl.B/2000-6 dt.10-6-2002 G.A. (Spl.B) Dept.)

17. Time limit

A case of disproportionate assets should be completed within a period of 6 months. To meet the dead-line, action should be initiated at the earliest opportunity at the very outset on all aspects simultaneously and pursued vigorously. (Memo.No. 700/ SC.D/ 88-4 G.A. (SC.D) Dept. dt. 13-2-89)

18. Wireless message and Preliminary report

As soon as a disproportionate assets case is registered and the premises of the accused officer is raided the investigating officer sends a wireless message to all concerned including the Vigilance Commission intimating the facts. As soon as practicable thereafter the Director General, Anti-Corruption Bureau submits a preliminary investigation report on the facts of the case. The Bureau will seek order of suspension of the officer where the disproportionate assets are not marginal; or his immediate transfer to a non-focal post. He also sends a proposal to Government to issue an order authorising the investigating officer to file an application before the Special Court for attachment of property involved in the offence. Copy of the report is furnished to the Department to enable them to furnish remarks of the Department on the case, if any, before the Vigilance Commissioner makes up his mind on the nature of action to be taken in the case.

19. Final Report

Upon completion of the investigation, the Director General, Anti-Corruption Bureau submits his final report recommending prosecution of the accused officer, or proposing departmental action for major penalty or for dropping of action in the light of evidence, to the Department through the Vigilance Commission.

20. Advice of the Vigilance Commission

The Vigilance Commission will, while furnishing a copy of the preliminary report to the Department advise Government to consider immediate suspension of the officer or his transfer to a non-focal post forthwith having regard to the facts and circumstances of the case as revealed in the preliminary report. He will also advise the Department on attachment of properties pending investigation and trial. Upon receipt of the final report and comments of the Department on the case, if any, received in the Commission, the Vigilance Commissioner advises sanction of prosecution against the accused officer if there is enough material to do so. In the event the Commission considers that no case for

prosecution has been made out, Major Penalty proceedings may be advised if there is enough material either through the T.D.P. or through the C.O.I or a departmental inquiring authority having regard to the available evidence and the seriousness of the case. Where no disproportionate assets case is made out but a case exists for proceeding against the accused officer for violation of Conduct Rules for non-submission of annual property returns, or delay in submission, failure to seek prior approval for property transaction where such approval is essential or for failure to intimate transaction in property. Commission also recommends simultaneous criminal action for possession of disproportionate assets and disciplinary proceedings for violation of Conduct Rules where a case for both is made out.

21. Sanction for prosecution and initiation of Departmental action

Where sanction for prosecution is advised the Anti-Corruption Bureau assists the department by furnishing a draft sanction order. In cases where departmental action is recommended it sends Part 'B' report to the Department or the T.D.P. as the case may be. It also assists the Department/TDP in framing charges by furnishing draft articles of charge. Where it decides to prosecute the officer the Department is expected to accord sanction for prosecution within 45 days. Thereupon the Bureau shall file the charge sheet within a fortnight.

22. Punishment

As soon as judgment is delivered by the Special Court convicting the accused officer and sentencing him, intimation of which shall be given forthwith and a copy of the judgment shall be furnished as early as possible to the Department by the Bureau with a request to take action for a dismissal of the officer in case he is still in service or to withhold the entire pension and gratuity of the officer if he has retired in the meantime. The Department shall issue orders forthwith thereon keeping in mind the proviso to Rule 9 of the A.P.C.S (CCA) Rules, 1991 and G.O.Ms No.2, GAD dated 4.1.1999 without waiting for an appeal being filed or decision in appeal. Officers

responsible for delay in doing so shall be liable for disciplinary action and recovery of the avoidable expenditure incurred on the officer towards pay and allowances, or subsistence allowance or provisional pension during the period of delay from the date of conviction to the date of dismissal/removal.

CHAPTER XVII

MISAPPROPRIATION

1. Provisions of the Financial Code

Articles 5, 273, 294, 300 , 301 and 302 of the Andhra Pradesh Financial Code lay down the responsibilities of Government servants in dealing with Government money, the procedure to fix responsibility for any loss sustained by the Government, the procedure to be followed and the action to be initiated for recovery. In addition to the instructions laid down in the Financial Code, the Government have from time to time, issued executive instructions regarding misappropriation cases which are incorporated hereunder (G.O.Ms.No.25, G.A.(Ser.C) Dept. dt.3-2-2004).

2. Standards of financial responsibility

Article 5 of the A.P. Financial Code casts an obligation on every Government servant to see that proper accounts are maintained for all Government. financial transactions with which he is concerned and to render accurately and promptly all such accounts and returns relating to them as may have been prescribed by Government, the Accountant General or the competent departmental authorities. He is required to check the accounts as frequently as possible to see that his subordinates do not commit fraud, misappropriation or any other irregularity. The Government holds him personally responsible for any loss that may be found to be due to any neglect of the duties laid upon him by the relevant provisions made by the Government. The fact that a Government servant has been misled or deceived by a subordinate will in no way mitigate his personal responsibility.

3. Assessment of responsibility for loss of public funds

Article 273 of the Andhra Pradesh Financial Code makes every Government servant personally responsible for any loss sustained by the Govt. through fraud or negligence on his part and also for any loss through fraud or negligence on the part of any other Govt. Servant to the extent to which it may be shown that he contributed

to the loss by his own action or negligence. The cardinal principle governing assessment of responsibility for such losses is that every Govt. Servant should exercise the same diligence and care in respect of all expenditure from public funds under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

4. Reporting of loss of public money and sending factual report to Govt.

When any facts indicating that defalcation or loss of public moneys, stamps, stores or other movable or immovable property has occurred or that a serious account irregularity has been committed, come to the notice of any Government Servant, he should in terms of Article 294 inform the head of the office immediately. If it appears to the head of the office, prima facie that there has been any such occurrence which concerns his office or in which a Govt. Servant subordinate to him is involved, he should send a preliminary report immediately to the Accountant General and through the proper channel, to the Head of the Department. On receipt of the information, the Head of the Department should report the matter to the Government without delay. These reports should be sent even when the loss has been made good irrespective of the amount involved.

5. Finalisation of quantum of loss and audit of accounts

Article 300 of the Code lays down the following general principles in enforcing personal responsibility of the Government servant for a loss sustained by the Government through fraud or negligence on his part and also for loss through fraud or negligence on the part of any other Government servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence. The head of the office or other appropriate authority should investigate the matter fully without delay. When necessary, the administrative authority may ask the Accountant General to furnish all vouchers and other documents in his possession that may be relevant to the investigation. If the investigation is so

complex as to require the assistance of an expert audit officer, the administrative authority should report the facts to the Government and request them to depute an audit officer for the purpose. The administrative authority and the audit officer will each be personally responsible within their respective spheres, for completing the investigation expeditiously.

6. Recovery

Whenever an administrative authority holds that a Government servant is responsible for a loss sustained by the Government, it should consider both whether the whole or any part of the loss should be recovered from him in money and whether any other form of disciplinary action should be taken. Whenever a loss is held to be due to fraud on the part of a Govt. servant or servants, every endeavour should be made to recover the whole amount lost from the guilty persons. If the failure of a superior officer to exercise proper supervision and control has facilitated the fraud, he should be called strictly to account and suitably dealt with after carefully assessing his personal liability in the matter. The pension of a retiring Govt. servant who is involved in any loss or irregularity which is under investigation should on no account be sanctioned until his responsibility in the matter has been finally determined. Whenever a competent authority orders that any amount should be recovered from the Govt. servant, otherwise than by forfeiture of his security deposit if any, on account of a loss sustained by the Government through fraud or negligence on his part and he is about to retire from service the amount should be recovered, as far as possible, by deduction from the last pay or leave salary due to him. If any amount still remains to be recovered, the Govt. servant should be asked to give his written consent to the recovery of the remaining amount from his pension. When a retired Govt. servant whose pension has already been sanctioned is held to have caused a loss to the Government by his fraud or negligence while in service and it appears likely that the amount could be recovered by bringing a suit against him, the matter should be reported to the Government for orders. Any fraud or negligence found to have been committed

by him when in service, should not be made an excuse for absolving other Government servants who are also responsible for the loss and are still in service.

7. Distinction between delayed Remittance and Misappropriation

A clear distinction should be drawn between cases of " delayed remittance" and misappropriation. The cardinal test to prove a case as a case of misappropriation rather than temporary misappropriation would be whether the amount has been put to use for the benefit of the person who has misappropriated it. It is the intention and purpose that should be the criterion and not whether the amount has been ultimately made good voluntarily.

8. Suspension of the officer accused

An officer accused of misappropriation shall be suspended forthwith under Rule 8 (1) (c) of the A.P.C.S. (CCA) Rules pending investigation or trial of the offence till he is dismissed or removed from service upon conviction or conclusion of the disciplinary proceedings as the case may be.

9. Initiation of departmental inquiries and criminal proceedings

If there is a reasonable suspicion that a loss sustained by the Government is due to the commission of a criminal offence, the procedure prescribed in Article 301 and 302 should be followed. Article 301 lays down that departmental proceedings should be instituted at the earliest possible moment against all the Government servants involved in any loss sustained by the Government on account of fraud, embezzlement or any similar offence and conduct with strict adherence to the rules, up to the point at which prosecution or any one of them begins . The Departments should ensure that charges are framed by the disciplinary authority in accordance with the procedure prescribed under rule 20 of APCS (CCA) Rules, 1991 and action is completed expeditiously observing the prescribed procedures to ensure that

there are no procedural infirmities. Criminal proceedings and departmental action should be processed simultaneously without loss of time with a view to avoiding manipulations and loss of evidence. Departmental officers should obtain photostat copies of documents and hand over the originals to police so that simultaneous action in regard to criminal proceedings and disciplinary action can be taken. Departmental action should be completed within 3 to 4 months. At this stage it may be specifically considered whether it is practicable to carry the departmental proceedings without waiting for the result of the prosecution. If it is , they should be carried out as far as possible but not as a rule, to the stage of finding and sentence. If the accused is convicted, the departmental proceedings against him should be resumed and formally completed. If the accused is not convicted, the authority competent to take disciplinary action should examine whether the facts of the case disclose adequate grounds for continuing departmental action against him. Simultaneous disciplinary and criminal proceedings can be initiated by the Department against the persons responsible for misappropriation and supervisory officers whose failure led to the offences. Following the decision of the Himachal Pradesh High Court in Khushiram Vs. Union of India (1973)(2) SLR.PP.564-565), it is not obligatory that the departmental proceedings should be stayed when the case is pending in a court of law, except when it is expedient to do so in the interest of fair play. .

10. Procedure for filing of complaints with local police or the CID

10.1 Prosecution for embezzlement of public money or property is laid down in Article 302. Whenever the head of an office finds that there is a reasonable suspicion that a criminal offence has been committed in respect of public moneys or property, he should as a general rule report the matter at once to the police and the head of his Department that he has laid an information before the police. When the case is heard by the Court, the head of the office concerned should see that all the witnesses serving in his department and all documentary evidence in the control of his department are punctually

produced. He should also appoint a Government servant of the Department to attend the proceedings in the court and assist the prosecuting staff. If prosecution for an offence of this kind results in the discharge or acquittal of any person, or in the imposition of any sentence which appears to be inadequate, the head of the office concerned should at once send a full statement of the facts of the case. If it is considered that further proceedings should be taken in revision or appeal, he should proceed accordingly.

10.2 In order to reduce the number of cases of misappropriation sent for investigation by the Police and prosecution thereafter, a monetary limit of Rs.1000 is fixed, below which the cases will be handled departmentally only. The Dept. should ensure that all material needed for investigation is made available to the Station House Officer of the Police Station having jurisdiction. In the event C.I.D. investigation is considered essential in view of the quantum of money involved or the complexity of the misappropriation case, action should be taken by the Secretariat Department concerned to refer the case to the Crime Investigation Department at Hyderabad in consultation with the Home Department in accordance with the procedure laid down by the D.G., C.I.D. If in the course of any investigation into corruption, misappropriation is noticed by the Anti-Corruption Bureau in such a case the Anti-Corruption Bureau itself will initiate action for prosecution of that case.

10.3 The Departments of Secretariat should consult the Home Dept. before entrusting any case to the CID. for investigation. To establish the offence of misappropriation, cheating/ forgery and use of forged documents utilisation of fake certificates etc., it is essential that:

(i) The complaint lodged by competent authority should contain specific information regarding details of crime and persons responsible, amount involved and the manner or mode of commission of offence.

(ii) The details of crime should contain essential ingredients of cognizable crime.

(iii) Whenever complaint involving misappropriation of public funds is preferred, it should be mandatory to initiate departmental audit to establish the instances and amounts of misappropriation. Steps will be taken by the concerned officers to ensure preservation of original documents ie., bills, vouchers etc., Requisitions should be sent to the Pay and Accounts Office, Treasury authorities /A.G. Office with a specific request to preserve the documents which would prove the culpability of persons responsible for such frauds/misappropriation. Specimen signatures and admitted handwritings of persons responsible for misappropriation, fraud etc. should be made available to the investigating agency.

(iv) For expeditious and proper investigation it is also imperative that relevant records of the case, like forged documents , duplicate copies of vouchers, audit report, report of preliminary enquiry conducted by the respective department, note files, registers etc. are handed over (in original) to the CID. with xerox copies being retained by the Department concerned for the purpose of disciplinary action and for record .

10.4 It should be ensured that a comprehensive complaint is lodged with the CID containing details of the crime / persons responsible for the commission of such offences, that complaints are lodged with original signature of the officers who are fully acquainted with the facts of the case and have been associated with the preliminary enquiry or departmental inquiry. Copies of relevant documents should also be enclosed with the complaint. The departments preferring complaints should also ensure collection and safe custody of original document relating to the offence.

11. Handing over of records / rendering necessary assistance to Investigating Agencies

11.1 All Heads of Office should hand over the records requisitioned by the local police, officers of the Bureau or the CID

as the case may be and render all necessary assistance to Investigating Officers. Senior Civil Servants who are defacto complainants in criminal cases or who are intimately acquainted with the facts and circumstances of the cases and whose evidence is relevant and material to prove the case in a court of law should tender their evidence when examined by the Investigating Officers of the CID and in a Court of Law. The investigation should not normally take more than one year after it is entrusted to the CID / Anti-Corruption Bureau however complicated the case may be.

11.2 The Government have decided that special cells will be created in the investigating agencies for departments where the number of misappropriation cases are large and persons from these cells and the Investigating Agency would maintain close liaison with the departments so that they can render necessary guidance to expedite cases.

11.3 In all cases of misappropriation, after investigation is completed by the Police and charge sheets filed, such cases should be pursued effectively to ensure that there is no let-up in prosecuting the cases effectively and that there is no failure on the part of the Asst. Public Prosecutor etc. in conducting the prosecution properly. In case, where the trial ultimately ends in acquittal, immediate action may be taken to file appeals, after obtaining legal opinion. In cases, where it is felt that the prosecution was conducted improperly and the prosecuting officers have not taken adequate interest, responsibility must be fixed for their failure to conduct the prosecution successfully. To ensure a proper watch, the Departments should review all such cases periodically for the half years ending 30/6 and 31/12 of every year and furnish their review to the General Administration (Ser-C) Department. Even when there are no such cases, a 'NIL' report has to be furnished.

12. Attachment and forfeiture of the properties of the accused

12.1 Whenever a scheduled offence involving the money of

the government is committed, the concerned departmental officers should collect the necessary data regarding movable / immovable property of the persons responsible for commission of the offence, so that such properties are subjected to attachment and forfeiture under the Criminal Law Amendment Ordinance, 1944 which contemplates that if any person commits any offence punishable under Section 406, 408, 409 411, 417 and 420 of the IPC or under clause (c) of sub-section (1) of Section 13 of the P.C.Act, 1988, the Government may whether or not any court has taken cognizance of the offence, authorize the making of an application to the District Judge concerned for attachment of the money or other property.

12.2 The attachment can be of the money or other property which the State Government believes the said person to have procured by means of the offence or if such money or property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

12.3 The District Judge has jurisdiction to issue an interim order of attachment of moneys procured by commission of a scheduled offence and deposited in Bank. Such money in the hands of the Bank does not cease to be attachable although its identity is lost by getting mixed up with the other moneys of the Bank, so long as it is not converted into anything else and remains liable to be paid back in cash to the depositor or to his order (K.Satwant Singh vs. Provincial Government of Punjab, AIR 1946 Lah 406)

12.4 Where the assets available for attachment are not sufficient and where he is satisfied that the transfer of the property to the transferee was not in good faith and for consideration, the District Judge has power to order the attachment of so much of the transferee's property equivalent to the value of the property transferred, as per sec. 6 of the Ordinance.

12.5 The court having jurisdiction to entertain the application for attachment of property under the Ordinance is the court of the District Judge within the local limits of whose jurisdiction the suspect ordinarily resides or carries on his business. A Special Judge while

trying an offence punishable under the Prevention of Corruption Act can exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, as per sub-sec. (6) of sec. 5 of the P.C.Act, 1988.

12.6 The District Judge is empowered under sec. 4(1) of the Ordinance, as also the Special Judge trying an offence punishable under the P.C.Act, 1988, to pass an ad interim order of attachment of the money or other property and to make the ad interim order of attachment absolute, under sec.5 of the Ordinance.

12.7 The order of attachment remains in force for 3 months as per cl.(a) of sec.10, but the period has been raised to one year by the P.C.Act, 1988 as per cl.(b) of sec.2 thereof. Where a court has taken cognizance of the scheduled offence, the order of attachment continues in force until orders are passed by the Judge, as per cl.(b) of sec.10 of the Ordinance.

12.8 The District Judge or a Special Judge trying an offence punishable under the P.C. Act, 1988 has power to order forfeiture of the attached property on the termination of the criminal proceedings where the final judgment or order of the criminal court is one of conviction as per sub-sec(3) of sec. 13 of the Ordinance.

12.9 The above provision should be used for attaching the properties of the Government servant(s) who are found to have misappropriated Government money pending the criminal proceedings and eventual confiscation of the property.

13. Invoking provisions of Andhra Pradesh Revenue Recovery Act

The provisions of Revenue Recovery Act can be invoked for recovery of the misappropriated amounts or loss caused to the Government. Recovery of misappropriated amount or loss caused to Government can be done as if it were an arrear of Land Revenue in accordance with the procedure laid down in the A.P. Revenue Recovery Act where the officer responsible fails to remit the amount to the Government Account. It is open to government to file a civil suit for recovery of such sum as a last resort.

14. Punishments to be awarded in proved cases of misappropriation

There is a wide disparity in the scales of punishment meted out in misappropriation cases. The question of prescribing uniform scale of punishment in such cases has been considered by Government. It has been decided that ordinarily cases of proved misappropriation would justify nothing less than dismissal from service and action should accordingly be taken. The minimum penalty to be imposed in all proven cases of misappropriation (in addition to the recovery of amount misappropriated) is dismissal from service. In case of retired employees the penalty should be withholding of entire pension and gratuity permanently or withdrawal of pension as the case may be, besides recovery of the misappropriation / loss amount. There may, however, be rare cases where attendant circumstances, such as trivial amount, short duration, immediate payment on detection, all of which may raise a presumption that it was an error in accounting, which may justify a different punishment. A clear distinction should be drawn between the cases of "delayed remittance" and "misappropriation" having regard to the fact that in proved cases of misappropriation no punishment short of dismissal is normally justified and accordingly the case of 'delayed remittance' need not always be classified for the purpose of audit as a case of misappropriation.

15. Consultation with Vigilance Commission

In all cases of misappropriation, the Vigilance Commission has to be consulted in accordance with the procedural instructions of the Commission.

16. Immediate dismissal upon conviction

An officer who is convicted by a Criminal Court for the offence of misappropriation or fraud should be dismissed from service without waiting for filing of an appeal or its outcome . Such action would be taken notwithstanding suspension of sentence by an Appellate Court. It shall not be necessary to consult the Andhra Pradesh Public Service Commission for taking action to dismiss the officer

on the grounds of conviction in a Court of Law. In the case of an officer who in the meantime has retired, his pension and gratuity shall be withheld or where it has already been sanctioned, his pension should be withdrawn. The officer who fails to enforce these instructions promptly, will be held responsible for any loss to the Government on account of avoidable payment of subsistence allowance or provisional pension as the case may be

17. Review of cases

17.1 There should be periodical office inspections by the Heads of Department and such inspections should invariably cover financial aspects, accounts and cases of misappropriation of funds, if any. The Chief Vigilance Officers of the Secretariat departments and the Vigilance Officers of Heads of Department, Public Enterprises, Autonomous Bodies and Cooperative Institutions have special responsibilities to keep track of the cases of misappropriation of funds by Government employees, and to take effective steps as envisaged in this Chapter.

17.2 The Finance Department has appointed an officer specially to monitor the pendency and watch progress with reference to statistics that will be furnished to him by the other Departments. This officer would place the statistical data regarding outstanding misappropriation cases for a review by Chief Secretary to Govt., with Secretaries of Departments periodically.

17.3 The Secretary of each Department should review each month all cases of misappropriation in his Department and send a copy of the review containing full details to the officer nominated for the purpose in the Finance Department. The Chief Secretary will review these cases with all Secretaries to Government once in 6 months to find out whether there are any bottle-necks in expediting cases of misappropriation.

17.4 All the Depts. of Secretariat, the Heads of Department and District Collectors have been directed to bring these instructions to the notice of their subordinates for their guidance and compliance and enforce strict compliance of these instructions.

CHAPTER XVIII

SANCTION OF PROSECUTION

1. Legal Provisions – Sec. 19 P.C.Act and Sec. 197 Cr.P.C.

1.1 Previous sanction of the appropriate administrative authority is necessary for launching prosecution against a public servant as per sec.19 of the Prevention of Corruption Act, 1988. The section is reproduced below:

1.2 **Sec. 19 of P.C.Act:**

"Previous sanction necessary for prosecution

(1) No Court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction —

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973;

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation — For the purpose of this section —

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature".

1.3 Further, previous sanction of the appropriate administrative authority is necessary for launching prosecution of public servants not removable except by the sanction of the Government, Judges and Magistrates for offences committed while

acting or purporting to act in the discharge of official duty, under Sec. 197 Cr.P.C. The relevant portion of the section is reproduced below:

1.4 **Sec. 197 Cr.P.C. :**

"Prosecution of Judges and public servants

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction —

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that . . . . . ."

2. Need for Sanction

The provision is intended to afford a reasonable protection to a public servant, who in the course of strict and impartial discharge of his duties may offend persons and create enemies, from frivolous, malicious or vexatious prosecution and to save him from unnecessary harassment or undue hardship which may result from an inadequate appreciation of the technicalities of the working of a department. A public servant who is alleged to have committed an offence should be allowed to be proceeded against in a court of law, unless on the basis of the facts placed before it the sanctioning authority considers that there is no case for launching a prosecution. That a case might lead to an acquittal will not be enough reason for refusing sanction. Whether the evidence available is adequate or not is a matter for the court to consider and decide. For the

sanctioning authority to be guided by such considerations will not be proper and it may lead to suspicion of partiality and protection of a guilty person. Therefore, normally, sanction for prosecution should be accorded even if there be some doubt about its outcome.

3. Authority competent to sanction prosecution under Sec.19 P.C. Act

3.1 Under Sec. 19 of the P.C. Act, 1988, the following are the authorities competent to sanction prosecution,—

(a) the Central Government, in the case of a Government servant who is employed in connection with the affairs of the Union and is not removable from his office except by the Central Government;

(b) the State Government, in the case of a Government servant who is employed in connection with the affairs of the State Government and is not removable from his office except by the State Government;

(c) the authority competent to remove him from his office, in the case of any other public servant.

3.2 The words “is employed” and “is not removable” used in clauses (a) and (b) of section 19(1) and “competent to remove him from his office” used in clause (c) thereof are significant and clearly show that the authority contemplated is the one competent to remove the public servant holding the office on the date the court takes cognizance of the offence and not any public servant holding the office held by the accused. Clauses (a) and (b) apply to persons who are employed in connection with the affairs of the Union or the affairs of a State and are removable from office only by the Central Government or a State Government respectively. A public servant who is removable from his office by an authority lower than the Central or State Government falls under cl.(c) and the authority competent to remove him from his office is the authority competent to sanction his prosecution. The expressions “Central Government” and “State Government” by virtue of sub-

secs. (8) and (60) of sec.3 of the General Clauses Act, 1897 mean the "President" and the "Governor" respectively. Sub-section (2) of sec. 19 provides that where any doubt arises as to the authority competent to issue the sanction under sub-sec. (1), the sanction shall be given by the authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed. Sanction should normally be accorded by the authority competent to issue the sanction. However, if in any case sanction is accorded by an authority higher than the competent authority, such a sanction will not be invalid. (State vs. Yesh Pal, AIR 1957 Pun 91).

4. State Government to issue sanction even where a subordinate authority is competent

Government decided that sanction for prosecution required under sec. 6(1) of the P.C. Act, 1947 (corresponding to Sec. 19(1) of the P.C. Act, 1988) may be accorded by the State Government in the case of any member of a service, State or Subordinate, even though in the case of certain Government servants the authority to accord sanction under the said Act may be an authority subordinate to Government. The departments of Secretariat were required to issue sanction order for prosecution in cases where the reports of the Anti-Corruption Bureau together with the advice of the Vigilance Commission for criminal prosecution of Government servants are received by them, instead of sending the case to the concerned subordinate authorities. (U.O.Note No. 2498/SC.D/75-4 dated 25-11-75 GA (SC.D) Dept.; Memo.No.1676/SC.D/82-3 dt.10-11-82 GA (SC.D) Dept.)

5. Sanction in respect of public servants whose services are lent

The case of a public servant whose services have been lent by one Government to another falls under clause (c) of sec.19 (1) and the authority competent to sanction his prosecution is the authority competent to remove him from his office, which may be either the Central Government or the State Government or an authority lower than the Central or the State Government, as the case may be.

6. Sanction in the case of Zilla Parishad, Panchayat Samithi, Municipality

In the case of employees of Zilla Parishads, Panchayat Samithis and Municipalities, sanction for prosecution under sec. 19(1)(c) of the P.C. Act may be accorded by the Government in respect of public servants who cannot be removed except by or with the sanction of the Government. In the case of employees who may be removed from service by an authority other than the Government, it is only that authority that can accord sanction for prosecution under the said Act. (U.O.Note No. 2498/SC.D/75-4 dt.25-11-75 G.A. (SC.D) Dept.)

7. Procedure where Board of Directors is the Sanctioning Authority

7.1 Where the Board is the authority required to grant the sanction under sec.19(1) (c) of the P.C. Act, the following requirement should be fulfilled —

i) A distinct item regarding the grant of sanction for prosecution of the public servant should be on the regular agenda of the meeting, so that all the members present are aware of the subject which will come up for discussion;

ii) Relevant papers, documents, evidence or any other material furnished by the prosecution should be placed before the members of the Board of Directors;

iii) All the members of the Board of Directors in the light of the papers, documents, evidence etc. before them, are required to apply their mind to the facts and circumstances of the case and then take the decision unanimously or by majority vote to grant the sanction or to withhold it.

7.2 A record of the proceedings of the meeting regarding the above aspects should be kept properly in the minutes book as an

adequate evidence of collective application of mind by the Board.

8. Authority competent to sanction prosecution under Sec. 197 Cr.P.C.

Under sec. 197 Cr.P.C., sanction is required for prosecution of a public servant not removable from his office save by or with the sanction of the Government for an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty –

a) of the Central Government, in the case of a public servant who is employed or was at the time of commission of the alleged offence employed in connection with the affairs of the Union;

b) of the State Government, in the case of a public servant who is employed or was at the time of commission of the alleged offence employed, in connection with the affairs of the State.

9. Sanction, when required under Section 19 P.C. Act and when under Sec. 197 Cr.P.C.

9.1 The sanction required under sec. 197 Cr.P.C. is materially different from that under sec. 19 of the P.C. Act in several respects.

9.2 Under sec. 197 Cr.P.C., sanction of the Central or of a State Government is necessary for the prosecution of a public servant (as defined under sec. 21 IPC) not removable from his office save with the permission of the Government. No sanction is required under this section to prosecute a public servant removable by an authority lower than the Government. Under sec.19 of the P.C. Act, sanction is required of the competent authority whether the public servant (as defined under sec. 2(c) P.C. Act) is removable by the Government or by an authority lower than the Government. Sanction is not required under sec. 19 of the P.C. Act, if the public servant is no longer in service at the time the Court takes cognizance of the offence, but is required under sec. 197 Cr.P.C. even where the public servant is no longer in service at the time the court takes cognizance of the offence. Under sec. 19 of the P.C. Act, sanction for prosecution

is required for an offence punishable under Secs. 7, 10, 11, 13, 15 of the Act, while under Sec. 197(1) Cr.P.C. sanction is required for an offence committed while acting or purporting to act in the discharge of his official duty, and not otherwise.

9.3 As laid down by the Supreme Court, a public servant can be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. A judge neither acts nor purports to act as a Judge in receiving a bribe though the judgment which he delivers may be such an act; nor does a Government Medical Officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining though the examination itself may be such an act. The acid test is as to whether the public servant can reasonably be inferred to have acted by virtue of his office. What is important is the quality of the act. The question whether an offence was committed in the course of official duty or under colour of office depends on the facts of each case (Baijnath vs. State of Madhya Pradesh, AIR 1966 SC 220: 1966 Crl.L.J. 179 (SC); S.B. Saha vs. M.S. Kochar, AIR 1979 SC 1841:1979 Crl.L.J. 1367 (S.C.)). The Supreme Court held, in the case of R. Balakrishna Pillai vs. State of Kerala, AIR 1996 SC 901, where the accused, Minister of Electricity, Government of Kerala, is alleged to have supplied certain Units of electricity without the consent of the Government, that the alleged criminal conspiracy has direct nexus with discharge of his official duties and that as such sanction is required for his prosecution under sec. 197 Cr.P.C.

10. Form of Sanction

In the Prevention of Corruption Act, no particular form has been prescribed in which the sanction for prosecution need be set out. The sanction represents a deliberate decision of the competent authority and courts expect that a sanction for which no particular form is prescribed by law, should ex facie indicate that the sanctioning authority had before it all the relevant facts on the basis of which prosecution was proposed to be launched and had applied its mind to all the facts and circumstances of the case

before according its sanction (Memo. No. 747/Courts.E/90-3 dt. 23-10-90 of Home (Courts-E) Dept.). The sanction order should deal with the facts and evidence against the accused. It should be clear as to what are the facts and under what provisions of law the prosecution is being launched, as to what are the basic ingredients of the offence required to be proved so as to give a clear picture to the court as to the basis on which the sanction for prosecution is accorded. Essential facts should be mentioned and superfluous matter avoided. The sanction order should be a self-contained speaking order. The sanctioning authority should satisfy itself that there is prima facie case and record its reasons for launching prosecution and specify that it is necessary in the public interest. The sanction order should be factually correct and complete in all respects and should satisfy the requirements of sec. 19 of the P.C. Act and/or sec. 197(1) Cr.P.C. (U.O.Note No.1033/ SC.D/89-2 dt.4-9-90 GA.(SC.D) Dept. and U.O. Note No. 450/ SC.D/87-1 dt.20-7-87 GA (SC.D) Dept.). Sanction order should not pin-point or mention the actual material examined, like the Anti-Corruption Bureau Report, C.D. file etc. or cite Government or Anti-Corruption Bureau references (U.O.Note No.1045/SC.D/87-3 dt.30-11-87 GA (SC.D) Dept.). The name and designation of the competent authority issuing the sanction order should be mentioned under the signature to facilitate ready reference (Endt. No. 372/SC.D/92-1 dt. 25-2-92 GA (SC.D) Dept.). Sanction order is meant for the Anti-Corruption Bureau for producing it in the court along with the charge sheet, and copies should not be marked to the departments or others, and correspondence between the Bureau, the Vigilance Commission and the Government should not be mentioned therein. (U.O.Note No.450/SC.D/87-1 dt.20-7-87 GA (SC.D) Dept.; U.O.Note No.1636/Spl.B3/2000-1 dt.4-9-2000 G.A. (Spl.B) Dept.)

11. Records to be sent with the Report

Anti-Corruption Bureau deals with the statements of witnesses and documents and the evidence borne out by them in the Anti-Corruption Bureau report, besides furnishing a specimen sanction order. As such, it is not necessary for them to furnish the case

diary file for issue of sanction order by the competent authority. However, the sanctioning authority may call for the case file from the Anti-Corruption Bureau only where it considers it necessary to further satisfy itself in regard to the existence of a prima facie case, and not in all cases in a routine manner. Where the C.D. file is called for, the Joint Director/Addl. Director should fix up a time for discussion, produce the C.D. file and discuss and bring it back (U.O. Note No.1045/SC.D/87-3 dt. 30-11-87 G.A.(SC.D) Dept.). In case the competent authority would like to see the original documents, they can be inspected by arrangement with the Anti-Corruption Bureau.

12. Records to be sent in case of All-India Services

Anti-Corruption Bureau should send the following documents while seeking sanction for prosecution of an All India Service officer:

i) Copy of Anti-Corruption Bureau Report

ii) Gist of documents and oral evidence

iii) Copies of statements of witnesses recorded during investigation.

iv) Copy of statement of accused officer recorded during investigation

v) Specimen sanction order

vi) Copy of opinion of the State Law Department or any other Legal opinion obtained by the Anti-Corruption Bureau

vii) Any other relevant or connected document which may help in appreciating the case and in coming to a decision.

13. Competent authority should be ascertained

Investigating Officer should verify the authority competent to remove the accused public servant from service, whether it is the Government, State or Central, or any lower authority or any other authority and obtain a copy of the order of appointment to the post held by the accused public servant at the material time of

commission of the offence and at the time of issue of the Sanction Order and connected record for determining the competent authority. For this purpose, it would be necessary to scrutinise the service book and service record of the accused public servant and examine the relevant rules and regulations to find out the authority competent to remove him from service.

14. Officer to prove Sanction Order should be identified

Investigating Officer should visit the Secretariat and contact the Assistant Secretary/Section Officer who processed the file and was present at the time of processing and signing of the sanction order by the competent authority and elicit facts regarding the circulation and movement of the file with reference to the notings and side initials in the file and incorporate them in Part-I case diary. He should also note the name and designation of the officer as also the facts to be elicited and documents to be brought to the court, so that the officer concerned can be cited in the charge sheet and summoned at the trial, and briefed on the facts to be elicited and the documents to be brought to the Court.

15. Sanction Order to be issued in 45 days — Due consideration to be given to advice of Vigilance Commission

15.1 In all cases where the Vigilance Commission after considering the final report, advises launching of criminal prosecution the concerned Principal Secretary/Secretary to Government or the concerned Head of Government/Undertaking etc. shall take action to issue sanction of prosecution within a period of 45 days from the date of receipt of the final report with the advice of the Commission. Authorities should give due consideration to the advice of the Vigilance Commission while taking a decision. Where the Commission advices prosecution, it shall not be further examined in the department concerned or in the Law Department as the recommendation of the Anti-Corruption Bureau and the advice of the Vigilance Commission are scrutinised by their legal cells.

15.2 Wherever it is necessary to obtain the orders of the Chief Secretary, the Chief Secretary may be approached through the Secretary (Pol.), G.A.D. Orders in circulation to the Minister/ Chief Minister should be obtained wherever necessary as per the provision under Rule 22 and 32(1) of the Government Business Rules and Secretariat instructions.

15.3 Periodical Meetings should be held once a quarter by the Chief Vigilance Officer in the Departments of Secretariat with a representative of the Anti-Corruption Bureau to review and sort out pending Anti-Corruption Bureau cases and ensure issue of orders within a reasonable time. Officers dealing with the case, like the Deputy Secretary/Joint Secretary/Additional Secretary may also be present at the meeting. (U.O.Note No.450/SC.D/87-1 dt.20-7-87 GA (SC.D) Dept.; Vigilance Commission Procedural Instructions; U.O.Note No. 400/SC.D/91-1 dt.30-3-91 G.A.(SC.D) Dept.; U.O.Note No.192/SC.D/ 22-1 G.A.(SC.D) Dept. dt.14-2-92; U.O.Note No.973/SC.D/94-1 G.A. (SC.D) Dept. dt.30-7-94; Memo.No.1728/Spl.B(3)/99-2 G.A. (Spl.B) Dept. dt.31-7-2000; Memo.No.609/Spl.B/99-8 G.A. (Spl.B) Dept. dt. 19-6-2002)

16. Authentication of Sanction issued by State Govt. and manner of proof

16.1 Where the sanction is issued by the State Government, it will be authenticated by the signature of an officer who is authorised under Article 166(2) of the Constitution to authenticate orders and other instruments made and executed in the name of the Governor and Rule 13 of the Business Rules. Government issued instructions that a sanction order issued in the name of the Governor should be authenticated by the Secretary or Principal Secretary. (U.O. Note No.450/SC.D/87-1 dt.20-7-87 G.A.(SC.D) Dept.)

16.2 The validity of a sanction issued by the State Government may be proved by the prosecution by the production of the following documents in the court:

i) the original sanction order;

ii) a copy of the notification issued under Article 166(2) of the Constitution by which the officer signing the sanction order is authorised to authenticate the orders issued by the Governor, and

iii) a copy of the Gazette Notification relating to the appointment of the officer signing the order to the office held by him at the time of the issue of the order of sanction.

17. Authentication of sanction issued by Central Government and manner of proof

17.1 Where the sanction is issued by the Central Government, it will be authenticated by the signature of an officer who is authorised under Article 77(2) of the Constitution to authenticate orders and other instruments made and executed in the name of the President, in accordance with the Authentication (Orders and other Instruments) Rules, 1958.

17.2 The validity of a sanction issued by the Central Government may be proved by the prosecution by the production of the following documents in the court:

i) the original sanction order,

ii) a copy of the notification issued under article 77(2) of the Constitution, and

iii) a copy of the Gazette Notification relating to the appointment of the officer signing the order to the office held by him at the time of the issue of the order of sanction.

18. Authentication of sanction issued by competent authority other than Government and manner of proof

18.1 Where the sanction is issued by a competent authority other than Government, the order of sanction will be signed by the officer who is competent to remove the accused public servant from his office at the time when the offence is to be taken cognizance of by the court if the sanction is to be accorded under sec. 19(1) of the P.C. Act or by the officer who was competent to remove him

from office at the time when the offence was committed if the order is to be issued under sec. 19(2) of the Act.

18.2 The validity of such sanction may be proved by the prosecution by production of the original sanction order, a copy of the Gazette Notification relating to the appointment of the officer signing the sanction to the office held by him at the time of the issue of the sanction by virtue of which he is competent to issue the order of sanction, or the order of appointment in the case of an officer whose appointment is not notified in the Gazette.

19. Proof of signature

An order of sanction to prosecute a Government servant is a public document within the scope of Sec. 74 of the Indian Evidence Act. Under sec. 77 of the said Act, it is permissible to produce in proof a certified copy of a public document and it should not be necessary to prove the signature of the officer who had signed or authenticated the order of sanction. But the Court may in certain circumstances refuse to take judicial notice of the signature. To meet such a contingency the name of a witness who is familiar with the signature of the officer who has authenticated or signed the order of sanction should be listed in the charge sheet to prove the signature.

20. Sanctioning authority, whether should be examined as witness

20.1 It is not necessary to examine the authority which accorded the sanction. All that is necessary for the prosecution to prove is that all the facts constituting the offence are before the sanctioning authority and that the sanctioning authority gave the sanction by applying its mind to the facts before it. If the facts constituting the offence are specified in the order of sanction and if it indicates that the sanction is accorded by the sanctioning authority after examining the material before it, it is sufficient proof to show that the sanctioning authority has accorded sanction by applying its mind to those facts, and in such cases it is not

necessary for the prosecution to prove by producing any independent evidence to show whether the sanction was properly accorded or not. The question of proving sanction by adducing independent evidence arises only in cases where the order of sanction does not disclose facts constituting the offence and other material. In such cases in order to prove that the facts constituting the offence are before the sanctioning authority, it is necessary to examine the sanctioning authority as a witness.

20.2 There is thus normally no need to examine the sanctioning authority as a witness to prove that the sanction has been accorded validly. The concerned Assistant Secretary or Section Officer conversant with the file and the signature of the sanctioning authority may attend the Court as a witness in order to prove the order sanctioning the prosecution. If the Court is appraised of the legal position, it would not be inclined to accept the defence request to summon the sanctioning authority. If inspite of such appraisal, the court chooses to issue summons, it will become necessary for the authority summoned to attend the court in order to dispel any possible suspicion from the mind of the court which his non-appearance might create. (D.O. Lr.No.2457/SC.D/82-1 dt.19-11-82 GA (SC.D) Dept.; Memo.No.2572/Cts.C/80-3 dated 3-10-80 Home (Courts-C) Dept.)

21. Sanction order – questioning of validity

If sanction of the competent authority is not obtained or the sanction obtained is defective, the trial would be ab initio void and if commenced will have to be set aside. A fresh prosecution will have to be launched after a proper sanction has been obtained and a charge sheet filed afresh. In the Prevention of Corruption Act, 1988, new provisions have been made in sub-secs. (3) and (4) of sec. 19 aimed at curbing dilatory tactics of accused public servant in raising the question of validity of sanction at any stage that suited him. As per these provisions, no stay of proceedings can be granted on the ground of error, omission or irregularity in the sanction unless it resulted in a failure of justice. No court can stay the proceedings

on any other ground or exercise the powers of revision on any interlocutory order. No Court in appeal, confirmation or revision can reverse or alter the finding, sentence or order passed by a Special Judge on the ground of absence of, or any error, omission or irregularity in the sanction required, unless a failure of justice has resulted, in determining which the fact whether the objection should have been raised at any earlier stage in the proceedings should be taken into account.

22. Sanction of prosecution — where invalid, subsequent trial with proper sanction, not barred

The Supreme Court observed in the case of Baij Nath Prasad Tripathi vs. State of Bhopal, AIR 1957 SC 494 that the whole basis of sec. 403 (1) Cr.P.C., 1898 (corresponding to sec. 300(1) Cr.P.C., 1973) is that the first trial should have been before a court competent to hear and determine the case and to record a verdict of conviction or acquittal; if the court is not so competent, as where the required sanction under sec. 6 of P.C.Act, 1947 (corresponding to sec. 19 of P.C. Act, 1988) for the prosecution was not obtained, the whole trial is null and void and it cannot be said that there was any conviction or acquittal in force within the meaning of sec. 403(1) Cr.P.C., 1898. Such a trial does not bar a subsequent trial of the accused under P.C.Act read with sec. 161 IPC after obtaining the proper sanction. The earlier proceeding being null and void, the accused cannot be said to have been prosecuted and punished for the same offence more than once and Art. 20(2) of the Constitution has no application.

CHAPTER XIX

TRIAL, APPEAL, REVISION

1. Trial

Where prosecution is decided and sanction is accorded a charge sheet under sec. 173(2) Cr.P.C. should be filed in the court of the Special Judge for Anti-Corruption Bureau Cases of competent jurisdiction within a fortnight of receipt of the sanction order.

2. Withdrawal of Prosecution — Anti-Corruption Bureau and Vigilance Commission to be consulted

2.1 The Government laid down that wherever it is proposed to reconsider a case of prosecution already sanctioned in an Anti-Corruption Bureau case, the views of the Bureau have to be obtained before a decision is taken by the Government. (U.O.Note No.400/SC.D/91-1 dt.30-3-91 GA (SC.D) Dept.)

2.2 The Government also decided that whenever it is proposed to withdraw a case of prosecution, the advice of the Vigilance Commission should be obtained before taking a final decision. (U.O. Note No.314/SC.D/94-3 dt.7-6-94 GA (SC.D) Dept. and U.O.Note No.1166/SC.D/94-1 dt.13-10-94 GA (SC.D) Dept.)

3. Quantum of fine under secs. 13, 14 of P.C.Act, 1988

3.1 Section 16 of the Prevention of Corruption Act, 1988 provides that where a sentence of fine is imposed under sub-section (2) of sec. 13 or sec. 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in cl. (e) of sub-section (1) of sec. 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

3.2 This provision should be kept in view while seeking fixation of fine commensurate with the offence committed.

4. Confiscation of disproportionate assets on conclusion of trial

4.1 Section 452(1) Cr.P.C. vests power in the court to make an order for confiscation of property at the conclusion of the trial. This provision should be pressed into service for getting orders of confiscation of the property in a case of disproportionate assets under sec. 13(1)(e) of the P.C.Act, 1988 on the successful conclusion of the trial.

4.2 The Supreme Court, in the case of Mirza Iqbal Hussain vs. State of U.P., 1983 Cri.L.J. SC 154, held that the Special Judge trying an offence under the P.C.Act has the power to pass an order of confiscation under sec. 452 Cr.P.C.

4.3 Apart from this provision an alternative available is forfeiture of property under the Criminal Law Amendment Ordinance, 1944. In all cases where attachment of property has been ordered by the Court, confiscation of such property shall be insisted upon conclusion of trial and conviction of accused officer.

5. Action after judgment

5.1 When the judgment is delivered by the Special Judge, the Anti-Corruption Bureau should send a conviction/ acquittal/discharge report to the Head Office by the quickest means possible to the Vigilance Commissioner, the Secretary to Government in the Secretariat, the Chief Secretary and the Head of Department.

5.2 The Prosecutor should apply for and obtain a certified copy of the judgment, which he is entitled to get free of cost and send it to the Bureau with his report at the earliest.

5.3 The Prosecutor should specifically report whether there is material for filing an appeal against acquittal/discharge and whether the sentence is adequate in case of conviction and whether a revision should be filed for enhancement.

5.4 The Prosecutor should report the reasons for acquittal/ discharge and point out defects in investigation and prosecution and adverse remarks of the court and offer his comments.

5.5 If obtaining of a certified copy entails delay, the Prosecutor may get an uncertified copy and send the certified copy later when received, with proforma of limitation. It should be ensured that the date of application and date of receipt of the certified copy are mentioned on the certified copy of judgment with court seal. The prosecutor should also mention the date of expiry of appeal time in the covering letter. He should send the original certified copy but not a mere photostat copy.

6. Action in case of acquittal

6.1 The Bureau would consult the Chief Legal Adviser and move the department in the Secretariat for filing an appeal or revision before the High Court against acquittal/discharge or for enhancement of sentence wherever thought fit.

6.2 The Standing Counsel or the Public Prosecutor, High Court will file the appeal before the High Court on behalf of the Government in time and appear before the High Court.

6.3 While sending proposals to the Public Prosecutor, High Court or the Standing Counsel to file appeals, the authority should send certified copy of the judgment, 3 legible photostat copies of the judgment and Case Diary file and connected records file. (Memo. No.1506/Cts.B/88-1 dt.2-7-88 Home (Courts-B) Dept.)

6.4 Proper measures should be taken to watch the progress of appeals filed by the accused against conviction in the High Court, by the Standing Counsel. Daily Cause List of cases of the High Court should be carefully perused by him.

6.5 The Standing Counsel should maintain a register of cases pending in the High Court, of cases filed by the Government and those filed by the accused.

6.6 The Standing Counsel or the Public Prosecutor, High Court will appear on behalf of the Government, obtain and furnish judgment to the Government and the Anti-Corruption Bureau with his remarks. The Bureau will render necessary assistance in the hearing before the High Court.

6.7 Appeals before the Supreme Court will be filed and followed up in the same manner as appeals before the High Court.

6.8 Government will direct the Advocate-on-Record of the Supreme Court to file appeal in the Supreme Court under intimation to the Anti-Corruption Bureau and he would watch the progress of the appeal before the Supreme Court.

6.9 While scrutinising the judgment, it should be verified whether the rules and regulations prescribed are adhered to in practice, whether there are any loopholes in the procedure prescribed and followed and consider measures required to be taken to plug the loopholes.

6.10 The Bureau should ensure that prior orders of the Government for filing an appeal are invariably obtained by sending proposals well in time. Bureau should avoid filing appeals in anticipation of orders. (Memo.No.4707/SC-E/96-1 dt.10-2-97 GA (SC-E) Dept.)

6.11 The Government directed that proposals of the Bureau for filing appeals should be processed expeditiously and the decision of the Government communicated to the Bureau well in time before the expiry of the time limit. (U.O.Note No.530/SC.E1/ 99-1 dt.5-3-99 GA (SC-E) Dept.)

6.12 The Vigilance Commission expressed its view that it is not necessary for the Commission to advice on the judgment of the criminal courts and it is for the Government to take a decision in consultation with the Law Department. (Memo.No. 1994/ SC.D)/ 77-1 dt. 7-10-77 GA (SC.D) Dept.)

7. Action against Hostile witness

7.1 When all efforts fail and the witness turns hostile, action should be taken to prosecute him under appropriate sections of law for perjury.

7.2 Section 182 I.P.C. applies where a person, having given a signed complaint turns hostile during the trial, enquiry or disciplinary proceedings. The mere giving of a false complaint against a public servant to the Investigating Officer is enough.

7.3 Section 193 I.P.C. is attracted where a witness gives false evidence during trial. There must be a finding of the court that the witness gave false evidence or fabricated evidence.

7.4 Section 211 I.P.C. applies where a person institutes or causes to be instituted a false criminal charge to cause injury to another person.

7.5 The procedure is outlined under sec.195(1) Cr.P.C. and timely initiative should be taken to press for action under sec. 340 Cr.P.C. An application under sec. 340(1) Cr.P.C. should be filed by the Legal Officer immediately after the conclusion of arguments and where applicable under sec. 344 Cr.P.C. A specific order should be sought from the Court, so that in the event of an adverse order, an appeal can be preferred under sec. 341 Cr.P.C.

7.6 The public servant should also be proceeded against for misconduct, for violation of rule 3(1)(2) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 in the case of State Government servants or the corresponding Conduct Rules applicable in the case of other employees, where having given a statement under sec. 164 Cr.P.C deviates from it materially during the trial or before the Tribunal for Disciplinary Proceedings or in a Departmental Inquiry. (Memo.No.1886/SC.D/74-1 dt.29-10-74 GA (SC.D) Dept).

CHAPTER XX

DEPARTMENTAL ACTION IN CASE OF CONVICTION

1. Constitutional provision

1.1 Clause (a) of the second proviso to clause (2) of Art.311 of the Constitution lays down that the procedure prescribed under the said clause (2) need not be followed where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

1.2 Identical provision in this regard is incorporated in rule 25 of the A.P.C.S. (C.C.&A) Rules, 1991 and rule 14 of the A.I.S. (D&A) Rules, 1969 and in the Rules/Regulations of the State Public Undertakings etc.

2. Suspension of Government servant on conviction

As soon as the report about the conviction is received from the Anti-Corruption Bureau, and if it happens that the Government servant convicted had not been placed under suspension, the appropriate disciplinary authority should decide whether he should now be suspended and suspend him accordingly. In cases where the conviction is for a term of imprisonment exceeding 48 hours and the convicted Government servant was imprisoned and he suffered imprisonment for a period exceeding 48 hours, the period of 48 hours computed from the commencement of the imprisonment after the conviction, he shall be deemed to have been suspended under rule 8(2)(b) of the APCS (CCA) Rules, 1991. It should be noted that the provision of deemed suspension under rule 8(2)(b) of the APCS (CCA) Rules, 1991 does not operate merely when the Government servant is sentenced to a term of imprisonment exceeding 48 hours, but actually suffered imprisonment for a period exceeding 48 hours. This will be seen from the explanation under rule 8(2)(b) that “the period of forty-eight hours referred to in cl.(b) of this sub-rule shall be computed

from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account".

3. Imposition of penalty — guidelines

3.1 Thereupon the disciplinary authority must consider whether his conduct which had led to his conviction was such as to warrant the imposition of a penalty and if so, what that penalty should be. For that purpose, the disciplinary authority will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and in doing so take into account the entire conduct of the Government servant, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and extenuating circumstances or redeeming features. Where the disciplinary authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant, but it should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case. (Union of India vs. Tulsiram Patel, 1985(2) SLR SC 576).

3.2 The disciplinary authority may, if it comes to the conclusion that an order imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, pass such an order without waiting for the period of filing an appeal, or if an appeal has been filed, without waiting for the decision in the first court of appeal. (Form No.29 of Part II of Volume II)

4. Release under Probation of Offenders Act — no bar to taking action

Where a Government servant convicted by a court of law of any penal offence has been dealt with under section 3 or section 4 of the Probation of Offenders Act, 1958, as per section 12 of the said Act, he shall not suffer any disqualification. But even in such cases, action under this clause can be taken against a Government

servant without following the procedure laid down in the substantive part of Article 311(2) of the Constitution. (Akella Satyanarayana Murthy vs. Zonal Manager, L.I.C. of India, 1970 SLR AP 230).

5. Action on ground of conduct, not because of conviction

The order under this provision should be passed on the ground of conduct which has led to the conviction of the Government servant and not because of the conviction. In this case action should be taken under clause (i) of rule 25 of the A.P. Civil Services (CCA) Rules, 1991, corresponding to clause (a) of the second proviso to clause (2) of Article 311 of the Constitution.

6. Appeal, no bar against action

The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which has led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed, without waiting for the decision in the first court of appeal. If, however, a restraining order from an appellate court is produced, action has, of course, to be withheld or taken according to the Court's direction.

7. Imposition of penalty — subject to judicial review

7.1 A Government servant who is aggrieved by the order can agitate in appeal, revision or review that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case and if it is his case that he is not the person who was in fact convicted, he can also agitate this question. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The Court will go into the question whether the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the Government servant belongs.

7.2 The Supreme Court laid down, in the case of K.C. Sareen vs. CBI, Chandigarh, 2001(5) Supreme 437, that when conviction is on a corruption charge against a public servant, the appellate Court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended, and that it would be a sublime public policy that the convicted public servant is kept under disability of the conviction inspite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision. In the light of the categorical direction of the Supreme Court, Government instructed all concerned to take action forthwith for dismissal of public servants convicted of corruption and criminal misconduct immediately upon such conviction without waiting for any appeal and stated that the appointing/disciplinary authorities will be personally held responsible for non-implementation of these instructions and will be liable for disciplinary action, if inspite of these instructions it is found convicted officials are continuing in service without being dismissed immediately or continue to receive provisional pension if they have already retired in the meantime without action to withhold pension and other pensionary benefits or withdraw pension entirely as the case may be, disregarding these instructions. Government further directed that salary/pension/ provisional pension paid after the judgment convicting the public servant shall be liable to be recovered from the appointing authority. The Departments of Secretariat and Heads of Department are required to oppose any application for suspension of conviction in such cases, quoting the above-mentioned judgment of the Supreme Court. (Memo.No.1621/Spl.B/2001-1 G.A.(Spl.B) Dept. dt.26-11-2001)

8. Quantum of penalty

Proviso to Rule 9 of the Andhra Pradesh Civil Services (CCA) Rules, 1991 provides that in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forebearing to do any official act is established, the penalty mentioned in clause (ix) or clause (x) shall be imposed. Instructions were issued in the

Memo.No.3037/Ser.C/64-3 G.A.(Ser.C) Dept. dated 26-11-64 among others, that in proved cases of bribery and corruption, no punishment other than that of dismissal be considered adequate and if any lesser punishment is to be awarded in such cases adequate reasons should be given for it in writing. In the Memo.No.1718/Ser.C/75-1 dt. 22-11-75 instructions were issued to the effect that the officers convicted in criminal cases should normally be dismissed from service. The above instructions have been reiterated for strict compliance vide the General Administration (Services.C) Department Memo.No.3824/Ser.C/98-2 dt. 9-2-98. Vide G.O.Ms.No.2 G.A.(Ser.C) Dept. dt. 4-1-99 Government declared that it is its earnest endeavour to ensure a clean and transparent administration. To have this policy transcended to the grass root level, it is keenly felt that the officers with doubtful integrity and involved in criminal offences shall be weeded out in order to ensure efficient functioning. To ensure clean and efficient administration, the Government directed that in all proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women, the penalty of dismissal from service shall be imposed.

9. Service Commission — not necessary to consult

It is not necessary for the Government to consult the Public Service Commission in a case of imposition of a penalty in terms of clause (a) mentioned above.

10. Departmental Action on ground of conduct leading to Conviction — Effect of subsequent acquittal — Action that lies thereafter

10.1 Government issued the following instructions in dealing with cases where Government servants are convicted on a criminal charge and where an Appeal/Revision against conviction in a higher court succeeds.

(a) Where an appeal or a revision in a higher court against conviction succeeds and the Government servant is acquitted, the

order imposing a penalty on him on the basis of conviction, which no longer stands, becomes liable to be set aside. A copy of the judgment should be immediately procured and examined with a view to decide —

i) whether the acquittal should be challenged in a still higher court, or

ii) whether, despite the acquittal, the facts and the circumstances of the case are such as to call for a departmental action against the Government servant on the basis of the misconduct on which he was previously convicted.

(b) If it is decided to take the matter to a still higher court under item (i) above, action to institute proper proceedings should be taken without delay and the order imposing penalty need not be set aside during the pendency of such proceedings. If, however, it is considered expedient that the Government servant should not be allowed to discharge his duties during the pendency of such proceedings, he may be placed under suspension, as soon as he reports to duty after his acquittal by the first court of appeal.

(c) If, on the other hand, it is decided that departmental action may be taken under item (ii) above, a formal order should be made (Form No.30 of Part II of Volume II) —

i) setting aside the order imposing the penalty on the basis of conviction; and

ii) ordering such departmental inquiry.

10.2 In case where the penalty imposed on the basis of the conviction was dismissal, removal or compulsory retirement from service, the order should also state that under rule 8(4) of the A.P.C.S. (C.C.&A) Rules, 1991 or rule 3(6) of the A.I.S.(D&A) Rules, 1969 or the corresponding regulations of the Public Sector Undertaking, as the case may be, the Government servant / member of All India Service/employee is deemed to be under suspension

with effect from the date of dismissal, removal or compulsory retirement from service.

10.3 In case, where neither of the courses mentioned in sub-para (2) is followed, a formal order should be issued setting aside the previous order imposing the penalty (Form No.31 of Part II of Volume II). (Memo.No.169/Ser.C/77-8 dt.10-2-78 GA (Ser.C) Dept.; Memo. No. 1718/Ser.C/75-1 dt.22-11-75 G.A.(Ser.C) Dept.; U.O.Note No.1418/SC.D/90-2 dt.5-11-90 GA (SC.D) Dept.; U.O. Note No.1700/SC.D/92-4 dated 9-3-94 GA (SC.D) Department)

11. Departmental action in cases of acquittal by trial Court

11.1 If the Government servant is acquitted by trial or appeallate court and if it is decided that the acquittal not be challenged in a higher court, the competent authority should decide whether or not despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry on the basis of the allegations on which he was previously charged and convicted. According to the ruling of the Supreme Court in Nagpur City Corporation vs. Ram Chandra and others (SC 396 of 1980-SLR 1981(2)), even where the accused public servant is acquitted and exonerated of an offence, such acquittal does not bar a departmental authority from holding or continuing disciplinary proceedings against the accused public servant.

11.2 On the scope of departmental action after acquittal by a court of law, the following aspects should be taken note of:

(i) One identical set of facts and allegations may be sufficient to constitute a criminal offence as well as misconduct not amounting to criminal offence.

(ii) If the facts or allegations had come to be examined by a court and the court has given a finding that the allegations are not true, it is not permissible to held a departmental inquiry.

(iii) If on the other hand, the court had merely expressed a doubt as to the correctness of the allegations, there may be no objection to hold a departmental inquiry on the same allegations, if better proof than what was produced before the court or was then available, is forthcoming.

(iv) If the court has held that the allegations are proved but do not constitute the criminal offence with which the Government servant is charged, there would be no objection to hold a departmental inquiry on the basis of the said allegations if such proved allegations are considered good and sufficient reason for taking disciplinary action.

(v) It is permissible to hold a departmental inquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge in the criminal case and is not based on any allegations which have been negatived by the criminal court.

(vi) Where an allegation has not been examined by a court of law, but it is considered good and sufficient reason for taking disciplinary action there is no bar to taking such action.

12. Penalty imposed after inquiry following prescribed procedure, not affected by acquittal

Where a Government servant/employee is compulsorily retired or removed or dismissed or reduced in rank after complying with the requirements of Art. 311 (2) of the Constitution, and holding an inquiry as provided under rules 20, 21 of the A.P.C.S. (C.C.&A.) Rules, 1991 or rules 8, 9 of A.I.S. (D&A) Rules, 1969 or corresponding Regulations applicable to employees of Public Undertakings, as the case may be, or where he is imposed any other penalty after following the procedure prescribed in that regard, such an order is not affected by his acquittal in a criminal court. (Memo. No. 2598/65-2 dt.25-9-65 GA (Ser.C) Dept.)

CHAPTER XXI

CONDITIONS OF SERVICE

(ARTICLES 309, 310, 311 OF CONSTITUTION)

1. General

Public servants have got a special relationship with the Government, their employer, which is in some respects different from the relationship under the ordinary law between the master and servant. Chief Vigilance Officers, Vigilance Officers and others handling vigilance cases and attending to vigilance work will need to know and bear in mind the basic provisions of the Constitution pertaining to services, while processing disciplinary cases against public servants. The relevant Constitutional provisions are dealt with below.

2. Article 309 of Constitution

2.1 Article 309 of the Constitution is reproduced below:

Article 309 of Constitution

"Recruitment and conditions of service of persons serving the Union or a State —Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act".

2.2 This Article empowers the Parliament or the State Legislature to make laws to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or the State, as the case may be. It also authorises the President or the Governor to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament or the State Legislature.

2.3 The following are the relevant Acts and Rules:

(i) The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

(ii) The Andhra Pradesh Civil Services (Conduct) Rules, 1964.

(iii) The Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960.

(iv) The Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989.

(v) The All India Services (Discipline and Appeal) Rules, 1969.

(vi) The All India Services (Conduct) Rules, 1968.

2.4 The Andhra Pradesh Civil Services (Conduct) Rules and the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules govern the State and Subordinate services of the State and are made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution, while the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act was enacted by the State Legislature and the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules were made in exercise of the powers conferred by the Act.

2.5 The All India Services (Discipline and Appeal) Rules and the All India Services (Conduct) Rules were made by the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951, which was enacted under Article 312 of the Constitution. The three All India Services

created so far are the Indian Administrative Service, the Indian Police Service and the Indian Forest Service.

3. Officers of High Court

Under Article 229 of the Constitution, conditions of service of officers and servants of the High Court are regulated by rules made by the Chief Justice of the High Court subject to the approval of the Governor in certain matters. Article 233 governs the appointment etc. of District Judges and Article 234 governs those other than District Judges of the State Judicial Service, while Article 235 deals with control over district and subordinate courts, etc.

4. Employees of Public Sector Undertakings

The employees of public sector undertakings which have been constituted as corporate bodies and constitute separate legal entities under the relevant statutes or which have been registered as companies under the Companies Act are not Government servants. They are governed by rules and regulations made by the respective undertakings under the powers vesting in them under the relevant statutes/Articles of Memorandum. Government servants who may be employed under such undertakings on deputation terms continue, for purpose of disciplinary action, to be governed by Government rules and regulations.

5. Article 310 of Constitution

5.1 Article 310 of the Constitution is reproduced below:

Article 310 of Constitution

"Tenure of office of persons serving the Union or a State. –

(1) Except as expressly provided by the Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds

any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post."

5.2 Article 310 provides what is known as "doctrine of pleasure" as per which a Government servant of a State holds office during the pleasure of the Governor and a member of the All India Service holds office during the pleasure of the President. Therefore, his tenure could be terminated by the Governor or the President, as the case may be, at pleasure.

5.3 The exercise of the pleasure is, however, subject to the express provisions of the Constitution made in relation to certain special services and posts and to the provisions of Article 311 which lays down, in relation to holders of posts covered by that Article, the manner in which the services of a Government servant could be terminated. In that sense the provisions of Article 311 are of the nature of a proviso to Article 310. The exercise of pleasure by the Governor and the President under Article 310 is thus controlled and regulated by the provisions of Article 311. (Purushothamlal Dhingra vs. Union of India, AIR 1958 SC 36).

6. Article 311 of Constitution

6.1 Article 311 of the Constitution is reproduced below:

Article 311 of Constitution

"Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.–

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where, it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry

as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

6.2 The procedure laid down in Article 311 is intended to assure, first, a measure of security of tenure to Government servants, who are covered by the Article and secondly to provide certain safeguards against arbitrary dismissal or removal of a Government servant or reduction to a lower rank. These provisions are enforceable in a court of law. Where there is an infringement of Article 311, the orders passed by the disciplinary authority are void ab initio and in the eye of law "no more than a piece of waste paper" and the Government servant will be deemed to have continued in service or in the case of reduction in rank, in his previous post throughout.

6.3 The implications of the provisions of Article 311 have been the subject of a close examination by several High Courts and by the Supreme Court. In particular in the cases of (i) Purushotham Lal Dhingra vs Union of India, AIR 1958 SC 36; (ii) Khem Chand vs. Union of India, AIR 1958 SC 300 and (iii) Union of India and another vs. Tlusiram Patel, 1985(2) SLR SC 576, the Supreme Court gave an exhaustive interpretation of the various aspects involved and they provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

6.4 Articles 310 and 311 apply to Government servants, whether permanent, temporary, officiating or on probation. (Purushotham Lal Dhingra vs. Union of India, AIR 1958 SC 36)

7. Services covered by Article 311 of Constitution

Clause (1) of Article 311 of the Constitution limits the application of the provisions of the Article to members of the civil services of the Union, the All India Services, the Civil Services of the States and holders of civil posts under the Union and the States. Employees of public undertakings and of corporate bodies are not holders of civil posts and are not covered by Article 311, but Government servants who are on deputation to such undertakings and corporate bodies are covered. The Article does not cover members of the

Defence Services or those holding posts connected with the Defence including civilian personnel working in posts connected with Defence services and paid from Defence Estimates.

8. Dismissal, Removal, Compulsory Retirement, Reduction in Rank

8.1 Dismissal, removal and reduction in rank are major penalties and they can be imposed upon Government servants under the A.P. Civil Services (CCA) Rules or under other corresponding services rules in accordance with the procedure prescribed therein. Dismissal and removal amount to a premature termination of the service of a Government servant as a measure of penalty. There is a difference between the two in that whereas in the case of removal, a person remains eligible for reappointment under Government, in the case of dismissal, he will not ordinarily be so eligible.

8.2 Compulsory retirement imposed by way of penalty amounts to removal and is a major penalty (Union of India vs. Tulsiram Patel, 1985(2) SLR SC 576). Compulsory retirement ordered as per enabling rules does not constitute a penalty and is distinguished from compulsory retirement imposed as a penalty in that the latter casts a stigma on the Government servant and implies that his services have been terminated owing to some misconduct or misbehaviour while the former does not cast any such stigma.

8.3 The term reduction in rank denotes reduction to a lower post or a lower time-scale of pay or to a lower stage in a time-scale. A change of position in the seniority list of a cadre, however, will not amount to reduction in rank.

9. Termination of Service, when amounts to Dismissal, Removal

9.1 Whether termination of service of a Government servant in any given circumstances will amount to punishment will depend upon whether under the terms and conditions governing the appointment to a post he would have a right to hold the post but

for the termination of his service. If he has such a right, then the termination of his service will, by itself, be a punishment for it will operate as a forfeiture of his right to hold the post. But, if the Government servant has no right to hold the post the termination of his employment or his reversion to a lower post will not deprive him of any right and will not, therefore, by itself be a punishment.

9.2 In the case of a temporary appointment, dismissal or removal will amount to punishment if such a Government servant has been visited with certain evil consequences. In such a case, the termination of his services will have to be after observing the procedure laid down in the A.P.Civil Services (CCA) Rules.

10. Authority Competent to Dismiss or Remove

10.1 Clause (1) of Article 311 of the Constitution provides that no person who is a member of a civil service of a State or holds a civil post under the State or who is a member of an All India Service shall be dismissed or removed by an authority subordinate to that by which he was appointed. The appointing authority cannot delegate his power of dismissal and removal to a subordinate authority.

10.2 If in a particular case a Government servant was appointed by a higher authority than the one which was competent to make appointment to the post or a Government servant was appointed by a particular authority but subsequently the power to make appointment to that post or grade was delegated to lower authority and if such a Government servant is dismissed or removed from service by the lower authority, such an order of dismissal or removal would contravene the provisions of Article 311(1) of the Constitution, as such an authority though no doubt competent under the rules to order the appointment and also to order dismissal, is lower in rank than the authority which had in fact ordered his appointment. If an authority higher in rank than the competent authority makes an appointment in any individual case, it is only that higher authority that can exercise the power of ordering his removal or dismissal from service.

10.3 In the case of appointments made on the basis of selection, that authority which makes the actual appointment and

not that which made or approved the selection will be competent to order dismissal or removal. Thus a higher authority or a head of the department may have approved a selection list or directed a subordinate authority to appoint a particular person. In either case the higher authority does not become the appointing authority.

10.4 If a Government servant is appointed by one authority in a temporary capacity and is confirmed by a higher authority, the competent authority to order dismissal or removal will be the higher authority which confirmed the Government servant and not the authority which actually appointed him.

10.5 An order of dismissal or removal can be passed also by an authority higher than the appointing authority.

10.6 In all cases, the order should be signed by the appropriate authority.

10.7 If an order of dismissal or removal is passed by an authority subordinate to the appointing authority, any subsequent confirmation of such order by the competent authority will not validate the defective order. In such a case, the competent disciplinary authority should start fresh proceedings, if the circumstances so warrant. The fresh proceedings can be taken up at the stage where the inquiry report was accepted by the earlier authority.

11. Applicability to Public Undertakings

11.1 The question whether Article 311 applies to the employees of statutory Corporations, Public Sector Undertakings and Government Companies was considered by the Supreme Court in a series of decisions and it was held that they fall within the meaning of the term “other authorities” mentioned in Art. 12 of the Constitution which has defined the term “the State”. It was further held that if the Body is invested with public functions and afforded state financial aid or subjected to State control of unusual degree, it is a State agency or agent or instrumentality of the State. It may be owned by the Government or it may be under the complete control and management of the Government. This principle has been applied to the Nationalised Banks which have

been created under the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980 and which are wholly owned by Central Government.

11.2 The Supreme Court held that the employees of these statutory Corporations, Public Sector Undertakings, Nationalised Banks and Government Companies are not entitled to the protection under Art. 311 of Part XIV of the Constitution but they would nonetheless be entitled to the protection of the Fundamental Rights enshrined in Articles 14, 16 and 21 of Part III of the Constitution.

11.3 As per the 42nd amendment of the Constitution which came into force on 3-1-1977, it shall not be necessary under Art. 311(2) to give the charged employee an opportunity of making representation on the penalty proposed and such penalty may be imposed on the basis of the evidence adduced during the inquiry. After this amendment, a question arose whether inspite of dispensing with the show cause notice against the proposed penalty, it was still not necessary to furnish a copy of the inquiry report to the charged employee and give him an opportunity of making a representation thereon. The Supreme Court held that in every case where the inquiry is conducted by an Inquiry Officer other than the Disciplinary Authority and the Inquiry Officer submits a report to the Disciplinary Authority at the conclusion of the inquiry, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge. The delinquent is entitled to the opportunity even if the statutory rules do not permit the furnishing of the report or are silent on the subject, whether the delinquent asks for the report or not, and even when the penalty imposed is other than a major penalty.

11.4 Where the inquiring authority holds a charge as not proved and the disciplinary authority takes a contrary view, the reasons for such disagreement in brief must be communicated to the charged officer along with the report of inquiry so that the charged officer can make an effective representation. This procedure would require the disciplinary authority to first examine the report as per the laid

down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer.

12. Exceptions to Article 311(2) of Constitution

12.1 Clause (a) of the second proviso to clause (2) of Article 311 of the Constitution provides an exception where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. The rationale is that a court of law has already given a verdict. This has already been dealt with in an earlier Chapter.

12.2 Clause (b) of the second proviso provides that where the appropriate disciplinary authority is satisfied for reasons to be recorded by the authority in writing that it considers it not reasonably practicable to hold an inquiry, no inquiry need be held.

12.3 Under clause (c) of the second proviso to clause (2) of Article 311 of the Constitution, where the Governor (or the President, as the case may be) is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry, the services can be terminated without recourse to the normal procedure prescribed in the substantive part of clause (2) of the Article.

13. Inquiry dispensed with, where not practicable

13.1 Where action is taken under clause (ii) of rule 25 of the A.P.C.S. (CCA) Rules, 1991, corresponding to clause (b) of the second proviso to clause (2) of Article 311 of the Constitution, there are two conditions precedent which must be satisfied: (i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable in the opinion of a reasonable man taking reasonable view of the prevailing situation. Illustrative cases in which it would not reasonably be practicable to hold the inquiry would be: (a) where a civil servant, through or together with his associates, terrorises, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from

doing so, (b) where the Government servant by himself or with or through others threatens, intimidates and terrorises the officer who is the disciplinary authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held, or (c) where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made. The threat, intimidation, or the atmosphere of violence or of a general indiscipline and insubordination referred to in the illustrative cases, for example, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time. The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the Government servant is weak and is therefore bound to fail.

13.2 Another important condition precedent to the application of this clause is that the disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by clause (ii) of rule 25 of the A.P. Civil Service (CCA) Rules, 1991, corresponding to clause (b) of the second proviso to clause (2) of Article 311. This is a Constitutional obligation and if the reasons are not recorded in writing the order dispensing with the inquiry and the order of penalty following it would both be void and unconstitutional. It should also be kept in mind that the recording in writing of the reasons for dispensing with the inquiry must precede the order imposing the penalty. Legally speaking, the reasons for dispensing with the inquiry need not find a place in the final order itself, but it would be of advantage to incorporate them briefly in the order of penalty. The reasons given should not be vague or they should not be just a repetition of the language of the relevant rules.

13.3 In view of clause (3) of Article 311 of the Constitution, the decision of the competent authority shall be final and it cannot be questioned in appeal, revision or review before a departmental authority. This finality is, however, not binding on a court so far as

its power of judicial review is concerned, and the court is competent to strike down the order dispensing with the inquiry as also the order imposing penalty, should such a course of action be considered necessary by the court in the circumstances of the case.

13.4 The Government servant who has been dismissed or removed from service or reduced in rank by applying this clause can claim in appeal, revision or review that an inquiry should be held with respect to the charges on which such penalty has been imposed upon him, unless a situation envisaged by the second proviso is still prevailing at the hearing of the appeal, revision or review application. Even in such a case the hearing of the appeal, revision or review application should be postponed for a reasonable length of time for the situation to return to normal. (Union of India vs. Tulsiram Patel, 1985(2) SLR SC 576; Satyavir Singh and ors vs. Union of India and ors, 1986(1) SLR SC 255)

14. Inquiry dispensed with, in the interest of Security of State

14.1 Where action is taken under clause (iii) of rule 25 of the A.P. Civil Services (CCA) Rules, 1991, corresponding to clause (c) of the second proviso to clause (2) of Article 311 of the Constitution, what is required is the satisfaction of the Governor or the President as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). This satisfaction is of the Governor or the President as a constitutional authority arrived at with the aid and advice of the Council of Ministers. The satisfaction so reached by the Governor or the President is necessarily a subjective satisfaction. It will be sufficient if orders of the Minister-in-charge are obtained. The Supreme Court in Shamsher Singh vs. State of Punjab and anr (AIR 1974 SC 2192) have overruled their earlier decision in the case of Sardar Lal vs. Union of India and ors (Civil Appeal No.576 o 1969) and held that the Rules of Business and the allocation among the Ministers of the said business, indicates that the decision of any Minister or Officer under the rules of

business made under Article 166(3) in the case of Governor of a State and Article 77(3) in the case of President is the decision of the Governor or the President respectively. It has been also held that the requirement of the Constitution and corresponding provision in the C.C.A. Rules would be satisfied if the matter is submitted to the Minister-in-charge under the relevant rules of business and it receives the approval of the Minister.

14.2 The reasons for this satisfaction need not be recorded in the order of dismissal, removal from service or reduction in rank, nor can they be made public. There is no provision for departmental appeal or other departmental remedy against the satisfaction reached by the Governor or the President. If, however, the inquiry has been dispensed with by the Governor or the President and the order of penalty has been passed by a disciplinary authority subordinate thereto, a departmental appeal, revision or review will lie. In such an appeal, revision or review, the Government servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal, revision or review, a situation envisaged by the second proviso to Article 311(2) is still prevailing. Even in such a situation, the hearing of the appeal, revision or review application should be postponed for a reasonable length of time for the situation to become normal.

14.3 Ordinarily the satisfaction reached by the Governor or the President would not be a matter for judicial review. However, if it is alleged that the satisfaction of the Governor or the President had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction in law, of the Governor or the President at all. The question whether the court may compel the Governor to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not. (Union of India vs. Tulsiram Patel, 1985(2) SLR SC 576)

CHAPTER XXII

CONSTITUTIONAL PROTECTION, PRINCIPLES OF NATURAL JUSTICE, STANDARD OF PROOF, SIMULTANEOUS DEPARTMENTAL ACTION ETC.

1. Constitutional Protection under Article 311(2) of Constitution

Article 311, clause (1) lays down that no person who is a member of a civil service of the Union or a State or an All India Service or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clause (2) provides that no such person shall be dismissed or removed or reduced in rank, except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and stipulates that the evidence adduced during the inquiry alone should be the basis for imposing the penalty.

2. Reasonable Opportunity In terms of Art. 311(2) of Constitution

2.1 What constitutes 'reasonable opportunity' has been considered by High Courts and the Supreme Court on a number of occasions. According to the prescribed procedure, the disciplinary authority should hold an inquiry, hear and weigh the evidence and consider the merits of the case before coming to a conclusion. These constitute elements of a judicial approach and therefore, in discharging its functions in disciplinary inquiries, the disciplinary authority acts in a quasi-judicial capacity. As a corollary, the requirements of 'reasonable opportunity' have been equated with the principles of natural justice (P. Joseph John vs. State of Travancore, Cochin, AIR 1955 SC 160). Courts have freely applied these principles to disciplinary proceedings against Government servants.

2.2 It has been held that for a proper compliance with the requirement of 'reasonable opportunity' as envisaged in Article

311(2), a Government servant against whom action is proposed to be taken should, in the first instance, be given an opportunity to deny the charge and to establish his innocence and if as a result of an inquiry the finding is of 'guilty' and it is proposed to impose upon him any of the penalties of dismissal, removal, or reduction in rank, such penalty may be imposed on the basis of the findings as a result of such inquiry. It is not necessary to give him any opportunity of making representation on the penalty proposed after the amendment of clause (2) of Article 311 of the Constitution with effect from 3-1-1977.

2.3 In Khem Chand vs. Union of India, AIR 1958 SC 300, the Supreme Court explained the nature and scope of 'reasonable opportunity'. As per the Supreme Court, the reasonable opportunity to the charged official envisaged by Article 311(2) of the Constitution includes:

(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining any witnesses and himself in support of his defence.

An opportunity to make representation on the proposed penalty mentioned by the Supreme Court is no longer necessary in view of the amendment of clause (2) of Article 311 with effect from 3-1-77.

3. Principles of Natural Justice

3.1 Explaining the above Constitutional provisions, the Supreme Court held that the rules of natural justice require that —

(1) charged employee should be given notice of the charges he is called upon to explain and the allegations on which those are based;

(2) evidence should be taken in the presence of the charged employee;

(3) he should be given opportunity to cross-examine the prosecution witnesses;

(4) he should have the opportunity of adducing all relevant evidence on which he relies;

(5) no material should be relied on against him without giving him an opportunity of explaining such material.

3.2 Principles of Natural Justice operate in areas not covered by any rule or law; they do not supplant the law but only supplement it.

3.3 The following are the two important basic principles of natural justice:

(i) No one can be a judge in his own cause ('Nemo debet essa judex in propria cause'),

(ii) Hear the other side ('Audi Alteram Partem').

3.4 The principle, 'No one can be a judge in his own cause' implies that the accuser must not sit in judgment on the accused. The judge can under no circumstances combine in himself the roles of judge and jury, of judge and witness or judge and prosecutor. He must be totally free from any bias. Bias can be of three types: (a) a pecuniary interest, (b) a personal interest, and (c) a general interest, in the subject matter brought before him for decision. Bias is relevant not only in the disciplinary authority but also in the inquiry officer even where the inquiry officer is a different person from the disciplinary authority.

3.5 The second principle, 'Hear the other side' means (a) that a judge must hear both sides and must not hear one side in the absence of the other. It means that the delinquent Government servant has a notice of the charges he is called upon to explain and the allegations on which those are based; (b) that he has access to all relevant evidence that he wishes to adduce; (c) that he is given the opportunity to cross-examine the prosecution witnesses and to produce witnesses in defence and offer himself

for examination; (d) that no evidence should be recorded behind his back but all of it should be taken in his presence; and (e) that no materials should be relied on against him without his being given an opportunity of explaining them.

3.6 The following further principles emerge from a consideration of what is stated above: (i) that the decision must be made in good faith and (ii) an order must be a speaking order.

3.7 The principle that the decision must be made in good faith implies that the judge has bestowed due consideration to the facts and evidence adduced during the inquiry and has not taken into account any extraneous matter not adduced during the inquiry and that he has arrived at the decision without favour to any of the parties.

3.8 The principle that the order must be a speaking order is based on the premise that whether the judge has considered all the aspects of a matter before him can be ascertained only if the order which he makes is a speaking order. The requirement of making a speaking order will minimise the possibility of arbitrary exercise of power as the necessary search for reasons will ensure reasonableness. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter while arriving at a decision.

3.9 The provisions of the C.C.A. Rules in fact satisfy the requirements and the principles of natural justice will be satisfied if the procedures laid down in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 are scrupulously followed.

3.10 The Supreme Court, in Union of India vs. T.R. Verma, AIR 1957 SC 882 has summarised the principles of natural justice thus:

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken

in his presence, and that he should be given the opportunity of cross-examining the witness examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them."

3.11 Hence, the rules of natural justice are violated:

(a) where the inquiry is confidential and is held ex parte (without valid reasons) or the witnesses are examined in the absence of the charged officer;

(b) where the charged officer is denied the right to call material defence witnesses or to cross-examine the prosecution witnesses, or he is not given sufficient time to answer the charges, or the Inquiry Officer acts upon documents not disclosed to the charged officer;

(c) where the Inquiry Officer has a personal bias against the person charged.

3.12 However, in this connection, the famous dictum of Lord Denning, Master of the Rolls in the case of R vs. Secretary of State for Home Department, (1973) 3 All ER 796 of the Court of Appeal, Civil Division, published in the All England Law Reports, that "Rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences", approvingly quoted by the Supreme Court of India in the case of H.C. Sarin vs. Union of India, AIR 1976 SC 1686, sounds pragmatic.

4. Rules of Evidence and Procedure

4.1 The provisions of the Evidence Act and the Criminal Procedure Code are not applicable to departmental inquiries. (State of Orissa vs. Murlidhar Jana, AIR 1963 SC 404) Whatever the Inquiry Officer does should be 'lawful' but not 'legalistic'.

4.2 The Inquiry Officer should afford reasonable opportunity to both sides to present their respective cases including full

opportunity for cross-examining witnesses. The principles of natural justice should be followed.

4.3 A departmental proceedings is not a criminal trial and the standard of proof required in a departmental inquiry is that of preponderance of probability and not proof beyond reasonable doubt. (Union of India vs. Sardar Bahadur, 1972 SLR SC 355: State of Andhra Pradesh vs. Sree Ramarao, AIR 1963 SC 1723: Nand Kishore Prasad vs. State of Bihar and ors, 1978(2) SLR SC 46)

5. Standard of Proof in Departmental Inquiry

5.1 Departmental inquiry is a quasi-judicial proceeding, and is different from a criminal proceeding. The scope of a criminal trial is to determine whether an offence against the law of the land has been committed, and if so, to punish the person if he is found guilty of the offence. The scope of departmental inquiry is to determine whether a public servant has committed a misconduct or delinquency and if so, whether he deserves to be retained in service or reverted or reduced in rank or otherwise suitably dealt with for his delinquency or misconduct.

5.2 In a criminal trial, the prosecution will have to prove its case beyond all reasonable doubt. In a disciplinary proceeding, the decision is taken based on preponderance of probability.

5.3 Evidence Act does not apply to a disciplinary proceeding. Material which is not strictly admissible in evidence in a court of law can nevertheless be admitted into evidence in a departmental inquiry and relied upon, provided the Inquiry Officer is satisfied about the credibility of the evidence so admitted.

5.4 Departmental instructions are instructions of prudence and not rules that bind or vitiate in violation.

5.5 Where there is “some” evidence, which the Disciplinary Authority had accepted and which evidence may reasonably support the conclusion that the delinquent is guilty of the charge, the decision based on such evidence cannot be questioned before a court of law.

5.6 Hear-say evidence which is not admissible in a criminal proceeding may be accepted in a departmental inquiry provided it has reasonable nexus and credibility. To what extent such evidence may be received and relied upon must depend on the facts and circumstances of each case, and the Inquiry Officer must be careful in evaluating such material.

5.7 The evidence of accomplice may be accepted without corroboration, but the Inquiry Officer should caution himself as to the danger of acting solely on that evidence and do so only after due deliberation.

5.8 Circumstantial evidence may be accepted provided the circumstances lead to a reasonable inference about the guilt of the delinquent officer. Findings of the Inquiry Officer should not however be based on suspicions, conjectures and surmises.

5.9 The rule that unless the maker of a document is available for cross-examination, the document should not be admitted into evidence is a rule from the Evidence Act and it has no application to a domestic inquiry. If the Inquiry Officer is satisfied about the credibility of the evidence contained in a document he may accept the same, even though the maker of the document has not appeared at the inquiry.

5.10 Tape-recorded evidence may be accepted, provided the conversation is relevant to the matter in issue, the identification of the voice is established and possibility of tampering with the tape is eliminated and the Inquiry Officer is convinced of the accuracy of the conversation.

5.11 The Supreme Court held in the case of State of Andhra Pradesh vs. S. Sree Ramarao, AIR 1963 SC 1723 that the rule followed in a criminal trial that an offence is not established unless proved beyond reasonable doubt does not apply to departmental inquiries.

5.12 The Supreme Court further held in the case of Bank of India vs. Degala Suryanarayana, 2001(1) SLJ SC 113 that where there is some evidence in support of the conclusion arrived at by the disciplinary authority, the conclusion has to be sustained.

6. Disciplinary authority, the Sole Judge

6.1 The Supreme Court held that the court is concerned to determine whether the inquiry is held by an authority competent in that behalf and according to the procedure prescribed and whether the rules of natural justice are not violated. There should be clear application of mind to the evidence available. (U.O.Note No.23552/ Ser-C/97-1 dt.7-5-97 G.A.(Ser.C) Dept).

6.2 The departmental authorities, if the inquiry is properly held, are the sole judge of facts and if there is some legal evidence on which their findings can be based, the adequancy or reliability of that evidence is not a matter which can be permitted to be convassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution. (State of Andhra Pradesh vs. S. Sree Ramarao, AIR 1963 SC 1723)

6.3 A penalty cannot be awarded on the basis of mere suspicion. In Srinivasa vs. State, AIR 1961 MLJ 211, the Public Service Commission which was consulted before the imposition of the punishment, while agreeing to the punishment proposed by the disciplinary authority stated that the evidence "leaves suspicion in the mind". It was no doubt open to the Government to take a different view from that of the commission as regards the effect of the evidence and hold that there was sufficient evidence. But, instead of doing so, the Government simply proceeded to pass an order of punishment advised by the Commission. The Court held that the conclusion to be drawn from these facts was that the punishment was imposed on the basis of mere suspicion and not for good and sufficient cause and accordingly set aside the order.

6.4 The Supreme Court held in the case of Union of India vs. Harjeet Singh Sandhu, 2002(1) SLJ SC 1 that if two views are possible, court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power, in judicial review.

7. Simultaneous Departmental Action with Investigation/ Prosecution

7.1 There is no legal bar for the Disciplinary Authority to initiate disciplinary action pending investigation by the police or pending criminal proceedings before a Court of Law. The purpose of the two proceedings is quite different. The object of disciplinary proceedings is to ascertain whether the officer concerned is a person to be retained in service or not, or to be dealt with by imposing a suitable penalty. On the other hand, the object of criminal prosecution is to find out whether the ingredients of the offence as defined in the penal statute have been made out. The holding of a departmental inquiry during the pendency of a criminal prosecution in respect of the same subject matter would not amount to Contempt of Court. Only where the employee goes to the Court and obtains a stay order, a wilful violation of that order alone would amount to Contempt of Court. If the case is of a grave nature or involves questions of fact and law which are not simple, it is advisable to await the decision of the Court.

7.2 There are certain practical difficulties in proceeding with disciplinary action simultaneously with prosecution of the employee. For instance, where the proof of the allegation depends on documentary evidence, it will not be possible for the department to obtain the documents which are already in the custody of the Police or the Criminal Court. During the disciplinary proceedings, the employee may refuse to disclose his defence on the ground that any incriminating statement given by him may go against him in the criminal proceedings, and it would be unfair to compel him to do so. Therefore, the Disciplinary Authority should consider all these factors before taking a decision to proceed with simultaneous disciplinary proceedings.

7.3 Prosecution should be the general rule in all cases which are found fit to be sent to court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In cases, involving less serious offences or involving malpractices of a departmental nature,

departmental action alone should be taken and the question of prosecution should generally not arise.

7.4 There is no legal bar to the initiation of departmental disciplinary action under the rules applicable to the Government servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of the offence in criminal prosecution and misconduct in departmental proceedings and the standards of proof required are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubt, whereas in departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might, however, affect the outcome of the subsequent proceedings may be the contradictions which the witnesses may make in their depositions in the earlier proceedings. It is, therefore, necessary that all relevant aspects should be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started along side criminal prosecution. In a case where the charges are serious and the evidence strong enough, simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of the Government servant and a final decision can be taken about his further continuance in service.

7.5 The Supreme Court in the case of Delhi Cloth and General Mills Ltd vs. Kushal Bhan (AIR 1960 SC 806) observed that it cannot be said the “principles of natural justice require that an employer must wait for the decision atleast of the criminal trial court before taking action against an employee”. They, however, added that “if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced”.

7.6 If the Government servant is acquitted by the Court of law, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. It should be considered in such a

review whether the criminal prosecution and the departmental proceedings covered precisely the same ground. If they did not and the legal proceedings related only to one or two charges i.e. not the entire field of departmental proceedings it may not be found necessary to alter the decision already taken. Moreover, while the court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold that the Government servant was guilty of a departmental misdemeanour and he had not behaved in the manner in which a person of his position was expected to behave.

7.7 The most opportune time for considering the question whether departmental action should be initiated simultaneously is when the prosecution is sanctioned. At that stage all the documents are available and taking photostat copies or producing the originals before the Inquiry Officer is not a problem. Once the originals have been admitted by the charged Government servant the photostat copies duly attested by the Inquiry Officer and/or the charged Government servant could be utilised for further processing the departmental proceedings as the originals would be required in court proceedings.

7.8 The Supreme Court held in the case of Jang Bahadur Singh vs. Baij Nath Tiwari, AIR 1969 SC 30 that the pendency of Court proceedings does not bar disciplinary action or constitute contempt of court in the absence of order of court restraining continuance of the disciplinary proceedings.

7.9 The Government clarified that there is no legal objection to departmental inquiry being conducted when the matter is under investigation or under trial and that disciplinary proceedings and criminal proceedings should be processed without loss of time with a view to avoiding manipulation and loss of evidence. (Memo.No.689/Ser.C/95-3 G.A. (Ser.C) Dept. dt.16-3-96)

7.10 The Government directed that the authorities should ensure that departmental action is completed in the case well before

launching of prosecution undertaken by the police and at any rate not exceeding 3 or 4 months. (U.O.Note No.463/Ser.C/85-4 G.A.(Ser.C) Dept. dt.20-12-85)

8. Departmental Action and Acquittal

8.1 The normal rule is whenever the accused is honourably acquitted and totally exonerated in the criminal case on merits, a disciplinary proceeding should not be initiated against him. But, if the disciplinary authority is of the opinion that sufficient evidence is available and there are good grounds to proceed with the departmental action, the disciplinary authority can certainly initiate departmental action. Even though the case may have ended in honorable acquittal, the evidence before the criminal court may still disclose serious departmental lapses on the part of the employee in which case the disciplinary authority will be within his right to take departmental action for such lapses. Disciplinary Authority can definitely initiate disciplinary action against the employee who has been acquitted by the criminal court by giving benefit of doubt, because the standard of proof in a departmental inquiry is lighter than that in a criminal proceeding. While the criminal court insists on proof beyond all reasonable doubt, in departmental action proof of preponderance of probability is sufficient. Evidence which is not sufficient for a conviction by a court of law may, therefore, be sufficient for establishing a charge in a departmental action. Similarly, where the court acquits the accused due to technical lapses such as defective charge or defective procedure, want of sanction for prosecution where necessary, or where the complainant or witnesses are absent, in such cases, it is open to the disciplinary authority to initiate disciplinary action and pursue it inspite of acquittal.

8.2 Where a Government servant/employee is compulsorily retired or removed or dismissed or reduced in rank after complying with the requirements of Article 311(2) of the Constitution and holding an inquiry as provided under the Rules applicable or imposed any other penalty after following the procedure prescribed in that regard, such an order is not affected by his acquittal in a criminal court.

8.3 The scope of criminal trial is to determine whether an offence has been committed, while that of departmental inquiry is to determine whether a public servant has committed a misconduct or delinquency and if so whether he deserves to be retained in service or reverted or reduced in rank or otherwise suitably dealt with.

8.4 In a criminal trial the prosecution will have to prove the case beyond all reasonable doubt, while in a departmental proceeding, the standard of proof is preponderance of probability. Thus, in a given case, the evidence may fall short of proof of a criminal offence in a court of law but yet the self-same evidence could be sufficient to establish the charge of misconduct in a disciplinary proceeding. (State of Andhra Pradesh vs. S.Sreeramarao, AIR 1963 SC 1723; Nand Kishore Prasad vs. State of Bihar, 1978 (2) SLR SC 46).

8.5 Further, Evidence Act does not apply to a disciplinary proceeding and material which is not strictly admissible in evidence in a criminal trial can be admitted into evidence in a departmental inquiry and relied upon. Hearsay evidence which is not admissible in a criminal proceeding may be accepted in a departmental inquiry (U.R. Bhatt vs.Union of India, AIR 1962 SC 1344; State of Haryana Vs. Rattan Singh, AIR 1977 SC 1512)

8.6 In the case of Corporation of Nagpur vs. Ramachandra, 1981(2) SLR SC 274, the Supreme Court laid down that the power of the authority to continue the departmental inquiry is not taken away nor is the discretion fettered in any way merely because the accused is acquitted. The State Government clarified that in view of the decision, acquittal is not a bar to initiate departmental action. (Memo. No. 1317/ Ser.C/88-1 dt.31-12-88 GA (Ser.C) Dept.)

8.7 Departmental action can arise on a collateral issue in a case of acquittal. The criminal case may have ended in acquittal but the evidence may disclose departmental lapses on the part of the employee in which case departmental action can be taken for such lapses. Where, prosecution for an offence under sec. 161

I.P.C. of obtaining illegal gratification ended in acquittal in the court accepting the defence version that the payment was a loan, the official was dealt with in departmental action for obtaining a loan from a person with whom he was likely to have official dealings in contravention of the Conduct Rules and was imposed a penalty of compulsory retirement. (Union of India vs. Sardar Bahadur, 1972 SLR SC 355)

8.8 The Government clarified that in trap cases departmental inquiry is not to be treated as a criminal trial. The Inquiry Officer should weigh the evidence, even if hostile, and should not set aside the testimony of the officer who laid the trap and the contemporaneous record. The disciplinary authority should apply his mind by going through the evidence on record and arrive at a reasoned decision. It should be noted that rule 21 of the A.P.C.S.(CCA) Rules, 1991 provides for the disciplinary authority to disagree with the findings of the Inquiry authority. The competent authorities who are vested with the power of revision/review should exercise their power under rules 40 and 40A of the A.P.C.S. (CCA) Rules, 1991. (Memo.No. 564/SC.A/93-1 Home (SC.A) Dept. dt.28-4-93)

9. Court Jurisdiction

9.1 “Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. The disciplinary authority is the sole judge of facts. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.” (B.C.Chaturvedi vs. Union of India, 1995(6) SCC 749).

9.2 In the case of Secretary to Government, Prohibition and Excise Department vs. L. Srinivasan, 1996 (2) SLR SC 291, where

the Tamilnadu Administrative Tribunal set aside the orders of suspension, departmental inquiry and quashed the charges on the ground of delay in initiation of disciplinary proceedings, the Supreme court observed: "Suffice it to say that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The Member of the Administrative Tribunal appears to have no knowledge of jurisprudence of the service law and exercised power as if he is an appellate forum do hors the limitation of judicial review. This is one such instance where a member had exercised his power of judicial review in quashing the (suspension order and) charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this court to examine each case in detail. It is high time that it is remedied."

10. Further inquiry permissible, where order set aside by Court on Technical Grounds

Where the order of the court setting aside the order of disciplinary authority imposing a penalty, is on merits on consideration of facts, it is binding and should be complied with unless it is taken up in appeal to a higher forum. But where the court has passed the order purely on technical grounds without going into the merits of the case, it is open to the competent authority on a consideration of the circumstances of the case to hold a further inquiry against the official on the allegations on which the penalty was originally imposed and rectify the procedural lapses and comply with the requirements and pass a proper order. Same is the position where the order of the disciplinary authority is set aside by the departmental appellate authority. The provisions of deemed suspension under sub-rules (3),(4) of rule 8 of A.P.C.S (C.C.&A) Rules, 1991, sub-rules (5), (6) of rule 3 of All India Services (D&A) Rules, 1969 and corresponding Regulations of Public Undertakings bear this out.

11. Procedural defect after conclusion of Oral Inquiry

If the oral inquiry has been held properly, a defect in the subsequent proceedings will not necessarily affect the validity of

the oral inquiry. Where the order of dismissal was set aside on the ground that it was made by an authority subordinate to the competent authority in contravention of Article 311(1) of the Constitution, fresh proceedings could be restarted from the stage at which the oral inquiry ended. (Lakh Ram Sharma vs. State of Madhya Pradesh, AIR 1959 MP 404)

12. Disciplinary proceedings not barred by limitation

There is no period of limitation for institution of disciplinary proceedings against an employee during the period of his service.

13 Disciplinary authority liable for departmental action where failure to follow procedure results in Government servant's reinstatement

Government decided that in all cases where the circumstances leading to a Government Servant's reinstatement reveal that the authority which terminated his service, either wilfully or through gross negligence, failed to observe proper procedure as laid down in the Andhra Pradesh Civil Services (C.C.&A.) Rules, before terminating his service, proceedings should be instituted against such authority under rule 20 of the said Rules and the question of recovering from such authority the whole or part of the pecuniary loss arising from the reinstatement of the Government servant should be considered. (Memo. No.2568/63-3 dt.27-11-63 GA (Ser.C) Dept); Memo. No.380/65-1 dt.24-2-65 GA (Ser-C) Dept.)

CHAPTER XXIII

PENALTIES : SCOPE, CURRENCY AND EFFECT

1. Penalties

1.1 Penalties for the purpose of disciplinary proceedings are those laid down under the CCA/D&A Rules.

1.2 Under rule 9 of the A.P. Civil Services (CCA) Rules, 1991, the competent authority may impose on a Government servant any of the following penalties:

H Minor penalties:

(i) Censure

(ii) Withholding of promotion

Note: Non-promotion after consideration of his case on merit does not amount to a penalty.

(iii) Recovery from pay of the whole or part of any pecuniary loss caused by the Government servant to Government or local authority etc by negligence or breach of orders

(iv) Withholding of increments of pay without cumulative effect

Note: The following do not amount to a penalty:

(i) withholding of increments for failure to pass a departmental examination;

(ii) stoppage or postponement of increment on account of extension of probation.

(v) Suspension

Note: This can be imposed only in certain circumstances and on certain categories.

H Major penalties:

(vi) Withholding of increments of pay with cumulative effect

(vii) Reduction to a lower rank in the seniority list or to a lower stage in the time-scale of pay or to a lower time-scale of pay not being lower than that to which he was directly recruited or to a lower grade or post not being lower than that to which he was directly recruited, whether in the same Service or in another Service, State or Subordinate

Note: The following do not amount to a penalty:

(i) reversion from an officiating post on the ground that he is considered to be unsuitable.

(ii) reversion while under probation in accordance with the terms of appointment.

(iii) replacement of services of a Government servant on deputation.

(iv) reversion from a department to his parent department for administrative reasons.

(viii) Compulsory retirement

Note: Compulsory retirement in accordance with the provisions relating to his superannuation or retirement does not amount to penalty.

(ix) Removal from service

Note: (i) This shall not be a disqualification for future employment under Government.

(ii) The following do not amount to a penalty:

(a) termination of service of a probationer in accordance with the provisions;

(b) discharge of a Government servant engaged under contract, in accordance with the terms of his contract;

(c) discharge of a Government servant appointed otherwise than under contract, to hold a temporary appointment, on the expiration of the period of the appointment.

(x) Dismissal from service

Note: This shall ordinarily be a disqualification for future employment under Government.

H Other Minor penalties:

1.3 Under rule 10 of the A.P.C.S. (CCA) Rules, 1991, the following minor penalties are specified:

(xi) Fine

This can be imposed on a member of Last Grade Service and certain others specified.

(xii) Suspension for a period of upto 15 days

This penalty can be imposed on the following Government servants:

(a) Forest Guards;

(b) directly recruited members of the Andhra Pradesh Police Subordinate Service and the Andhra Pradesh Special Police Service;

(c) Station Officers, Engineer Sub-Officers, Leading Firemen, Driver-Mechanics, Driver Operators, Firemen-Mechanics, Firemen and equivalent ranks of the Andhra Pradesh Fire Subordinate Service.

The penalty may be imposed on those mentioned in cls. (b) and (c) only if the penalty of reduction to a lower grade, post or time-scale or to a lower stage in the same time-scale cannot be imposed.

2. Warning

2.1 An order of 'censure' is a formal act intended to convey that the person concerned has been held guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment. There may be occasions, however, when a superior officer may find it necessary to criticise adversely the work of an officer working under him, eg. point out negligence, carelessness, lack of thoroughness, delay etc. Or, he

may call for an explanation for some act or omission and taking all factors into consideration, it may be felt that the matter is not serious enough to justify the imposition of a formal penalty of censure but calls for some action such as communication of a warning, admonition, reprimand or caution. Administration of a warning in such circumstances does not amount to a formal punishment. It is an administrative device in the hands of the superior authority for conveying its criticism and disapproval of the work or conduct of the person warned and for making it known to him that he has done something blameworthy thereby enabling him to make an effort to remedy the defect, with a view to toning up efficiency and maintaining discipline.

2.2 The punishment of censure can be imposed only after following the prescribed procedure and the imposition of 'censure' is conveyed by a formal written order. A record of the penalty is kept on the officer's confidential roll and will have its bearing on the assessment of his merit or suitability for promotion to higher rank. A warning may, however, be administered verbally or in writing. If the circumstances justify it, a mention of it may be made or a copy of it placed in the officer's confidential roll and in such a case it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same in accordance with the instructions relating to adverse remarks. Though not amounting to imposition of the penalty of censure, it may to an extent, affect the career prospects of the officer concerned.

2.3 A superior authority can administer a warning to an official working under it. It is, however, desirable that the authority administering the warning should not normally be lower than the authority which initiates the confidential report on the official to be warned.

2.4 The fact that an informal warning does not carry with it the stigma of a formal penalty should not be taken as tantamount to suggesting that a warning may be freely given. Considerations of

simple natural justice demand that a written warning should not be administered or placed on an officer's confidential unless the authority doing so is satisfied that there is good and sufficient reason for doing so. Unless the lapses in respect of which the officer is proposed to be warned are absolutely incontravertible, an opportunity should be afforded to the official concerned to explain his position before the warning is kept on his confidential roll.

2.5 Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded any of the statutory penalties mentioned in rule 9 or 10 of the A.P. Civil Services (CCA) Rules, 1991. In such a situation a recordable warning should not be issued as it would for all practical purposes amount to a censure, which is a formal punishment to be imposed by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. 'Warning' kept in the confidential report dossier has all the attributes of censure. In the circumstances where it is considered after the conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates cognizance of such fact, the disciplinary authority should award any of the appropriate penalties. If the intention of the disciplinary authority is not to award a penalty of censure, then no recordable warning should be awarded. There is no restriction on the right of the competent authority to administer warnings purely as an administrative measure and not as a result of disciplinary proceedings.

3. Displeasure of Government

On occasions, an officer may be found to have committed an irregularity or lapse of a character which though not considered serious enough to warrant action being taken for the imposition of a formal penalty or even for the administration of a warning, is such that it may be considered necessary to convey to the officer concerned the sense of displeasure over it. Such displeasure is usually communicated in the form of a letter and a copy of it may,

if so decided, be placed on the confidential roll of the officer. Like warning, communication of displeasure does not amount to imposition of a penalty under the C.C.A. Rules. Where a copy of the letter communicating the 'Displeasure of the Government' is kept in the character roll of the officer, it will constitute an adverse entry and the officer concerned will have the right to represent against the same in accordance with the instructions relating to adverse remarks.

4. Scope of Order of Penalty

While passing an order imposing a penalty, the disciplinary authority should define the scope of the penalty in clear terms.

5. Withholding of Promotion

5.1 An order of penalty of withholding Government servant's promotion should clearly state the period for which the promotion is withheld. The order will debar him from being considered for promotion during that period, whatever be his seniority, merit or ability.

5.2 Withholding implies temporary suspension rather than total and final denial. Debarring a person from further promotion would not fall within the ambit of the penalty of withholding of promotion and it is beyond the provision of this rule. (Memo.No.743/Ser.C/80-1 dt.20-8-80 GA (Ser.C) Dept.; Memo.No.771/Spl.B/2000-1 G.A. (Spl.B) Dept. dt. 5-6-2000)

6. Promotion — guidelines

Government have modified the existing instructions to the Departmental Promotion Committees and Screening Committees to effect that they should take into account the overall performance of the officer concerned which includes past punishments and not merely be guided by the fact whether a punishment is subsisting as on the date of the meeting of the Departmental Promotion Committee or Screening Committee or on the qualifying date for the preparation of the panel. (G.O.Ms.No.203 G.A.(Ser.C) Dept. dt.5-5-99)

7. Recovery of Pecuniary Loss from Pay

The penalty of recovery of pecuniary loss caused to Government from the pay of a Government servant should be imposed only when it has been established that the Government servant was directly responsible for a particular act or acts of negligence or breach of orders or rules which caused the loss. When ordering such recovery, the disciplinary authority should clearly state as to how exactly the negligence was responsible for the loss. The order should also specify the number of instalments in which recovery is to be made. The amount of each instalment should be commensurate with the capacity of the Government servant to pay.

8. Imposition of two penalties

Normally there will be no need to impose two statutory penalties at a time. However, the penalty of recovery from pay of the whole or part of any pecuniary loss caused by the Government servant/employee by negligence or breach of orders could be imposed along with any other penalty. (U. O. Note No.1713/Ser.C/66-1 dt.1-7-66 GA (Ser.C) Dept.)

9. Withholding of Increments

9.1 The penalty of withholding of increments of pay is imposed either without effect on future increments or with cumulative effect on future increments. The exact implication of the two types of withholding of increments needs to be clearly understood so that the disciplinary authority may decide the appropriate penalty that should be imposed.

9.2 The following example will make the position clear:

Scale of pay	:	Rs.4550–150–5300–170–6150–200–7150–250–8400–300–9600
Date of punishment	:	1st Jan. 2003
Pay on the date of punishment	:	Rs. 5150 per month
Date of next increment	:	1st April 2003

9.3 In this case, the Government servant has drawn four increments already. It is a well recognised principle that unless he draws the fifth increment, he cannot draw the sixth and the subsequent increments. Thus at any one time, only one increment can be withheld, namely the next increment. It is, therefore, not appropriate to order that his “one” increment be withheld. The correct way is to order that his “next” increment be withheld.

9.4 Suppose in the above example it is ordered that his next increment be withheld for three years without effect on future increments. Then for three years beginning with 1st April 2003, he will not draw his fifth increment which would have raised his pay to Rs.5300. He will draw his fifth increment after three years i.e. on 1st April 2006 and since the withholding of increment of pay was ordered to be without effect on future increments, he will also draw on that date the increments he would have otherwise drawn on 1st April 2004 and 1st April 2005 and also the increment that would fall due in the normal course on 1st April 2006. In other words, he will continue to draw the pay of Rs.5150 per month till 1st April 2006 and on that day his pay will be Rs. 5810.

9.5 If, in the above example, his next increment was withheld for three years with cumulative effect on future increments, then his next increment viz. the 5th increment, which in the normal course would have accrued on 1st April 2003, will now accrue on 1st April 2006. He will continue to draw his present pay of Rs.5150 per month till 1st April 2006 on which date the fifth increment will accrue and his pay will rise to Rs.5300. The sixth increment raising his pay to Rs.5470 will accrue on 1st April 2007.

9.6 The penalty of withholding an increment takes effect from the date of increment accruing to the officer after the issue of the punishment order. It cannot affect the increment which was due prior to the issue of the punishment order even though it may not have actually been drawn due to the officer being on leave or other administrative reasons.

9.7 As per ruling (1) under F.R. 24, if the order does not state that the withholding of the increment shall have the effect of postponing future increments, it shall be assumed that the individual's pay is restored to what it would have been had his increment not been withheld, from the next natural date from which he would have drawn increment.

10. Reduction

10.1 Reduction to a lower stage in the time scale of pay can be ordered for a specified period only. In compliance with the requirements of F.R. 29(1), while ordering a penalty of reduction to a lower stage in the time scale of pay, the disciplinary authority will indicate —

(i) the date from which the order will take effect;

(ii) the stage in the time scale of pay in terms of rupees to which the pay of the Government servant is to be reduced;

(iii) the period, in terms of years and months for which the penalty will be operative;

(iv) whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay, and if so, to what extent; and

(v) that the period for which the reduction is to be effective shall be exclusive of any interval spent on leave before the period is completed.

10.2 When the pay of a Government servant is reduced to a particular stage in a time-scale, his pay will remain constant at that stage for the entire period of reduction. This is traceable to the principle that unless a given increment accrues, the subsequent increments cannot accrue. On the expiry of the period of reduction, the pay of the Government servant will be as follows:

(i) If the order of reduction lays down that the period of reduction shall not operate to postpone future increments

or is silent on this point, the Government servant will be allowed the pay which he would have drawn in normal course but for the reduction. If the pay of the person mentioned in the preceding paragraph is reduced by two stages for three years without effect on future increments, then for three years from 1st January 2003 he will draw pay at Rs.4850. On 1st January 2006, he will draw pay at Rs.5640 and on 1st April 2006, at Rs.5810.

(ii) If the order specifies that the period of reduction was to operate to postpone future increments, the pay of the Government servant is to be fixed in accordance with (i) above but after treating the period for which the increments were to be postponed as not accounting for increments. Thus, in the example, on 1st January 2006 his old pay Rs.5150 will only be restored and his increment raising his pay to Rs.5300 only will accrue on 1st April 2006.

10.3 The penalty of reduction to a lower time scale of pay, grade, post or service may be imposed by the disciplinary authority for a specified period or for an unspecified period, as per F.R. 29(2). The order will give:

(i) the lower time scale of pay, grade, post or service and stage of pay in the said lower time scale to which the Government servant is reduced;

(ii) the date from which the order will take effect;

(iii) whether the reduction is for a specified period, or is permanent;

(iv) where the penalty is imposed for a specified period, the period in terms of years and months, for which the penalty will be operative and whether on the expiry of the period the Government servant is to be promoted automatically to the post from which he was reduced;

(v) whether on such repromotion the Government servant will regain his original seniority in the higher service, grade or

post or higher time scale which has been assigned to him prior to the imposition of the penalty;

(vi) if the penalty is imposed for an unspecified period, directions regarding conditions of restoration to the grade, post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) that the period for which the reduction is to be effective shall be exclusive of any interval spent on leave before the period is completed.

10.4 In cases where the reduction is for a specified period and is not to operate to postpone future increments, on restoration the Government servant will be allowed the pay which he would have drawn in normal course but for the reduction.

10.5 Where the reduction is for a specified period and is to operate to postpone future increments, the pay of the Government servant on repromotion may be fixed by giving credit for the period of service actually rendered by him in the higher service, grade or post or higher time-scale.

10.6 In cases where an order of penalty does not specifically cover the above points, the Government servant on whom the penalty of reduction for a specified period is imposed, will, on completion of such period be promoted automatically and his seniority will be determined as follows:

(a) if the period of reduction is to operate to postpone future increments, the seniority of the Government servant should be determined, on repromotion by giving credit for the period of service actually rendered by him in the higher grade etc prior to reduction;

(b) if the period of reduction does not operate to postpone future increments, the Government servant on repromotion, will regain his seniority as it existed before his reduction.

10.7 If the order does not specify any period and simultaneously there is an order declaring the Government servant permanently unfit for promotion, the question of his promotion will not arise. In other cases where the order does not specify any period, the Government servant should be deemed to be reduced till such date as on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion.

11. Compulsory Retirement, Removal, Dismissal

11.1 An order of dismissal or removal cannot be given effect to retrospectively from the date of commencement of suspension but only from the date on which the order of dismissal or removal is passed.

11.2 Regarding the date of effect of order of dismissal, removal or compulsory retirement on a Government servant, the instructions issued in respect of an order of suspension would apply mutatis mutandis.

11.3 The penalty of removal from service shall not be disqualification for future employment under the Government. But dismissal shall ordinarily be a disqualification for future employment under the Government.

11.4 A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity. But the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on invalid pension, as per rule 40 of the Andhra Pradesh Revised Pension Rules, 1980.

11.5 A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two thirds and not more than full invalid pension or gratuity or both admissible to him on the date of his compulsory retirement, as per Rule 39 of the Andhra Pradesh Revised Pension Rules, 1980.

12. Bribery, Corruption

12.1 In every case in which the charge of acceptance from any person of any illegal gratification as a motive or reward for doing or forbearing to do any official act is established, it shall be necessary to impose on the Government servant, the penalty of removal or dismissal from service, as per the proviso to rule 9 of the Andhra Pradesh Civil Services (CCA) Rules, 1991. However, in any exceptional case, any other penalty may be imposed for reasons to be recorded in writing. In order to ensure that these instructions are being followed scrupulously, inspecting officers are required to review at the time of their inspecting the offices, all cases of corruption and bribery where the minimum penalty has not been awarded by the competent authority.

12.2 In the G.A. (Ser.C) Dept. Memo.No.3037/Ser.C/64-3 dt. 26-11-64, instructions were issued, among others, that in proven cases of bribery and corruption, no punishment other than that of dismissal be considered adequate and if any lesser punishment is to be awarded in such cases adequate reasons should be given for it in writing. In the G.A. (Ser.C) Dept. Memo.No.1718/Ser.C/75-1 dt.22-11-75, instructions were issued to the effect that the officers convicted in criminal cases should normally be dismissed from service. The above instructions have been reiterated for strict compliance vide G.A. (Ser.C) Dept. Memo.No.3824/Ser.C/98-2 dt. 9-2-98.

12.3 Government has made it clear that it is its earnest endeavour to ensure a clean and transparent administration. To have this policy transcended to the grass root level it is keenly felt that the officers with doubtful integrity and involved in criminal offences shall be weeded out in order to ensure efficient functioning. To ensure clean and efficient administration, the Government have directed that in all proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women, the penalty of dismissal from service shall be imposed. (G.O.Ms.No.2 G.A. (Ser.C) Dept. dt. 4-1-99)

13. Misappropriation

Government have also instructed that ordinarily cases of proved misappropriation would justify dismissal from service and action should accordingly be taken. In rare cases of 'delayed remittance' where attendant circumstances such as trivial amount, short duration, immediate payment on detection, all of which may raise a presumption that it was an error in accounting, a lesser punishment may be justified. The cardinal test to treat a case as a case of misappropriation would be whether the amount has been put to use for his own benefit, and the intention and purpose should be the criterion and not whether the amount has been ultimately made good voluntarily.

14. Leave Travel Concession Claims

14.1 If a decision is taken by the disciplinary authority to initiate disciplinary proceedings against a Government servant on the charge of preferring a fradulent claim of Leave Travel Concession such Government servant shall not be allowed the Leave Travel Concession till the finalisation of such disciplinary proceedings.

14.2 To avoid bogus LTC claims, Government decided that the claimant should produce used Air/Railway/Bus tickets in original along with the claim. The controlling officer should check the claim thoroughly as per the A.P.C.S. (TA) Rules and initiate disciplinary action where the claim is fradulent as per paragraph 14 in Annexure VII under rule 92 of A.P.C.S. (T.A.) Rules. (Memo.No. 11818/48/A2/TA/2001 Finance (TA) Dept. dt.7-3-2002)

14.3 Where, in a departmental enquiry, misuse/abuse of the facility available under the Leave Travel Concession Rules is proved, the departmental authority should take action as indicated below:

(a) entire amount, if drawn, shall be recovered in one lumpsum; if advance drawn and paid the entire amount of the unutilised advance along with penal interest at 18% per annum shall be recovered in one lumpsum;

(b) right of concession shall be forfeited for the rest of the Service;

(c) In addition, the competent authority shall take disciplinary action.

14.4 If the Government servant is fully exonerated of the charge of fradulent claim of Leave Travel Concession, he or she shall be allowed to avail of the concession withheld earlier as additional sets in future block years but before the normal date of his or her superannuation. (G.O.Ms.No.746 Finance (T.A) Dept. dt.12-12-2001)

15. Double jeopardy

The Supreme Court held in the case of State of Tamil Nadu vs. K.S. Murugesan, 1995(3) SLJ SC 237 that non-consideration of promotion during currency of penalty, does not constitute double jeopardy.

16. Currency and Effect of minor penalties on Promotion

The Government examined the need for issue of comprehensive instructions on the currency and effect of minor penalties on Government employees who were involved in disciplinary cases and who come up for consideration for promotion to higher categories and issued further instructions as follows (G.O.Ms.No.342 dt.4-8-1997 G.A. (Ser.C) Dept.):

(i) Censure

In terms of orders issued in G.O.Ms.No.53, G.A. (Ser.C) Dept. dt. 4-2-97 every Censure awarded shall debar a Government employee for promotion/appointment by transfer for one year to both selection and non-selection posts.

(ii) Withholding of Promotion

This penalty awarded to Government employees shall debar the individual for promotion/appointment by transfer to a higher

post during the period of subsistence of penalty which shall be indicated in the order imposing the penalty subject to a minimum period of one year, both for selection and non-selection posts.

(iii) Recovery from pay of the whole or part of any pecuniary loss caused by him

Whenever a Government employee is awarded the penalty of recovery from pay, it shall debar the individual for promotion/ appointment by transfer to a higher post during the period of penalty which shall be indicated in the order imposing the penalty subject to a minimum period of one year both for selection and non-selection posts. Even if an employee remits the amount in one lumpsum, he/she shall not be considered for promotion/ appointment by transfer for a minimum period of one year.

(iv) Withholding of increments of pay

(a) with cumulative effect:

(i) In G.O.Ms.No. 335, G.A. (Ser.C) Dept., dt. 14-6-93 orders were issued to the effect that the penalty of stoppage of increments with cumulative effect amounts to a major penalty under the Andhra Pradesh Civil Services (CCA) Rules, 1991 and the elaborate procedure prescribed under rule 20 of the said rules is to be followed.

(ii) In terms of G.O.Ms.No.968, G.A. (Ser.C) Dept., dt. 26-10-98, whenever any Government employee is awarded the penalty of stoppage of increment with cumulative effect, the cases of such employees shall not be considered for promotion/appointment by transfer for twice the period for which the increment(s) is/are stopped with cumulative effect, both for selection and non-selection posts.

(b) Without cumulative effect:

This penalty awarded to Government employee shall debar him/her for promotion / appointment by transfer to a higher post during the period of subsistence of penalty which shall be indicated in the order subject to a minimum period of one year, both for selection and non-selection posts.

Withholding of increment — effect on promotion

Where the penalty of stoppage of increment with or without cumulative effect is imposed, the currency of a penalty is for a minimum period of one year and the increment or increments falling due immediately after the date of issue of the order should be withheld and during the currency of the penalty, the Government servant shall not be recommended for promotion. (Memo.No.34633/Ser.C/99 G.A. (Ser.C) Dept. dt.4-11-99)

Withholding of increment — effect on pension

F.R. 24 provides that in ordering the withholding of an increment the withholding authority is required to state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments. According to ruling (4)(a) under the said rule, where it is proposed to withhold an increment in an officer's pay as a punishment the authority inflicting the punishment should before the order is actually passed, consider (i) whether it will affect the officer's pension, and (ii) if so, to what extent. It is further laid down therein that if it is decided finally to withhold the increment, it should be made claer in the order that (i) the effect of the punishment on the pension has been considered, and (ii) that the order is intended to have this effect. As per ruling (1) under F.R. 24, if the order does not state that the withholding of the increment shall have the effect of postponing future increments, it shall be assumed that the individual's pay is restored to what it would have been had his increment not been withheld from the next natural date. (Memo.No.1436/Ser.C/80-2 G.A. (Ser.C) Dept. dt.7-2-81)

(v) Suspension as penalty, where a person has already been under suspension under rule 8

Where suspension is revoked exonerating a person fully his/her case may be considered for promotion with retrospective effect. Where the disciplinary proceedings finally resulted in a penalty he/she will be debarred during the period of penalty and subject to

a minimum period of one year from the date of reinstatement. In case the suspension period itself is treated as substantive penalty, he/she shall be debarred for promotion / appointment by transfer for a period of minimum one year both for selection / non-selection posts. (G.O.Ms.No.342 G.A.(Ser.C) Dept. dt.4-8-97)

17. Quantum of Penalty — interference by Tribunal and High Court

It is the settled law that the Administrative Tribunal or the High Court should not interfere with the decision of the disciplinary authorities except where the penalty is disproportionate and shocks the judicial conscience as reiterated by the Supreme Court in Director General, RPF vs. Ch. Sai Babu, 2003(4) Supreme 313, setting aside the decision of the Division Bench of the Andhra Pradesh High Court holding that "normally the punishment imposed by the disciplinary authority should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reachig a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department / establishment in which the concerned delinquent person works. Normally in cases where it is found that the punishment imposed is shockingly disproportionate, High Courts or Tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment". (Memo.No.107309/Ser.C/2003 G.A. (Ser.C) Dept. dt.3-9-2003)

18. Penalty — application of mind

There should be clear application of mind to the evidence available before coming to the conclusion on the quantum of punishment proposed to be imposed and the penalty should be commensurate with the gravity of the charges established. (U.O.Note No.23552/Ser.C/97-1 G.A. (Ser.C) Dept. dt.7-5-97)

CHAPTER XXIV

SUSPENSION

1. Effect of suspension

1.1 An order of suspension has the effect of debarring a Government servant/public servant from exercising the powers and discharging the duties of his office for the period the order remains in force. The suspended employee retains a lien on the permanent post held by him substantively at the time of suspension and does not suffer a reduction in rank. He continues to be a Government servant/public servant and retains master-servant relationship and is governed by Conduct, CCA/D&A Rules and renders himself liable for disciplinary action for any misconduct committed by him during the period of suspension.

1.2 An order of suspension is non-penal. It is a step-in-aid of action to be taken when allegations of misconduct of a serious nature are received against the employee.

2. Suspension, when can be ordered

2.1 A Government Servant of the Andhra Pradesh Civil Services can be placed under suspension by the prescribed authority —

where a disciplinary proceeding against him is contemplated or is pending, or

where a case against him in respect of any criminal offence is under investigation, inquiry or trial, or

where he has engaged himself in activities prejudicial to the interest of the security of the State,

as per rule 8 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

2.2 A member of the All India Services can be suspended under the same circumstances as per rule 3 of the All India Services

(Discipline & Appeal) Rules, 1969. Similar provisions are available in the Rules and Regulations applicable to employees of the State Public Sector Undertakings.

2.3 Public interest should be the guiding factor in deciding whether a Government servant including a Government servant on leave, should be placed under suspension and whether such action should be taken even while the matter is under investigation and before a prima facie case has been established. Certain circumstances under which it may be considered appropriate to place a Government servant under suspension are given below (Memo.No.401/65-1 G.A. (Ser.C) Dept. dt. 27-2-65; Memo.No. 768/ Ser.C/83-1 G.A. (Ser.C) Dept. dt. 25-8-83):

(i) where the continuance in office of the Government servant will prejudice investigation, trial or any inquiry eg. apprehended tampering with witnesses or documents;

(ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which he is working;

(iii) where the continuance in office of the Government servant will be against the wider public interest in circumstances other than those mentioned in items (i) and (ii), like where there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals particularly corruption;

(iv) where a preliminary enquiry into allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service;

(v) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

2.4 In the circumstances covered under items (i), (ii) and (iii), disciplinary authority may exercise his discretion to place the Government servant under suspension even when the case is under investigation and before a prima facie case has been established.

2.5 In the circumstances mentioned above, it may be considered desirable to suspend a Government servant for misdemeanours of the following types:

(a) an offence or conduct involving moral turpitude;

(b) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;

(c) serious negligence and dereliction of duty resulting in considerable loss to Government;

(d) desertion of duty;

(e) refusal or deliberate failure to carry out written orders of superior officers.

In cases of types (c), (d), (e), discretion should be exercised with care.

2.6 A Government servant may also be suspended by the competent authority in cases in which the appellate or revising or reviewing authority, while setting aside an order imposing the penalty of dismissal, removal or compulsory retirement directs that de novo inquiry should be held or that steps from a particular stage in the proceedings should be taken again and considers that the Government servant should be placed under suspension even if he was not suspended previously. The competent authority may in such cases suspend a Government servant even if the appellate or revising or reviewing authority had not given any direction that the Government servant should be suspended.

2.7 A Government servant against whom proceedings have been initiated on a criminal charge but who is not actually detained in custody eg. a person released on bail, may be placed under

suspension by an order of the competent authority under clause (c) of rule 8(1) of the Andhra Pradesh Civil Services (CCA) Rules, 1991.

2.8 The Supreme Court, in the case of Niranjan Singh and another vs. Prabhakar Rajaram Kharote and others, AIR 1980 SC 785, have made some observations about the need/desirability of placing a Government servant under suspension, against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist. As and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide the desirability or otherwise of placing such a Government servant under suspension in accordance with the rules, if he is not already under suspension. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of the case by the court.

3. Suspension in Traps

3.1 Government observed that trap is the most effective and successful way of catching corrupt officials in the act of receiving bribe where the rate of conviction is high. Corrupt officials have become cautious and alert and devised methods of avoiding being caught, like engaging private persons, personal servants or subordinates to receive the bribe amounts, or getting the money placed unobtrusively without themselves receiving it in their own hands, thereby avoiding physical contact with the phenolphthalein-smeared currency notes.

3.2 Government are of the view that it would not be in public interest not to suspend or delay the suspension of such corrupt officials who receive bribes indirectly and that it should be open to the disciplinary authority to suspend such officials pending investigation without waiting for advice of the Vigilance Commission. Government directed that immediately on receipt of the preliminary

report against the official who is caught directly or indirectly in the act of accepting the bribe, irrespective of whether the phenolphthalein test yielded positive result or not, the official may be immediately placed under suspension pending investigation based on the preliminary report received from the Anti-Corruption Bureau. (U.O. Note No. 1818/SPL.B/2000-2 dt. 21-11-2001 G.A. (SPL.B) Dept.) The Bureau should furnish along with the preliminary report, copies of the F.I.R. and mediators reports while seeking suspension of the accused officer.

3.3 Government have further examined the matter and prescribed the following revised procedure in trap cases: "The Anti-Corruption Bureau will send a Radio Message to Secretariat Administrative Department and to the Vigilance Commission within 24 hours of the trap instead of sending preliminary report. On receipt of the said Message, the Disciplinary Authorities will take action for suspending the accused officer". (Memo.No.177/ Spl.C/2003-1 dt. 13-5-2003 G.A. (Spl.C) Dept.)

4. Suspension in Disproportionate Assets Cases

4.1 In disproportionate assets cases, the accused official was not being placed under suspension immediately following the registration of the case, but transferred to a far off non-focal post. Where he deliberately fails to co-operate with the investigating agency or tries to tamper with official records or influence witnesses or bring pressure on the Investigating Officer, the disciplinary authority was to place him under suspension at that stage based on the recommendation of the Bureau. Otherwise, the disciplinary authority was to consider and decide the desirability of placing the accused official under suspension as and when a charge sheet is filed in the court or a charge memorandum is served in major penalty proceedings. (Memo.No.554/Ser.C/93-6 dt.26-12-94, Genl.Admn. (Ser.C) Dept.)

4.2 The Government further examined the matter on the advice of the Vigilance Commission and on the recommendation by the High Level Committee on Anti-Corruption and advised the

Director General, Anti-Corruption Bureau to submit along with the preliminary reports in disproportionate assets cases, other than where the disproportion is marginal, proposals for placing the accused officer under suspension, besides institution of proceedings for attachment property under the Criminal Law Amendment Ordinance, 1944. (Memo.No.596/ Spl.B/2000-6 dt.10-6-2002 G.A. (Spl.B) Dept.)

5. Suspension in other cases

Further in a case where a charge sheet of specific acts of corruption or any other offence involving moral turpitude has been filed in a Criminal Court, the accused officer may be immediately kept under suspension after filing of the charge sheet. It is also desirable and necessary that an officer charged with specific acts of corruption or gross misconduct involving moral turpitude may be suspended upon initiation of regular departmental action for imposition of major penalty and a charge memo is served upon him, immediately upon serving of the memo.

6. Leave under threat of Suspension

It is not proper to serve an order requiring the Government servant to go on leave, threatening otherwise to place him under suspension.

7. Competent Authority

7.1 A Government servant governed by the Andhra Pradesh Civil Services (CCA) Rules, 1991 may be placed under suspension by the authorities mentioned in rules 13, 14 and 15 thereof. Rule 15 lays down that the appointing authority or any higher authority may also place under suspension any member of a State or Subordinate service, besides the authorities specified under rules 13 and 14.

7.2 If an order of suspension is made by an authority lower than the appointing authority but which is competent to pass an order of suspension in respect of the Government servant concerned, such authority will report to the appointing authority the circumstances in which the order was made.

7.3 Before passing an order of suspension, the authority proposing to make the order should verify whether it is competent to do so. An order of suspension made by an authority which does not have the power to pass such an order is illegal and will give cause of action for:

(a) setting aside of the order of suspension and

(b) claiming full pay and allowances for the period the Government servant remained away from duty due to the order of suspension.

7.4 When an order of suspension is made by an authority subordinate to the appointing authority, the appointing authority should, as soon as information about the order of suspension is received, examine whether the authority by whom the order was made was competent to do so.

7.5 Where the services of a Government servant are lent by one department to another department or borrowed from or lent to the Central Government or the Government of another State or a company or corporation or organisation or a local or other authority, the borrowing authority can suspend such Government servant under rules 30 and 31 of the A.P. Civil Services (CCA) Rules, 1991. The lending authority should, however, be informed forthwith of the circumstances leading to the Order of suspension.

7.6 In the circumstances stated in rule 3 of the All India Services (Discipline and Appeal) Rules, 1969, the State Government can suspend a member of an All India Service if he is serving under the State Government. Where an order of suspension is passed by the State Government against a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless before the expiry of a period of ninety days from the date from which the member was suspended, disciplinary proceedings are initiated against him, provided the Central Government may at any time before the expiry of the said period of ninety days and after considering the special circumstances for not initiating disciplinary

proceedings, to be recorded in writing, allow continuance of the suspension order beyond the period of ninety days without the disciplinary proceedings being initiated.

8. Procedure for placing under suspension

No procedure is prescribed to be followed for placing an employee under suspension. What is required is material on record to satisfy the competent authority of the existence of any of the situations mentioned above and the need or desirability to suspend the employee. An order of suspension cannot be questioned on the ground of violation of Art. 311(2) of the Constitution. The employee is not entitled to an opportunity to make a representation on the allegations before he is placed under suspension.

9. Object of suspension

The object of placing a Government servant under suspension is generally to facilitate easy collection of evidence from witnesses who may hesitate to depose against the Government servant as long as he is in office, or to prevent him from tampering with witnesses or records. Suspension is also resorted to, among other things, where the continuance in office of the official will be against the wider public interest such as where there is a public scandal and it is necessary to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption, taking into consideration the adverse effect the nature and gravity of the misconduct is likely to have on the image of the official, the post held by him and on the image of the Government. (Memo.No.401/65-1 dt. 27-2-65 G.A.(Ser.C) Dept.)

10. Date of coming into force of Order of Suspension

10.1 An order of suspension, if the Government servant is on duty, may be served on him by delivering or tendering it in person under acknowledgment or if he is on leave or otherwise absent, communicated to him by registered post to the address given by him if any or his usual place of residence or if it cannot be so served or communicated, be published in the Andhra Pradesh Gazettee. Where the Government servant is on leave or absent from duty

without permission or availing joining time and is absconding or evading the service of the order, the order of suspension takes effect from the date of its despatch from the office of the authority which passed it. (State of Punjab vs. Khemi Ram, AIR 1970 SC 214)

10.2 Except in cases in which a Government servant is deemed to have been placed under suspension, an order of suspension can take effect from the date on which it is made, or from a later date prospectively, and a retrospective order of suspension is illegal. Ordinarily, it is expected that the order will be communicated to the Government servant concerned simultaneously. Difficulty may, however, arise in giving effect to the order of suspension from the date on which it is made if the Government servant proposed to be placed under suspension:

(a) is stationed at a place other than where the competent authority makes the order of suspension;

(b) is on tour and it may not be possible to communicate the order of suspension to him immediately;

(c) is holding charge of stores, cash, warehouses, seized goods, bonds etc.

10.3 In cases of types (a) and (b) above, it will not be feasible to give effect to an order of suspension from the date on which it is made owing to the fact that during the intervening period the Government servant may have performed certain functions lawfully exercisable by him or may have entered into contracts. The competent authority making the order of suspension should take the circumstances of each case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Government servant concerned.

10.4 In cases of the type (c) above, when a Government servant holding charge of stores and/or cash is to be placed under suspension, he may not be able to hand over charge immediately without checking and verification of the stores/cash etc. In such cases the competent authority should, taking the circumstances

of each case into consideration, lay down that the checking and verification of stores and/or cash should commence on receipt of suspension order and should be completed by a specified date from which suspension should take effect after formal relinquishment of charge.

10.5 An officer who is on leave or who is absent from duty without permission will not be performing any functions of his office. In such cases there should be no difficulty in the order of suspension operating with immediate effect.

10.6 No order of suspension should be made with retrospective effect, except in the case of deemed suspension. A retrospective order will be both meaningless and improper.

11. Suspension, when on leave

Where a Government servant is on leave, it is not necessary to recall him from leave before placing him under suspension. He can be placed under suspension while he is on leave and the unexpired portion of leave can be cancelled by an order to that effect. (Memo.No.1085/Ser.C/72-3 dt. 10-5-73 G.A. (Ser.C) Dept.)

12. Deemed suspension

12.1 A Government servant is deemed to have been under suspension or, as the case may be, deemed to have continued under suspension, from an anterior date with retrospective effect, as per sub-rules (2) (3) (4) of rule 8 of APCS (CCA) Rules, 1991 —

i) where he is detained in custody for a period exceeding 48 hours, with effect from the date of his detention;

ii) where he is convicted and sentenced to a term exceeding 48 hours, the said period of 48 hours being computed from the commencement of imprisonment, with effect from the date of conviction;

iii) where a penalty of dismissal, removal or compulsory retirement passed on a Government servant under suspension, is set aside by the appellate, revising or

reviewing authority under the A.P.C.S. (CCA) Rules, 1991 and remitted for further inquiry, with effect from the date of the original order of dismissal, removal, or compulsory retirement;

iv) where a penalty of dismissal, removal or compulsory retirement is set aside by a court on technical grounds and not on merits and further inquiry is decided upon by the disciplinary authority, with effect from the date of the original order of dismissal, removal or compulsory retirement.

12.2 A Government servant who is detained in custody under any law providing for preventive detention or as a result of proceedings for his arrest for debt will fall under category (i) above.

12.3 The police authorities will send prompt intimation of arrest and/or release on bail etc of a Government servant to the latter's official superior as soon as possible after the arrest and/or release indicating the circumstances of the arrest etc. A duty has also been cast on the Government servant who may be arrested for any reasons to intimate promptly the fact of his arrest and circumstances connected therewith to his official superior even though he might have been released on bail subsequently. Failure on the part of the Government servant to do so will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

13. Revocation need not follow, on release on bail

A Government servant who is deemed to have been suspended by an order of the competent authority to suspend him, remains under suspension until further orders. The competent authority or a higher authority need not necessarily revoke the order of suspension when the Government servant who is arrested and detained on a criminal charge or otherwise, for a period exceeding forty eight hours is released on bail. But the said authority may revoke the order of suspension and admit him to duty or grant

him leave during the period, if applied for by him, if the said authority thinks fit to do so, having regard to the nature of the charge and the other circumstances of the case. The mere fact that the Government servant has been granted bail does not give him a right to be restored to duty.

14. Duration of Suspension

An order of suspension made or deemed to have been made will continue to remain in force until it is modified or revoked by the authority which made or is deemed to have made the order or by an authority to which it is subordinate. Order of suspension should not mention any period during which or a date upto which it is valid or in force, but merely state that the official is placed under suspension until further orders (Memo.No.904/Ser.C/67-1 dt.29-5-67 G.A.(Ser.C) Dept.). An order of suspension cannot be revived retrospectively. In cases in which the proceedings result in an order of dismissal, removal or compulsory retirement, the order of suspension will cease to exist automatically from the date from which the order of dismissal, removal or compulsory retirement takes effect.

15. Headquarters during Suspension

15.1 The order of suspension should specify the headquarters of the Government servant during the period that the order will remain in force. It should normally be the last place of duty. The competent authority may, however, for reasons to be recorded in writing, fix any other place as his headquarters in the interest of public service.

15.2 If a Government servant under suspension requests for a change of headquarters, the competent authority may accede to the request if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance etc or create difficulty in investigation or in processing the disciplinary proceedings etc.

15.3 A Government servant under suspension is subject to all the conditions of service applicable to Government servants and cannot leave the headquarters without prior permission.

16. Order of Suspension

16.1 A Government servant can be placed under suspension only by a specific order made in writing by the competent authority. A standard form in which the order should be made under rule 8(1) of the A.P.Civil Services (CCA) Rules, 1991 is prescribed (Form Nos.1,2,3 of Part II of Volume II). A Government servant should not be placed under suspension by an oral order.

16.2 In the case of deemed suspension under rule 8(2), (3) or (4) of the A.P. Civil Services (CCA) Rules, 1991, suspension will take effect automatically even without a formal order of suspension. However, it is desirable for purposes of administrative record to make a formal order. A standard form of an order of deemed suspension under rule 8(2) of the A.P. Civil Services (CCA) Rules, 1991 is prescribed (Form No.4 of Part II of Volume II).

16.3 If the two standard forms are not found fully to meet the requirements of any case, the competent authority may amplify/ modify the form suitably to meet the requirements of the case. The order should indicate all the cases (criminal/departmental under investigation/trial/contemplation) on the basis of which it is considered necessary to place the Government servant under suspension (Check List No.9 of Part II of Volume II).

16.4 Where a Government servant is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceedings or otherwise and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may for reasons to be recorded by him in writing direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings. Therefore whenever a Government servant is under suspension and any other case is initiated against him and the competent authority considers it necessary that the Government servant should remain under suspension in connection with that case also, the competent authority should pass fresh orders with specific reference to all

the cases against the Government servant so that he will continue under suspension until the disposal of all such proceedings and in the event of reinstatement of the Government servant in one case the facts of the other case or cases can also be taken into account while regulating the period of his suspension.

17. Issue of Order in 15 days of V.C's advice, under intimation to Anti-Corruption Bureau

Expeditious action should be taken to place the official under suspension or transfer him as the case may be within 15 days of receipt of advice tendered by the Vigilance Commission in cases taken up for investigation by the Anti-Corruption Bureau (Memo.No.357/Ser.C/94-1 dt.4-8-94 G.A.(Ser.C) Dept.). Order of suspension should not refer to the Anti-Corruption Bureau or the Vigilance Commission in any manner (Memo.No.81/Ser.D/77-2 dt.10-5-77 G.A.(Ser.D) Dept.). In Anti-Corruption Bureau cases, departments of Secretariat, Heads of Department and District Collectors should communicate copies of orders of suspension with information as to the date of its coming into force and orders of revocation, to the Anti-Corruption Bureau (Memo.No.732/Ser.C/85-1 dt.6-8-85 G.A.(Ser.C) Dept., and Memo.No.1054/Ser.C/85-1 dt. 21-1-86 G.A.(Ser.C) Dept.)

18. Government to pass order in Tribunal cases

In cases referred to the Tribunal for Disciplinary Proceedings, where it is considered necessary to place the official under suspension, Government themselves should pass the order of suspension. (U.O.Note No.3170/Ser.C/71-3 dt.3-10-72 G.A.(Ser.C) Dept.)

19. Appeal against Order of Suspension

19.1 An order of suspension made or deemed to have been made may be modified or revoked at any time for good and sufficient reasons by the authority that made the order or is deemed to have made the order or by a superior authority.

19.2 Subject to the provisions of rule 33 of the A.P.Civil Services (CCA) Rules, 1991, a Government servant may prefer an appeal against an order of suspension made or deemed to have been made under rule 8. This would imply that a Government servant who is placed under suspension should generally know the reasons leading to his suspension so that he may be able to prefer an appeal against it. Where a Government servant is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of a criminal offence is under investigation, inquiry or trial, the order placing him under suspension would contain a reference in this regard and he would be aware of the reasons leading to his suspension. When a Government servant is placed under suspension on the ground of "contemplated" disciplinary proceeding, every effort should be made to finalise the charges against the Government servant within three months of the date of suspension. If these instructions are strictly followed, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceeding will become aware of the reasons for his suspension without loss of time. However, there may be some cases in which it may not be possible for some reason or the other to issue a charge sheet within three months from the date of suspension. In such cases, the reasons for suspension should be communicated to the Government servant concerned immediately on the expiry of this time-limit prescribed for the issue of the charge sheet so that he may be in a position effectively to exercise the right of appeal available to him, if he so desires. Where the reasons for suspension are communicated to him on the expiry of time-limit prescribed for issue of charge sheet, the time-limit for submission of appeal should be counted from the date on which the reasons for suspension are communicated. This will not apply to a case where Government servant is placed under suspension on the ground that he has engaged himself in activities prejudicial to the interest of the security of the State.

19.3 On receipt of the appeal, the appellate authority shall

consider whether in the light of the provisions of rule 8 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

20. Date of effect of Order of Revocation

The order of revocation of suspension will take effect from the date of issue. However, where it is not practicable to reinstate a suspended Government servant with immediate effect, the order of revocation of suspension should be expressed as taking effect from a date to be specified (Form No.8 of Part II of VolumeII).

21. Leave Travel Concession Claims, not to suspend

It is not necessary to place a Government servant under suspension in cases of false claim of Leave Travel Concession. (Memo.No.1184/Ser.C/81-1 dt. 5-8-81 G.A. (Ser.C) Dept.)

22. Subsistence Allowance

22.1 The competent authority should pass an order regarding the subsistence and other allowances to be paid to the Government servant during the period of suspension simultaneously with the orders of suspension or as early as possible after the issue of the order of suspension to avoid hardship to the Government servant. Subsistence allowance is meant for the subsistence of a suspended Government servant and his family during the period he is not allowed to perform any duty and thereby earn a salary. The authorities concerned should take prompt steps to ensure that after a Government servant is placed under suspension, he receives subsistence allowance without delay.

22.2 A Government servant under suspension or deemed to have been placed under suspension by an order of the competent authority is entitled to a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary.

22.3 Where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of the first three months if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant.

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 percent of the subsistence allowance admissible during the period of the first three months if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government servant.

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above.

22.4 Though F.R. 53 does not specifically provide for a second or subsequent review there is no objection to such review(s) being made by the competent authority. Such authority shall be competent to pass orders to increase or decrease the rates of subsistence allowance upto 50 percent of the amount of the subsistence allowance initially granted, according to the circumstances of each case. A second or subsequent review can be made at any time at the discretion of the competent authority.

22.5 It is permissible to reduce the amount of subsistence allowance once increased on the basis of the first review, upto 50 percent of the amount of the subsistence allowance initially granted, if the period of suspension has been prolonged for reasons directly attributable to the Government servant, i.e. by his adopting dilatory

tactics. Similarly, in a case where the amount of subsistence allowance has been reduced after the first review, the same can be increased upto 50 percent of the amount initially granted, if the period of suspension has been prolonged for reasons not directly attributable to the Government servant and the Government servant has given up dilatory tactics.

22.6 A Government servant or a member of an All India Service placed under suspension is entitled to payment of subsistence allowance equal to leave salary which he would have drawn if he had been on leave on half-average pay or half pay and dearness allowance thereon during the period of suspension, subject to production of a certificate in the prescribed form that he is not engaged in any other employment, business, profession or vocation during the period to which the claim relates (Form No.5 of Part II of Volume II). Subsistence allowance cannot be denied to him on any other ground. (G.O.Ms.No.82/Ser.C dt.1-3-96 G.A.(Ser.C) Dept; G.O.Ms.No. 398 dt. 25-9-2001 G.A. (Ser.C) Dept.). The order of suspension should mention about payment of subsistence allowance in terms of F.R. 53 in the case of State Government servants and rule 4 of the All India Services (Discipline and Appeal) Rules, 1969 in respect of members of the All India Services. (Cir.Memo.No.560/Ser.C/95-3 dt.21-3-96 G.A.(Ser.C) Dept.)

22.7 The payment of subsistence allowance need not be withheld even if a review is pending with a higher authority (Cir.Memo.No.13431-160 AF.R.II/93 dt.1-4-93 Fin.& Plg. (FW.FR.II) Dept.). Government ordered that a Government servant under suspension be paid subsistence allowance whether he is lodged in prison or released on bail on his conviction pending consideration of his appeal. (Memo.No. 39071/471/A2/FR.II/99 Finance and Planning (FW.FR.II) Dept. dt. 28-2-2000)

22.8 After 3 months, subsistence allowance can be reduced or increased by upto 50% depending on whether prolongation of suspension was or was not due to reasons directly attributable to the official.

23. Recoveries from Subsistence Allowance

23.1 The following compulsory deductions should be enforced from the subsistence allowance:

(i) Incometax and surcharge (provided the employee's yearly income calculated with reference to subsistence allowance is taxable);

(ii) house rent and allied charges, i.e. electricity, water, furniture etc;

(iii) repayment of loans and advances taken from the Government at such rates as the Head of Department deems it right to fix;

(iv) Over-payments (having due regard to the circumstances of each case) at a rate ordinarily not greater than one third of the amount of subsistence allowance, exclusive of dearness allowance.

23.2 The following deductions which are optional should not be made from the subsistence allowance except with the Government servant's written consent:

(i) premia due on Postal Life Assurance Policies;

(ii) amount due to co-operative stores and co-operative credit societies; and

(iii) refund of advances taken from G.P.F.

23.3 The following deductions should not be made from the subsistence allowance:

(i) subscription to G.P.F.;

(ii) amount due on court attachments; and

(iii) recovery of loss to Government which the Government servant is responsible.

24. Dearness Allowance during Suspension

24.1 A Government servant under suspension is entitled to draw dearness allowance, if admissible on the basis of leave salary as would be admissible to him, if he were on leave on half average pay or on half pay.

24.2 If the rate of subsistence allowance is increased or decreased after the expiry of three months of suspension, the rate of dearness allowance will be recalculated on the basis of the increased or decreased amount of subsistence allowance from time to time. In other words, the dearness allowance, if admissible to the Government servant under suspension, will be equal to the amount admissible to a Government servant on leave and drawing leave salary equivalent to the subsistence allowance payable to him from time to time.

25. Compensatory Allowances during Suspension

A Government servant under suspension is entitled to draw other compensatory allowances eg. compensatory (city) allowance, house rent allowance admissible from time to time on the basis of pay of which he was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances. If the headquarters of a Government servant under suspension are changed in the public interest by order of a competent authority, he shall be entitled to the allowance as admissible at the new station provided he furnishes the requisite certificates with reference to such Station.

26. Suspended Official engaged in other Employment

26.1 A Government servant who engages himself in any employment, business, profession or vocation while under suspension will not be entitled to any payment. A Government servant under suspension should, therefore, be required to furnish to the competent authority a certificate that he is not engaged in any other employment, business, profession or vocation. A proforma is prescribed for this purpose.

26.2 A Government servant under suspension is subject to the provisions of the A.P. Civil Services (Conduct) Rules, 1964 and cannot engage himself in any employment, business, profession or vocation without the prior permission of the competent authority. If he does so, he is liable to disciplinary action on that ground also.

27. Leave while under Suspension

A Government servant under suspension is not entitled to sanction of leave while under suspension, as per F.R. 55. (Memo.No.1085/Ser.C/72-3 dt.10-5-73 G.A.(Ser.C) Dept.)

28. Termination of Service of Temporary Government servant under Suspension

The services of a temporary Government servant can be terminated in accordance with the rules of appointment under rule 10 of General Rules of the A.P. State and Subordinate Services Rules while he is under suspension or/and departmental proceedings are pending against him.

29. Payments admissible to official suspended while on leave

A Government servant who is suspended while on leave will be entitled to subsistence allowance at the rate admissible and not to leave salary irrespective of whether the rate of subsistence allowance admissible is more or less than the rate of leave salary he was already drawing. The unexpired portion of his leave will be cancelled and the suspension will take effect from the date of cancellation of leave.

30. Payments admissible to official deemed to be under suspension following setting aside of Dismissal, Removal or Compulsory Retirement

In the case of Government servant whose dismissal, removal or compulsory retirement has been set aside and who is deemed to have been placed or to continue to be under suspension under sub-rule (3) or sub-rule (4) of rule 8 of the A.P. Civil Services (CCA)

Rules, 1991 and who fails to produce a certificate as required under F.R. 53(2) for any period or periods during which he is deemed to be placed or continued to be under suspension, he shall be entitled to subsistence allowance and other allowances from the date of order of dismissal/removal/compulsory retirement equal to the amount by which his earnings during such period or periods as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him. If the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, he shall not be paid any subsistence allowance. The subsistence allowance in such cases is to be paid with retrospective effect from the date of order of dismissal/removal/compulsory retirement. The law of limitation for the purpose of payment of arrears of subsistence allowance will not be involved.

31. Suspension beyond age of Superannuation

A Government servant cannot be retained in service beyond the age of superannuation by placing him under suspension pending prosecution or pending departmental action or under any circumstances.

32. Review of Suspension Order

32.1 Government prescribed the following procedure for review of orders of suspension.

32.2 In respect of members of Subordinate Service (Non-Gazetted Officers)

32.2.1 The first review of the orders of suspension beyond 6 months shall be undertaken by the appointing authority. The second and subsequent reviews shall be by the Regional Authority, where it exists, at intervals of six months and where it does not exist, by the Head of Department. Where the appointing authority is the Head of Department, the Review shall be by the Head of Department. Where suspension is ordered by a higher authority, review shall be done by the authority as stipulated above and a report on the result

of review shall be sent to the higher authority for information and record.

32.3 In respect of members of State Service (Gazetted Officers)

32.3.1 Where the order of suspension is issued by the Regional Authority, the first review after six months shall be by the Regional Authority. The second and subsequent reviews at six monthly intervals shall be by the Head of Department. When no Regional Authority exists and the order of suspension in initial as well as second level Gazetted category is issued by the Head of Department, the order shall be reviewed by the Head of Department. Even where suspension is ordered by Government, the review shall be by the authority as stipulated above but with the prior approval of the Government where the review leads to reinstatement. In respect of third level and above Gazetted categories, the review at six monthly intervals shall be by Government (Form No.7 of Part II of Volume II). (G.O.Ms.No.578 dt.31-12-99 G.A.(Ser.C) Dept; Memo.No.32351/Ser.C/2000-1 dt. 11-1-2001 G.A. (Ser.C) Dept.)

33. Factors for consideration at Review

During the review, which should be at 6 monthly intervals, the reviewing authority should take into consideration the nature of the charges and whether the delay in finalisation of enquiry proceedings is not attributable to the employee and whether there is no interference from the employee in facilitating the enquiry.

34. Action where suspension prolongs beyond 2 years

34.1 On the expiry of 2 years, the employee may have to be reinstated without prejudice to the proceedings being pursued. In exceptional cases considering the gravity of the charges, the employee could be continued under suspension beyond a period of 2 years, especially where there is deliberate delay caused due to non-cooperation of the employee. (G.O.Ms.No.86 G.A.(Ser.C) Dept., dt. 8-3-94)

34.2 Cases for reinstatement cannot be dealt with in a routine manner. While referring cases to the Vigilance Commission, it

should be reported whether half-yearly reviews with the Anti-corruption bureau were conducted and if so, whether the delay in finalisation of the enquiry proceedings cannot be attributed to the employee, whether there is deliberate delay caused due to non-cooperation of the employee and whether he is attending the court whenever summoned for the hearing. The information should be obtained from the Anti-corruption bureau, wherever necessary and furnished to the Vigilance Commission, for considering whether to continue under suspension or to reinstate the employee. (U.O.Note No.2776/SC.E/98-1 dt.3-12-98 G.A.(SC.E) Dept.)

35. Anti-Corruption Bureau to report where suspension prolongs beyond 6 months — Joint review by Secretary and Anti-Corruption Bureau

35.1 In Anti-corruption bureau cases, where the period exceeds beyond 6 months after a Government servant has been placed under suspension, the Director General, should send a report to the concerned Secretary to Government intimating the stage of the case and whether or not the officer should be continued under suspension furnishing the reasons therefor. This should be done not only in cases which are under enquiry/investigation by the Anti-Corruption Bureau but also in cases pending inquiry before the Tribunal for Disciplinary Proceedings and trial before the Special Judge. (U.O.Note No.1742/Ser.C/68 dt.16-10-68 G.A.(Ser.C) Dept., and Memo.No.365/Ser.C/59-1 dt.11-6-70 G.A.(Ser.C) Dept.)

35.2 Government laid down that in Anti-Corruption Bureau cases, the Principal Secretary/Secretary of the Department should review at an interval of 6 months with the representative of the Anti-corruption bureau and make suitable recommendation as to the desirability or otherwise of the further continuance of the employee under suspension. (G.O.Ms.No.86 G.A.(Ser.C) Dept., dt.8-3-94 G.A.(Ser.C) Dept.)

36. Supreme Court decisions

36.1 In Government of Andhra Pradesh vs. K.K. Satyanarayana, E.O.-cum-Deputy Commissioner, S.V.V.S.S.Devasthanam, Annavaram, Civil Appeal No.2480 of 1991, the Supreme Court held

that the Andhra Pradesh Administrative Tribunal committed serious error in quashing the order of the Government placing the Government servant under suspension pending inquiry and that the Tribunal was not entitled to enter into the merit of the allegations of the defence at that stage and that the Tribunal committed grievous error in interfering with the order of suspension. (Memo.No.3924/L2/99 dt.20-5-92 Law Dept.)

36.2 In the case of State of Orissa vs. B.K. Mohanty, 1994(2) SLR SC 384, the Supreme Court held that "where serious allegations of misconduct are alleged against an employee, the Tribunal would not be justified in interfering with the orders of suspension of the disciplinary authority pending enquiry" and observed that the Tribunal appears to have proceeded in haste in passing the order even before the ink is dried on the order passed by the appointing authority. (U.O.Note No.814/SC.D/94-1 dt. 14-6-94 G.A.(SC.D) Dept., and Memo.No.26788/Ser.C/98-1 dt.18-5-98 G.A.(Ser.C) Dept.). Government reiterated that all departments should bring the ruling to the notice of the Andhra Pradesh Administrative Tribunal, the Central Administrative Tribunal and the High Court of Andhra Pradesh whenever orders of suspension are challenged. The Advocate General, High Court of Andhra Pradesh was requested to bring the decision to the notice of the Government Pleaders and to issue instructions to them to lay stress on the decision. (Memo.No.1032/SC.E/96-1 dt. 9-4-96 G.A.(SC.E) Dept.)

36.3 In the case of Secretary to Government, Prohibition and Excise Department vs. L.Srinivasan, 1966(2) SLR SC 291, Supreme Court observed that "the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order (and

charges) even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied."

37. Revocation of suspension by Court — Appeal

37.1 Having regard to the above pronouncements, whenever the Administrative Tribunal or any Court pronounces an order revoking a suspension order, the Government Pleader should be contacted to obtain a copy of the order together with his comments within a week. The department should thereafter, process the case and take a decision as to the further course of action within another week. Where it is considered that the matter should be taken to the High Court, steps should be taken to file Writ Petition and obtain stay of the order of the Tribunal instead of reinstating the official. The file should be dealt with personally atleast at the level of a Deputy/Joint Secretary to Government. The file should be circulated with a tag indicating 'Top Priority' and also specifying the limitation period. (U.O.Note No.808/Ser.C/87-1 dt.1-9-87 G.A.(Ser.C) Dept.)

37.2 Whenever the Tribunal pronounces an order revoking suspension orders, the Department should approach the Tribunal with a request to keep the orders in abeyance for a limited period in order to enable the Government to move the case in the High Court. Whether the order is kept in abeyance or not, the Department should take steps to file writ petition in the High Court without any loss of time. Proper counters should be filed on Representation Petitions filed by the accused officers under suspension. Other aspects than those raised by the accused official also should be dealt with, like non-cooperation of the official.

38. Compliance with Court Orders

Where it is not reasonably practicable to obtain orders in circulation of the Minister concerned or the Chief Minister without attracting contempt of the Tribunal or the High Court, the Chief Secretary is authorised to revoke the order of suspension, subject to the condition of submitting copy of the order issued by the Chief Secretary to the Minister concerned or the Chief Minister for information. (G.O.Ms.No.522 dt.13-9-88 G.A.(Ser.C) Dept.)

39. Posting on reinstatement

Heads of Department and Departments of the Secretariat should keep in view the gravity of the offence committed by the accused officer and the place of offence while reinstating him on the orders of the High Court or the Administrative Tribunal and post him to a far off place (Memo.No.588/Ser.C/87-1 dt.29-7-87 G.A.(Ser.C) Dept.). Investigating Officers should bring to the notice of Head Office the reposting to the same post or in another post at the same place after release from suspension so that he can be got posted to a far off place.

40. Treatment of period of suspension

40.1 i) In case of reinstatement

40.1.1 Where a Government servant of the State or a member of an All India Service placed under suspension is reinstated, the pay and allowances payable to him for the period of suspension and the treatment of the period are governed by the provisions of F.R. 54-B and Rule 5-B of the All India Services (D&A) Rules, 1969 respectively. Broadly stated, the suspended official is entitled to payment of full pay and allowances and to treatment of the period of suspension as period spent on duty, where the order of suspension is considered wholly unjustified. Where the order of suspension is not wholly unjustified, he shall be paid only such proportion of the full pay and allowances as the competent authority may determine and the period shall not be treated as period spent on duty.

40.1.2 In this connection, reference may be had to the decision of the Supreme Court in the case of Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra, 1997(2) SLJ SC 166, where it held that acquittal does not automatically entitle the Government servant on reinstatement from suspension to get the consequential benefits as a matter of course.

40.2 ii) In case of imposition of minor penalty

40.2.1 Suspension cannot be said to be wholly unjustified for treatment of period of suspension for consequential benefits, where

disciplinary proceedings result in imposition of a minor penalty. (G.O.Ms.No. 214 Fin. & Plg. (FW.FR.II) Dept. dt. 22-12-97)

40.3 iii) In case of death

40.3.1 Where a State Government servant or a member of an All India Service under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty and his family paid full pay and allowances for the said period. (F.R.54-B(2), Rule 5B(2) All India Services (D&A) Rules, 1969)

41. Resignation during Suspension

If a Government servant who is under suspension submits his resignation, the competent authority should examine with reference to the merits of the disciplinary case pending against him whether it would be in the public interest to accept the resignation. Normally an officer is placed under suspension only in cases of grave delinquency and it would not be correct to accept resignation of an officer under suspension. Where, however, the acceptance of resignation is considered necessary in the public interest because of one or more of the following conditions, the resignation may be accepted with the prior approval of the competent authority:

(a) the alleged offence does not involve moral turpitude; or

(b) the evidence is not strong enough to justify the assumption that if the departmental proceedings were continued, the officer would be dismissed or removed from service; or

(c) the disciplinary proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept resignation.

42. Compulsory Retirement of Official under suspension

There is no necessity of revoking the order of suspension and restoring an officer under suspension to duty before serving the notice of compulsory retirement. An officer under suspension

proposed for premature retirement may be served with a notice of retirement straight away without revoking the order of suspension and restoring him to duty.

43. Effect of Suspension, far-reaching

43.1 As per sub-rule (6) of rule 9 of the A.P. Revised Pension Rules, 1980, departmental proceedings shall be deemed to be instituted on the date on which the Government servant has been placed under suspension; thereby disciplinary proceedings remain unaffected by the 4-year limitation prescribed under sub-clause (ii) of cl. (b) of sub-rule (2) of the said rules.

43.2 Further, as per sub-rule (3) of rule 8 of the A.P.C.S. (CCA) Rules, 1991, a Government servant is deemed to have continued under suspension from the date of the order of dismissal, removal or compulsory retirement, where the Government servant was under suspension at the time of imposition of the said penalty, in the event of the penalty being set aside in appeal, revision or review under the said rules. The provision of deemed suspension does not apply if the Government servant was not under suspension at the time of imposition of the penalty of dismissal, removal or compulsory retirement.

43.3 Similarly, proceedings before the Tribunal for Disciplinary Proceedings are deemed to have commenced on the date on which the Government servant is placed under suspension; as such the Tribunal has jurisdiction to take up cases against retired Government servants provided they are placed under suspension while in service. (Letter No.144/ Ser.C/75-2 dt. 29-5-75 G.A. (Ser.C) Dept.)

43.4 These and similar deeming provisions of suspension should be borne in mind in safeguarding the interests of the administration.

44. Penalty of Suspension

The Andhra Pradesh Civil Services (C.C.&A.) Rules, 1991 and the rules and regulations of various State Public Sector Undertakings provide for imposition of a minor penalty of suspension on the employee under certain circumstances and situations.

CHAPTER XXV

DISCIPLINARY PROCEEDINGS — INITIATION OF ACTION

1. Introduction

1.1 Disciplinary Proceedings lay down the procedures required to be followed for the purpose of establishing the truth or otherwise of an allegation of misconduct levelled against an employee and in the event of the employee being held guilty of the misconduct to impose on him a penalty in strict conformity with the provisions of the Rules applicable to the employee. If the departmental authority holds the inquiry in violation of the statutory rules prescribing the mode of inquiry or in a manner inconsistent with the rules of natural justice, or if the authority fails to reach a fair decision by some considerations extraneous to the evidence on record or on similar grounds, the findings and decision of the authority are liable to be set aside by Courts/Tribunals. Hence, there is need for all those charged with the task of instituting and conducting Disciplinary Proceedings at various stages to equip themselves fully with the basic principles and essentials of procedure.

1.2 Disciplinary proceedings may be instituted for misconduct on the basis of a well-documented allegation straightaway or on the basis of preliminary enquiry conducted by the Department or may be the outcome of a Discreet Enquiry, or Regular Enquiry or investigation in a Registered Case by the Anti-Corruption Bureau or any investigating agency. It may be instituted following conviction in a Court of Law on the basis of conduct that led to conviction. Where criminal msconduct is involved simultaneous proceedings may be instituted both to prosecute him and to proceed against him departmentally for award of a penalty.

2. Relevant Enactments and Rules

The following are the relevant enactments and Rules for conducting of disciplinary proceedings:

i) Andhra Pradesh Civil Services (Conduct) Rules, 1964.

ii) A.P.C.S. (Classification Control & Appeal) Rules, 1991.

iii) A.P.C.S. (Disciplinary Proceedings Tribunal) Act, 1960.

iv) A.P.C.S. (D.P.T.) Rules, 1989.

v) All India Services (Conduct) Rules, 1968.

vi) A.I.S. (Discipline and Appeal) Rules, 1969.

vii) Public Servants (Inquiries) Act, 1850.

viii) Andhra Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993.

ix) Conduct and Discipline and Appeal / Classification, Control and Appeal Rules of State Public Sector Undertakings / autonomous bodies.

x) Andhra Pradesh Revised Pension Rules, 1980

xi) Andhra Pradesh Lokayukta and Upa Lokayukta Act, 1983

xii) All India Services (DCRB) Rules, 1958

3. Disciplinary Rules

3.1 The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 have come into force with effect from 1-10-1992 repealing the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963. They lay down the penal provisions and the procedure required to be followed in disciplinary proceedings. These Rules apply to members of civil services of the State and holders of civil posts in connection with the affairs of the State, whether temporary or permanent including such Government servants whose services are temporarily placed at the disposal of Government of India, Government of another State or a company, corporation or organisation owned or controlled by Government or a local or other authority.

3.2 These Rules do not cover:

(a) persons in casual employment;

(b) persons subject to discharge from service on less than one month's notice;

(c) persons for whom special provision is made in respect of matters covered by these rules by or under any law or in any rule or by or under any contract or agreement;

(d) members of the All India Services.

3.3 Among the excepted categories, members of the All India Services viz. Indian Administrative Service, Indian Police Service and Indian Forest Service are governed by the All India Services (Discipline and Appeal) Rules, 1969. The employees of public sector undertakings, statutory corporations, etc. are governed by the discipline and appeal rules framed by the respective public undertakings and corporations in exercise of the powers conferred upon them by the statute or by the Articles of Memorandum constituting them. In certain cases, they are laid down in the contract of service.

3.4 The discipline rules have been framed in conformity with the provisions of Article 311 of the Constitution, those of the State Government servants under the proviso to Article 309 of the Constitution and those of the All India Services under sec. 3(1) of All India Services Act, 1951. Regulations of the State Government Undertakings are made under the enabling provisions of the Acts by which they are constituted. The Rules / Regulations are statutory in nature and have the force of law. The basic provisions in the Andhra Pradesh Civil Services (CCA) Rules, 1991 are similar in character to the All India Services (Discipline and Appeal) Rules, 1969. The procedures discussed in the Manual are those prescribed in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 unless otherwise stated. Care should be taken to ensure that the provisions of the respective Rules are observed where they vary from those prescribed in the A.P. Civil Services (CCA) Rules, 1991, like in the case of public sector enterprises

and statutory corporations whose employees are governed by the rules framed by the respective organisations.

4. Disciplinary Authority

4.1 The Governor or any other authority empowered by him by a general or special order may institute or may direct a disciplinary authority to institute disciplinary proceedings against any Government servant.

4.2 A disciplinary authority competent to impose only a minor penalty is competent however to initiate disciplinary proceedings for a major penalty.

4.3 Rule 2(c) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 defines the term 'disciplinary authority' as the authority competent to impose on a Government servant any of the penalties specified in rule 9 or rule 10 thereof.

4.4 Competent authority should alone function as Disciplinary Authority and not a delegate of that authority.

4.5 Where charges relate to misconduct against the Disciplinary Authority, such officer cannot function as Disciplinary Authority.

4.6 An officer who detected the misconduct or one, who is a witness or complainant, cannot function as Disciplinary Authority.

5. Decision on Proceedings, Minor or Major

5.1 Once a decision has been taken after a preliminary enquiry or otherwise that a prima facie case exists and that formal disciplinary proceedings should be instituted against a Government servant under the A.P. Civil Services (CCA) Rules, 1991, the disciplinary authority will need to decide whether proceedings should be taken under rule 20 for imposing a major penalty or under rule 22 for imposing a minor penalty. It does not amount to prejudging the issue as the disciplinary authority takes the decision on the basis of the material revealed by preliminary enquiry as to

the nature of the penalty, major or minor, that may be warranted in the event of satisfactory substantiation of the charge.

5.2 The choice of the rule at this stage is a matter of vital significance. It will determine the procedure to be followed for the further conduct of the proceedings. The procedure under rule 20 is much more elaborate than that prescribed under rule 22. It will be waste of time and effort to adopt the lengthy procedure of rule 20 in cases in which only a minor penalty is indicated. In a case in which proceedings are initiated under rule 20 as for a major penalty, if after examining the report of oral inquiry the disciplinary authority considers that it would be sufficient to impose a minor penalty, he can do so. But on the basis of proceedings initiated under rule 22 as for a minor penalty, the disciplinary authority cannot impose a major penalty and would have to start proceeding for a major penalty under rule 20.

6. Advice of Vigilance Commission

6.1 Advice of the Vigilance Commission shall be sought before instituting proceedings in all cases which involve vigilance angle on the nature of proceedings to be instituted. Commission will also advise keeping in view the gravity of allegations, whether proceedings should be instituted for the imposition of a major penalty or a minor penalty and the Inquiring Authority which may be entrusted with the inquiry.

6.2 In cases enquired into by the Anti-Corruption Bureau, it sends its report to the Department through the Vigilance Commission. Simultaneously a copy of the report is sent to the Department. If Department has any comments on such a report, the same should be sent to the Commission within 21 days so that it may take into consideration the views of the Dpartment while tendering its first stage advice.

6.3 In cases where minor penalty proceedings were instituted on the advice of the Commission, consultation with the Commission at the stage of imposition of the penalty is not necessary if the disciplinary authority decides upon one of the minor penalties. A

copy of the orders imposing the penalty should be sent to the Commission. However, cases in whch the disciplinary authority decides to drop the proceedings will have to be sent to the Commission for advice. In a case where oral inquiry has been ordered for imposing minor penalty or a major penalty, the Commission should be consulted for second stage advce also after considering the inquiry report.

7. Types of Cases fit for Major Penalty Proceedings

The types of vigilance cases in which it is desirable to start proceedings for imposing a major penalty are given below as illustrative guidelines:

(i) cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a court of law eg.

  (a) possession of disproportionate assets;

  (b) obtaining or attempting to obtain, accepting or agreeing to accept illegal gratification;

  (c) misappropriation of government property, money or stores;

  (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for an inadequate consideration;

(ii) falsification of government records;

(iii) gross irregularity or negligence in the discharge of official duties with a dishonest motive;

(iv) misuse of official position or power for personal gain;

(v) disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act;

(vi) false claims on the government like travelling allowance and reimbursement claims etc.

8. Institution of Proceedings

Institution of proceedings under rule 22 or 20 of the A.P.C.S. (CCA) Rules, 1991 by issuing a charge memo or a charge sheet, is of vital significance as it is the starting point of formal proceedings and the material secured till then during the preliminary enquiry or otherwise cannot be relied upon.

9. Action under All India Services (Discipline and Appeal) Rules

9.1 Under rule 7 of the All India Services (Discipline and Appeal) Rules, 1969, disciplinary proceedings against a member of the All India Services may be instituted,—

(a) by the Government under whom he is for the time being serving, if the act or omission which has rendered him liable to a penalty was committed before his appointment to an All India Service;

(b) by the Government under whom he was serving at the time of the commission of the act or omission if the act or omission was committed after the appointment to an All India Service.

9.2 The Central Government can institute disciplinary proceedings against a member of an All India Service if the act or omission was committed while he was serving under the Central Government or while on deputation to any public sector undertaking or local authority under the Central Government. The Central Government can also initiate disciplinary proceedings against a member of an All India Service who has gone back to the State if the act or omission was committed while he was on deputation under the Centre.

9.3 A State Government can similarly institute proceedings against a member of an All India Service for the imposition of any of the penalties, including any of the major penalties, if the act or omission was committed while he was serving under the State Government.

9.4 The State Government is competent to impose any of the penalties mentioned in rule 6 of the All India Services (Discipline and Appeal) Rules, 1969 except the penalty of dismissal, removal or compulsory retirement as per rule 7(2) of the said Rules. The penalties of dismissal, removal and compulsory retirement can be imposed only by the Central Government. In cases where the State Government has conducted the disciplinary proceedings but is of the opinion that the penalty of dismissal, removal or compulsory retirement should be imposed, the State Government shall forward the record of the inquiry to the Central Government suggesting the imposition of these penalties. The Central Government may act on the evidence on record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witnesses and examine, cross-examine and re-examine such witnesses. If the Central Government do not find justification for imposing any of the penalties in a case referred to it by the State Government, the Central Government shall refer the case back to the State Government.

10. District Collector authorised to call for explanation of District officials

Government have authorised the District Collectors to call for explanation of any erring district official and after taking into consideration the explanation offered by the official, to forward the material to the Head of Department or Government for taking necessary disciplinary action. The contemplated action, however cannot be taken against officials of the All India Services or those governed by other than the Andhra Pradesh Civil Services (CCA) Rules, 1991. The District Collectors should resort to this measure sparingly and in exceptional circumstances only. (G.O. Ms.No.77 GA (Ser.C) Dept. dt.27-2-96; Memo.No.24313/Ser.C/2000 dt.26-7-2001 G.A. (Ser.C) Dept.)

11. Disciplinary Proceedings — measures to avoid delays

Government have issued the following instructions to expedite disciplinary proceedings. There should not be any delay between

the actual occurrence of the misconduct and framing of charges. Charges should be framed in clear appropriate terms, after duly verifying the records without mechanically following the draft charges. They should reflect the correct picture. Senior officers who are conversant with the facts should be cited as witnesses. The charges should be served without delay and the defence statement obtained from the official and examined with reference to the records. The Presenting Officer should be a senior officer. He should acquaint himself with the case by going through the record. The disciplinary authority should brief the Presenting Officer and furnish the records to the Inquiry Officer along with the order of appointment. There should be no delay in the submission of the inquiry report. (U.O.Note No.58445/ Ser.C/2002-2 G.A. (Ser.C) Dept. dt.24-1-2003)

12. Delay in investigation, inquiry, trial — action against those concerned

Government ordered that cases relating to corruption are to be dealt with swiftly, promptly without delay and the appropriate authorities should find out and deal with the persons responsible as and when delay is found to have been caused during the investigation, inquiry or trial. (G.O.Rt.No.1699 G.A.(Spl.C) Dept. dt.15-4-2003)

13. Departmental action — completion before retirement

Government directed that action should be instituted in time and not to allow it to be barred by 4-year limitation under rule 9 of the A.P.Revised Pension Rules, 1980. (U.O.Note No.1750/SC.D/ 79-4 G.A.(SC.D) Dept. dt.2-1-80)

14. Inquiry against Officers under suspension

Where the charged Government servant is under suspension, the fact should be specifically brought to the notice of the Inquiry Officer indicating the date from which the Government servant has been under suspension so that the Inquiry Officer may be able to give priority to such a case.

CHAPTER XXVI

MINOR PENALTY PROCEEDINGS

1. Minor Penalty, Imposition of

1.1 In the case of minor penalty, the employee should be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which action is proposed to be taken and given a reasonable opportunity of making such representation as he may wish to make against the proposal and the representation should be taken into consideration in arriving at a decision. It is not necessary to conduct an inquiry. However, if the Disciplinary Authority considers it necessary, depending on the nature of the charge, to hold an inquiry as in major penalty proceedings to arrive at the truth, he may hold such inquiry. The charged officer however has no right to demand that an inquiry should be held. After considering the representation of the employee and the record of inquiry, if any, conducted, the Disciplinary Authority may take appropriate decision on the finding and the penalty to be imposed and impose a minor penalty. Minor penalty proceedings are dealt with under Rule 22 of the Andhra Pradesh Civil Services (C.C.&A.) Rules, 1991 and Rule 10 of the All India Services (Discipline and Appeal) Rules, 1969. A memorandum may be issued in the prescribed form. (Form No.10 of Part II of Volume II)

1.2 Even though basically classified as a minor penalty, specific provision is made in the All-India Services (D&A) Rules, 1969 and Andhra Pradesh Civil Services (CCA) Rules, 1991, that an inquiry as for a major penalty shall be held where it is proposed to withhold increments of pay adversely affecting the pension or for a period exceeding three years. Supreme Court has laid down in the case of Kulwant Singh Gill that withholding of increments of pay with cumulative effect is a major penalty and it cannot be imposed without holding an inquiry, and it should therefore be so treated and A.P.C.S. (CCA) Rules were amended specifying the penalty of withholding increment with cumulative effect as a major penalty.

2. Inspection of Records

Rule 22 of the A.P. Civil Services (CCA) Rules, 1991 does not provide for the charged Government servant being given the facility of inspecting records for preparing his written statement of defence. There may, however, be cases in which documentary evidence provides the main grounds for the action proposed to be taken. Also, the records may be useful to the Government servant to understand the allegation or to deny the allegation itself or its credibility. The denial of access to records in such cases may handicap the Government servant in preparing his representation. Request for inspection of records in such cases may be considered by the disciplinary authority on merits.

3. Oral Inquiry, where considered necessary

Under rule 22(1)(b) of the A.P. Civil Services (CCA) Rules, 1991, the disciplinary authority may, if it thinks fit, in the circumstances of any particular case decide that an inquiry should be held in the manner laid down in sub-rules (3) to (23) of rule 20 of the C.C.A. Rules. In that event all the formalities beginning with framing of articles of charge, statement of imputations etc will have to be gone through. A disciplinary authority may consider holding such inquiry in a case, for example in which the Government servant desires to be heard in person or has requested for access to records or where the disciplinary authority considers it necessary to have the evidence of a number of witnesses for substantiating the allegations. In cases in which it is decided to hold an inquiry the procedure to be followed will be the same as prescribed for an inquiry in a case in which a major penalty is proposed to be imposed. A standard proforma is prescribed for issue for initiation of minor penalty proceedings in cases where the disciplinary authority decides to hold the inquiry. (Form No.15 of Part II of Volume II)

4. Passing Orders

4.1 The disciplinary authority will take into consideration the representation of the Government servant or without it if no such representation is received from him by the date specified and also

take into account such evidence as it may think fit and record its findings on each imputation of misconduct or misbehaviour.

4.2 If as a result of its examination of the case and after taking into account the representation made by the Government servant, the disciplinary authority is satisfied that the allegations have not been proved, it may exonerate the Government servant. An intimation of such exoneration will be issued to the Government servant in writing.

5. Consultation with Vigilance Commission

5.1 In a case where the Vigilance Commission was consulted at the first stage and minor penalty proceedings were instituted after taking its advice, the Commission should be consulted if it is proposed to drop the charges. A copy of the order passed should be sent to the Vigilance Commission.

5.2 In case the disciplinary authority is of the opinion that the allegations against the Government servant stand substantiated, it may impose upon him any of the minor penalties specified in rule 9 or rule 10 of the A.P. Civil Services (C.C.A.) Rules, 1991, subject to the exceptions mentioned above.

6. Record of Minor Penalty Proceedings

The record of proceedings in such cases shall include:

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry, if any inquiry is held in the manner laid down in sub-rules (3) to (23) of rule 20 of the CCA Rules, 1991.

(v) the advice of the Public Service Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.

CHAPTER XXVII

MAJOR PENALTY PROCEEDINGS

1. Procedure based on Art. 311 of Constitution

The procedure for imposition of a major penalty is based on the provisions of Art. 311 of the Constitution, according to which a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or a holder of a civil post under the Union or a State shall not be dismissed or removed or reduced in rank unless he is informed of the charges against him and an inquiry is held and he is given a reasonable opportunity of being heard in respect of the charges. Though Art.311 as such does not apply, the principles nevertheless apply to employees of Public Sector Undertakings etc. by virtue of the Fundamental Rights enshrined in Arts. 14, 16 and 21 of the Constitution.

2. Rules applicable

2.1 The disciplinary rules and procedures for departmental disciplinary proceedings are different for different categories of officers. The Rules applicable and the category of officers to which it applies are given in the statement below:

Category of Officers	*Rules applicable*
State Government servants	1. A.P.C.S.(CCA) Rules, 2. A.P.C.S. (Disciplinary Proceedings Tribunal) Act & Rules. 3. A.P. Lokayukta and Upa-Lokayukta Act & Rules.
All India Service Officers	1. All India Services (D&A) Rules. 2. Public Servants (Inquiries) Act
Public Sector Undertakings and Autonomous Bodies	Rules applicable to Undertakings/Bodies
Retired State Government servants	A.P. Revised Pension Rules
Retired All India Service Officers	AIS (DCRB) Rules

2.2 This chapter and the succeeding chapter deal with the procedure for inflcting a major penalty on a State Government servant in terms of the provisions of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules. The alternative procedure of inquiry through the Tribunl for Disciplinary Proceedings under the A.P.C.S. (D.P.T) Act and the Rules thereunder is dealt with in a separate chapter.

3. Rule 20 of APCS (CCA) Rules, 1991 — Major penalty proceedings - drastically amended on 19-12-2003

3.1 Rule 20 of the APCS (CCA) Rules, 1991 which governs the conduct of Major penalty proceedings has been drastically amended by G.O.Ms.No.383 G.A.(Ser.C) Dept. dt.19-12-2003 with the avowed object of expediting the proceedings. The changed procedure explained in this Chapter and the succeeding Chapter on "Oral Inquiry" has to be followed henceforth in respect of inquiries under these Rules.

3.2 The procedure laid down in rule 20 of the APCS (CCA) Rules, 1991 on major penalty proceedings is narrated below, followed by an interpretation of the provisions and discussion of related issues.

4. Charge Sheet

4.1 Where the disciplinary authority decides that proceedings should be instituted for imposing a major penalty, a charge memo will have to be drawn up on the basis of the material gathered during the preliminary enquiry/investigation or otherwise specifying—

(i) the articles of charge containing the substance of the imputations of misconduct or misbehaviour in a definite and distinct form;

(ii) a 'statement of the imputations' of misconduct or misbehaviour in support of each article of charge, which shall contain all relevant facts including any admission or confession made by the Government servant; and

(iii) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, together with copies of documents (extracts of voluminous documents) and copies of statements of witnesses.

4.2 The charge memo will have to be prepared or got prepared by the disciplinary authority or the cadre controlling authority who is subordinate to the appointing authority and served or caused to be served on the Government servant by the disciplinary authority or at its instance.

5. Appearance of Government servant — Statement of defence — plea of guilty or not guilty

5.1 The disciplinary authority shall require the Government servant to appear before him on a date and at a place specified, not exceeding 10 working days and submit a written statement of defence and to state whether he desires to be heard in person.

5.2 The Government servant shall appear before the disciplinary authority on the date fixed and submit his written statement of defence. The disciplinary authority shall question the Government servant whether he pleads guilty and if he pleads guilty to all or any of the articles of charge, the disciplinary authority shall record the plea under the signature of the Government servant.

6. Inquiring Authority

Where the Government servant pleads not guilty, refuses or omits to plead, the disciplinary authority shall record the plea under the signature of the Government servant and may decide to hold the inquiry itself or appoint a serving or a retired Government servant as Inquiring Authority. The choice of the Inquiring Authority in cases requiring consultation with the Vigilance Commission, will be based on his advice.

7. Presenting Officer

7.1 The disciplinary authority shall also appoint a Government servant or where he considers it necessary, a legally trained

Government servant or a legal practitioner as Presenting Officer to present the case in support of the articles of charge. The disciplinary authority shall adjourn the case to a date not exceeding five days.

7.2 The disciplinary authority shall serve copies of the orders appointing the inquiring authority and the presenting officer on the Government servant.

8. Defence Assistant

8.1 The Government servant may take the assistance of a Government servant or a legal practitioner where the presenting officer is a legal practitioner or a legally-trained Government servant.

8.2 The Government servant shall not take the assistance of a Government servant dealing with the instant inquiry or an officer to whom an appeal lies. The Government servant may take the assistance of a Government servant posted at any other station with the permission of the inquiring authority. He shall not take the assistance of any Government servant who has two pending disciplinary cases on hand in which he has to give assistance. He may take the assistance of a retired Government servant subject to conditions specified.

9. Defence Documents

9.1 The disciplinary authority shall require the Government servant to submit within five days a list of documents which he requires for his defence indicating relevance and the disciplinary authority may for reasons to be recorded in writing refuse to requisition the documents which in his opinion are not relevant.

9.2 The disciplinary authority shall forward the list to the authority having custody or possession with a requisition for production of the documents by a specified date. The authority having custody or possession of the documents shall produce the documents before the disciplinary authority but can claim privilege

on the ground of public interest or security of the State and refer to the Head of the Department or Secretary of the Department for a decision and the decision shall be informed to the disciplinary authority and the disciplinary authority shall communicate the information to the Government servant and withdraw the requisition.

10. Ex parte inquiry

Where the Government servant to whom the articles of charge has been delivered does not submit the written statement of defence by the specified date or does not appear in person, the inquiry may be started ex parte.

11. Records sent to Inquiring Authority

11.1 The disciplinary authority shall forward to the inquiring authority (i) a copy of the articles of charge and statement of imputations, (ii) a copy of the written statement of defence if any, (iii) copies of statements of witnesses (annexed to the charge sheet), (iv) copies of documents (annexed to the charge sheet), (v) evidence proving the delivery of the charge sheet and (vi) a copy of the order appointing the presenting officer.

11.2 The disciplinary authority shall also forward to the inquiring authority documents required by the Government servant for his defence as and when they are received.

11.3 The inquiring authority shall thereafter issue a notice in writing to the Government servant and the presenting officer to appear before him on a sepcified date and at a time and place not exceeding 10 days and they shall appear accordingly.

11.4 The procedure required to be followed as per the amended provisions of the major penalty proceedings under rule 20 of the APCS (CCA) Rules, 1991 is narrated above. The various aspects of the procedure and related issues are dealt with below.

12. Forum of Inquiry

12.1 Rule 20 after the amendment provides that inquiry may be conducted as per the provisions of rules 20 and 21 or as provided in the APCS (DPT) Act, 1960 or the A.P. Lokayukta and Upa-

Lokayukta Act, 1983. Inquiry under the Public Servants (Inquiries) Act, 1850 provided for earlier was omitted by the amendment. It may be noted that the All India Services (D&A) Rules, 1969, however, still provide for inquiry under the Public Servants (Inquiries) Act, 1850.

12.2 The choice of the procedure is a matter within the discretion of the disciplinary authority. The holding of an inquiry against a Government servant under the Public Servants (Inquiries) Act does not involve any discrimination and will not give him cause to question the conduct of an inquiry against him on that ground within the meaning of Article 14 of the Constitution. A person against whom an inquiry has been held under the said Act could not claim a further or a fresh inquiry under the CCA Rules. (S.A. Venkataraman vs. Union of India, AIR 1954 SC 375)

13. Copies of statements of witnesses and documents

The amendment dt. 19-12-2003 of rule 20 has provided for furnishing of copies of statements of witnesses and copies of documents relied upon (extracts where documents are voluminous), along with the charge sheet whereas the pre-amended rule provided for furnishing of copies of statements of witnesses and inspection of documents, at a later stage. Earlier the Government servant was entitled to a mere inspection of the documents, but now copies (extracts where document are voluminous) are required to be furnished to the Government servant, with the charge sheet itself.

14. Articles of Charge

14.1 A charge may be described as the prima facie proven essence of an allegation setting out the nature of the accusation in general terms, such as negligence in the performance of official duties, inefficiency, acceptance of sub-standard work, false measurement of work executed, execution of work below specification, breach of a conduct rule etc. A charge should briefly, clearly and precisely identify the misconduct / misbehavour and

the Conduct Rule violated. It should also give the time, place and persons or things involved so that the Government servant has clear notice of his involvement. It should be unambiguous and free from vagueness.

14.2 Charge should not contain expression of opinion as to the guilt of the Government servant. It should start with the word "that" to convey that it is only an allegation and not a conclusion.

14.3 The terms delinquent or delinquent officer, which may suggest prejudging of the issue should not be used but only terms like Government Servant charged, public servant charged, official/ employee charged be used.

14.4 There should be no mention of the penalty proposed to be imposed either in the Articles of Charge or the Statement of imputations.

14.5 The articles of charge should preferably be in the third person.

14.6 A separate charge should be framed in respect of each separate transaction / event or a series of related transactions/ events amounting to misconduct, misbehaviour.

14.7 If in the course of the same transaction, more than one misconduct are committed, each misconduct should be specifically mentioned.

14.8 If a transaction/event shows that the Government servant must be guilty of one or the other of misconducts, depending on one or the other set of circumstances, then the charge can be in the alternative.

14.9 Multiplication or splitting up of charges on the basis of the same allegation should be avoided.

14.10 Charge should not relate to a matter which has already been the subject matter of an enquiry and decision, unless it was based on technical considerations.

15. Statement of Imputations

15.1 The statement of imputations should embody a full and precise recitation of specific relevant acts of commission or omission on the part of the Government servant in support of each charge including any admission or confession made by the Government servant and any other circumstances which it is proposed to take into consideration. A statement that a Government servant allowed certain entries to be made with ulterior motive was held to be much too vague. A vague accusation that the Government servant was in the habit of doing certain acts in the past is not sufficient. It should be precise and factual. In particular, in cases of misconduct/misbehaviour, it should mention the conduct/behaviour expected or the rule violated. It would be improper to furnish the report of the Investigating Officer as a statement of imputations. It would not be proper to mention the defence and enter into a discussion of the merits of the case in the statement of imputations. The facts should be clear enough to support the imputations inspite of the likely version of the Government servant concerned. All material particulars such as dates, names, places, figures and totals of amounts etc should be carefully checked with reference to documents, statements of witnesses and other record and their accuracy ensured. It should not refer to the advice of the Vigilance Commission, Vigilance Department or any such agency or functionary.

15.2 The statement of imputation should contain all relevant facts given in the form of a narration. It should not refer to the preliminary enquiry report, unless relied upon, or the Anti-corruption bureau report of enquiry/investigation or the advice of the Vigilance Commission or others. (U.O. Note No.1798/SC.F/87-12 dt.22-8-89 GA (SC.F) Dept.; U.O. Note No. 1135/SC.F/92-1 dt.25-6-92 G.A. (SC.F) Dept.)

15.3 It would be convenient to draft the statement of the facts of the imputations of misconduct or misbehaviour first and based on them frame the articles of charge and pick up the witnesses and documents therefrom.

16. List of Witnesses

In the course of the preliminary enquiry, a number of witnesses are usually examined and their statements recorded. The list of such witnesses should be carefully checked and only such of them who can give evidence to substantiate the allegations should be included for examination during the oral inquiry. Others considered necessary may also be included. Care should be taken to see that the list of witnesses is complete. Copies of the statements recorded, if any, of the listed witnesses should be furnished to the Government servant with the charge sheet itself. Statements of those not relied upon by the disciplinary authority need not be furnished.

17. List of Documents

A list of documents containing evidence in support of the allegations which are proposed to be produced during the inquiry should be prepared. Individual documents should be listed. Mere mention of a file is not proper, unless the whole file is relevant. It should be seen that the list of documents is complete. Copies of the listed documents or extracts where the documents are voluminous should be furnished with the charge sheet.

18. Memorandum

The charge sheet is served on the Government servant/ member of All India Service/employee with a memorandum indicating that he is being proceeded against under Rule 20 of the A.P.C.S. (C.C.&A.) Rules, 1991, Rule 8 of the All India Services (D&A) Rules, 1969 or the corresponding rule/regulation applicable to the employee, which gives notice that major penalty proceedings are instituted against him. He is required to appear before the disciplinary authority on a date to be specified not exceeding 10 working days and submit a written statement of defence and to state whether he desires to be heard in person. He is informed that an inquiry will be held only in respect of the articles of charge not admitted by him and that he should specifically admit or deny each article of charge. He is also informed that if he fails to submit the statement of defence or fails to comply with the provisions of the Rules at any stage, the

inquiry may be held ex parte. He is warned against bringing influence to bear on the authorities on pain of action for misconduct.

19. Service of Charge Sheet

19.1 The best way of serving a charge sheet on the employee is personal service by delivering it under acknowledgment. In the alternative, the charge sheet may be sent by Regd. Post/Ack. Due to the last known address. In case the charge sheet could not be so served, it may be exhibited on the notice board, published in the official gazette or in the news papers depending on the provisions in the Rules or administrative instructions applicable. Endorsements on the postal letters to the effect, “not found”, “not traceable”, “not known”, “left”, do not amount to service, but an endorsement “refused” does. The mode of service of orders, notices and other process is prescribed under rule 42 of the APCS (CC&A) Rules 1991.

19.2 The Supreme Court laid down, in the cases of Delhi Development Authority vs. H.C. Khurana, 1993(2) SLR SC 509 and Union of India vs. Kewal Kumar, 1993(2) SLR SC 554 that charge sheet is issued when the charge sheet is framed and despatched to the employee irrespective of its actual service on the employee.

20. Standard Forms of Memorandum, Articles of Charge, Statement of Imputations

Standard proforma of articles of charge and statement of imputations and lists of witnesses and documents and the covering memorandum are prescribed (Form No.11 of Part II of Volume II) and they may be adapted. The memorandum should specifically mention the relevant rule (Rule 20 of A.P.C.S. (CCA) Rules, 1991 in the case of State Government servants) so that the Government servant gets notice that major penalty proceedings are being instituted. It should be signed by the disciplinary authority or in cases in which the Government are the disciplinary authority by an officer who is authorised to authenticate the orders on behalf of the Governor.

21. Draft Charge Sheet prepared by Anti-Corruption Bureau

In cases investigated by the Anti-Corruption Bureau, a draft of articles of charge, statement of imputations and list of documents and witnesses will be drawn up by the Anti-Corruption Bureau and sent to the Disciplinary Authority along with their report. The draft should be carefully scrutinised and any discrepancy or doubt about the correctness of any portion should be discussed and cleared with the Anti-Corruption Bureau.

22. Copy of charge memo to Anti-Corruption Bureau

Disciplinary authorities are required to furnish to the Anti-Corruption Bureau in their cases on request a copy of the charge sheet. (Memo.No.2866/SC.F/87-3 dt.13-7-89 GA (SC.F) Dept.; Memo. No. 442/SC.D/92-1 dt.3-4-92 GA (SC.D) Dept.)

23. Anti-Corruption Bureau, Vigilance Commission not to be referred to

The Departments of Secretariat are required not to make mention of the correspondence with the Anti-Corruption Bureau or Vigilance Commission in their order appointing the Inquiry Officer and also not to mark a copy of the order to Anti-Corruption Bureau but send a copy of the order to the Anti-Corruption Bureau separately. This principle should be followed in other similar situations. (U.O.Note No.1798/SC.E/87-1 G.A. (SC.E) Dept. dt.20-10-87)

24. Action on receipt of statement of defence

On a consideration of the statement of defence of the charged officer and examination of the Government servant, the Disciplinary authority can take the following course of action:

(i) He may review and modify the articles of charge, in which case a fresh opportunity should be given to the employee to submit a fresh statement of defence.

(ii) He may drop some of the charges or all the charges, if he is satisfied that there is no further cause to proceed with.

(iii) The disciplinary authority should give a finding of guilty on such of the charges as are admitted. The admission should be unequivocal, unqualified and unconditional.

(iv) He may, where he is of the opinion that imposition of a major penalty is not necessary, impose a minor penalty, on the basis of the record. But he shall not do so where the charged official has not offered a detailed explanation to the charge in the expectation that he could let in his defence in the course of the inquiry.

(v) Inquiry need be conducted into such of the charges as are not admitted.

(vi) He may conduct the inquiry himself but should refrain from doing so, unless unavoidable.

(viii) He may appoint an Inquiring Authority to inquire into the charges. He should do so only after considertion of the statement of defence.

25. Amendment to Charge Sheet

During the course of inquiry, if it is found necessary to amend the charge sheet, it is permissible to do so, provided a fresh opportunity is given to the charged Government servant in respect of the amended charge sheet. The Inquiry Officer may hold the inquiry again from the stage considered necessary so that the Government servant should have a reasonable opportunity to submit his defence or produce his witnesses in respect of the amended charge sheet. If, there is, however, a major change in the charge sheet, it would be desirable to hold fresh proceedings on the basis of the amended charge sheet.

26. Past Bad Record, consideration of

26.1 If the past bad record of imposition of a penalty, of the charged Government servant is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself. Or, in the alternative, a further charge based on the previous record should

be framed before the conclusion of the inquiry and the charged Government servant given an opportunity to meet it. If it is not done, it cannot be relied upon after the inquiry is closed and the report is submitted to the disciplinary authority and/or at the time of imposition of penalty, as clause (2) of Art.311 of the Constitution lays down that a penalty of dismissal, removal from service or reduction in rank may be imposed on the basis of the evidence adduced during the enquiry.

26.2 A mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the manner stated above, would vitiate the proceedings and should be eschewed. (G.O. Ms.No.578 dt.17-9-68 GA (Ser.C) Dept.)

27. Appointment of Inquiry Officer

27.1 If any or all of the charges have not been admitted by the Government servant in his written statement of defence or if no written statement of defence is received by the date specified, the disciplinary authority may itself inquire into such charges or appoint a Government servant serving or retired as Inquiring Authority to inquire into them. Though the A.P. Civil Services (CCA) Rules, 1991 permit such an inquiry being made by the disciplinary authority itself, the normal practice is to appoint another officer as Inquiry Officer. The officer selected should be of sufficiently senior rank and one who is not suspected of any prejudice or bias against the charged Government servant and who did not express an opinion on the merits of the case at an earlier stage. The inquiry authority could also be the Chairman, Commissionerate of Inquiries or a Member thereof (provided they are serving or retired Government servants). In all cases having a vigilance angle, during consultation with the Vigilance Commission at the first stage, the Commission would while suggesting major penalty proceedings, also indicate whether the inquiry may be entrusted to the Tribunal for Disciplinary Proceedings or to the Commissionerate of Inquiries or to a departmental Inquiry Officer.

27.2 As soon as the disciplinary authority has decided upon the person who will conduct the oral inquiry, it will issue an order

appointing him as the Inquiring Authority. A proforma is prescribed for the purpose. (Form Nos. 12, 14 of Part II of Volume II) (G.O. Ms.No.82 (Ser.C) dt.1-3-96 GA (Ser.C) Dept.; U.O.Note No.1798/ SC.F/87-12 dt.22-8-89 GA (SC.F) Dept.; U.O. Note No. 1135/SC.F/ 92-1 dt.25-6-92 GA (SC.F) Dept.; U.O.Note No.962/SC.E/97-1 dt.4-8-97 GA (SC.E) Dept.; U.O. Note No.2985/SC.E1/98-1 dt.4-1-99 GA (SC.E) Dept.; Memo. No. 46733/Ser.C/99 dt.22-10-99 GA (Ser.C) Dept.; U.O.Note No.302/Spl.B/2000-1 dt. 13-3-2000 G.A. (Spl.B) Dept.; Memo.No.8414/Ser.C/2000-4 dtg. 7-2-2001 G.A. (Ser.C) Dept.;Circular Memo.No.290/ Ser.C/ 94-2 dt.1-6-94 GA (Ser.C) Dept.)

28. Constitution of Commissionarate of Inquiries — functions under Vigilance Commission

28.1 Government have constituted a Commissionerate of Inquiries with chairman and a member in February 1989 for conducting of inquiries against Gazetted Officers of the State Government and All India Service officers serving in connection with the affairs of the State. The Commissionerate comprises a full-time Chairman and six members. (G.O. Rt.No.732 dt.22-2-89 GA (SC.F) Dept; Memo. No. 24/COI-Ch/89-2 dt.10-3-89 GA (COI.Ch) Dept.; U.O. Note No.1005/SC-E/97-3 dt.27-9-97 GA (SC-E) Dept.)

28.2 The Commissionerate of Inquiries comprising its Chairman and Commissioners/Members, hitherto functioning under the General Administration Department, now function under the administrative control of the A.P. Vigilance Commission. (G.O.Ms.No.174 dt. 9-6-2003 G.A. (SC.E) Dept.)

29. Cases that can be referred to the Commissionerate

29.1 Departments of Secretariat and Heads of Departments may entrust the following cases to the Commissionerate of Inquiries:

(a) Cases of Gazetted Officers appointed by Government and cases against Gazetted Officers enquired into by the Anti-Corruption Bureau and recommended for departmental action;

(b) Cases of Gazetted Officers in revenue-earning departments viz., Commercial Taxes, Excise, Registration and Transport Departments.

(c) Cases of Non-Gazetted Officers where a joint inquiry with a Gazetted Officer is necessary and cases of N.G.Os. involving grave charge and where Government consider it necessary to entrust to the Commissionerate. (Memo No.3037/ SC.E/ 97-1 dt.27-4-98 GA (SC.E) Dept.)

29.2 Cases of unauthorised absence should not be referred to the Commissionerate of Inquiries and should be dealt with by the disciplinary authorities themselves. (U.O.Note No.3061/SC.E/ 99-1 dt. 26-7-2000 G.A. (SC.E) Dept.)

30. Disciplinary Authority to appoint the Inquiring Authority and Presenting Officer in consultation with Chairman, Commissionerate and ensure prompt transmission of records

30.1 The disciplinary authority will appoint the Inquiring authority in consultation with the Chairman of the Commissionerate of Inquiries. The Inquiry Officer shall be a serving or retired Government servant. The disciplinary Authority will also appoint the Presenting Officer from a panel of persons prepared in consultation with the Chairman of the Commissionerate.

30.2 The disciplinary authority should ensure that all relevant records and material like copy of charge sheet, copy of written statement of defence, copy of statements of witnesses, evidence proving the delivery of the charge sheet to the charged officer and copy of the order appointing the Presenting Officer, besides copy of the order appointing the Commissioner of Inquiries or departmental Inquring Authority are furnished to the Inquiring Authority promptly (Check List No.28 of Part II of Volume II). (U.O. Note No.1005/SC-E/97-3 dt.27-9-97 GA (SC-E) Dept.; U.O. Note No.1005/SC-E/97-5 dt.1-10-97 GA (SC.E) Dept.; Memo.No.3037/ SC.E/97-1 dt.27-4-98 GA (SC.E) Dept.; U.O.Note No.800/SC.E1/ 98-1 dt.23-11-98 GA (SC.E) Dept.)

31. Powers and functions of Commissionerate

Commissioners of Inquiries are full-time inquiry officers and function in terms of the provisions of Rule 20 of the A.P.C.S. (C.C.&A.) Rules, 1991 or rule 8 of the A.I.S. (D&A) Rules, 1969 as the case may be and enjoy the same powers and discharge the same functions as a departmental inquiry officer.

32. Matters which are outside purview of Commissionerate

The Commissionerate of Inquiries is not a forum for holding an enquiry or conducting investigation against Government servants or looking into allegations made by the public and no such cases should be referred to them. (Memo.No.3431/SC.E/95-1 dt.11-12-95 GA (SC.E) Dept.)

33. Presenting Officer — clarification

33.1 The disciplinary authority which initiated the proceedings will also appoint simultaneously a Government servant or legally trained Government servant or a legal practitioner as the Presenting Officer to present on its behalf the case in support of the articles of charge before the Inquiring Authority. Ordinarily a Government servant belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer except in cases involving complicated points of law where it may be considered desirable to appoint a legal practitioner to present the case on behalf of the disciplinary authority. The Presenting Officer should be senior in rank to the charged Government servant. An officer who made the preliminary enquiry into the case should not be appointed as Presenting Officer. The order of appointment of the Presenting Officer may be issued in the form prescribed for the purpose (Form No.13 of Part II of Volume II). The Presenting Officer may also be issued a certificate of attendance for attending the hearings in the proforma prescribed for the purpose. In cases investigated or enquired into by the Anti-Corruption Bureau, the Bureau shall nominate an officer other than the one who investigated or conducted the enquiry in the case, and the disciplinary authority shall nominate the officer as Presenting Officer.

33.2 The Presenting Officer should ensure that the prescribed procedure is followed and raise written objections against any irregularities and acts of prejudice on the part of the Inquiry Officer then and there and report to the Disciplinary Authority promptly for taking up the matter with the Government. (Memo. No. 3265/SC.E/86-2 dt.6-1-87 GA (SC.E) Dept.; Memo. No.1311/SC.E/87-1 dt.25-6-87 GA (SC.E) Dept.; Memo. No. 2462/SC.E/87-6 dt.5-3-88 GA (SC.E) Dept.; Memo. No. 2866/SC.F/87-3 dt.13-7-89 GA (SC.F) Dept.; Memo.No.1470/SC.F/92-1 dt.29-8-92 GA (SC.F) Dept.; Memo.No.22/Ser.C/93-3 dt.1-5-93 G.A. (Ser.C) Dept.; Memo.No. 1455/SC.F/94-5 dt.30-8-94 GA (SC.F) Dept.)

33.3 Government instructed that all the authorities dealing with disciplinary cases investigated or inquired into by the Anti-Corruption Bureau, the Anti-Corruption Bureau shall nominate an officer other than the one who investigated or conducted an inquiry in the case and that the disciplinary authority should appoint him as Presenting Officer under CCA Rules. (Memo.No. 2780/Spl.B/2000-2 G.A.(Spl.B) Dept. dt.14-10-2002)

34. Presenting Officer to be given copies of record

The Presenting Officer should be supplied with copies of these documents and other relevant papers. He may also be given custody of the original documents sought to be produced in support of the charges. If the Government servant has submitted a written statement of defence, the Presenting Officer will carefully examine it. If there are any facts which the Government servant has admitted in his statement of defence without admitting the charges, a list of such facts should be prepared by the Presenting Officer and brought to the notice of the Inquiring Officer at the appropriate stage of the proceedings so that it may not be necessary to lead any evidence to prove the facts which the Government servant has admitted

35. Defence Assistant — clarification

35.1 The charged employee is entitled to have a Government servant as his Defence Assistant, subject to restrictions if any imposed under the Rules. He had no right to have a particular

employee as defence assistant, if the controlling authority is unable to spare his services for the purpose. No permission as such is required for the charged employee to take a Defence Assistant or for the employee concerned to function as a Defence Assistant. It is enough if the controlling authority is intimated of the fact.

35.2 In the copy of the order appointing the Presenting Officer furnished to the Government servant, the latter should be asked to finalise the selection of his Defence Assistant before the commencement of the proceedings.

35.3 If the Presenting Officer appointed by the disciplinary authority is a legal practitioner or a legally trained Government servant, the Government servant will be so informed by the disciplinary authority so that the Government servant may, if he so desires, engage a legal practitioner to present the case on his behalf before the Inquiry Officer. The Government servant may not otherwise engage a legal practitioner. In other cases, the Government servant may avail himself of the assistance of any other Government servant as defined in rule 2(e) of the A.P.Civil Services (CCA) Rules, 1991. He, however, cannot take the assistance of a Government servant who has two pending disciplinary cases on hand in which he has to give assistance. He may also take the assistance of a retired Government servant. He may take the assistance of a Government servant posted at any other station only if permitted by the inquiring authority. He shall not take the assistance of a Government servant who is dealing in his official capacity with the case of the particular inquiry.

36. Public Servants (Inquiries) Act, 1850

36.1 Ordinarily an inquiry will be made in accordance with the provisions of rule 20 of the A.P. Civil Services (CCA) Rules, 1991. It may be noted that the Public Servants (Inquiries) Act, 1850, as a forum of inquiry was omitted by the amendment of rule 20 of the APCS (CCA) Rules, 1991 and as such no inquiry can be conducted under the said Act in the proceedings against Government servants governed by the said rules. However, in

respect of an All India Service Officer, who is not removable from his office without the sanction of Government, the Disciplinary authority, which will be the Government in the case of such a Government servant may decide to make use of the procedure laid down in the Public Servants (Inquiries) Act, 1850 if it is considered that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour on his part.

36.2 There is no material difference in the scope of the two procedures which enable the Government to determine the penalty which should be imposed upon the Government servant. Like the proceedings under the C.C.A. Rules, the Commissioner appointed under the Act to make the inquiry does not constitute a judicial tribunal, though he possess some of the trappings of a court. The findings of the Commissioner upon the charge are a mere expression of opinion and do not partake of the nature of a judicial pronouncement and the Government is free to take any action it decides on the report.

36.3 The procedure under the Act is, however, distinguishable from the provisions of the disciplinary Rules in that while an inquiry made under the Act is a public inquiry, a departmental inquiry under the disciplinary rules is not so. Another distinguishing feature is that the Commissioner appointed under the Act has the power of punishing for contempts and obstructions to the proceedings and of summoning witnesses and to compel production of documents. These factors will need to be taken into account in deciding whether in any particular case the procedure of the Act should be adopted or not. An inquiry under the provisions of the Act is generally made in a case in which a high official is involved and it is considered desirable in the circumstances of the case to have a public inquiry. Generally a judicial officer like a judge of a High Court is appointed as a Commissioner to conduct an inquiry under the Act. That procedure will, however, not be found suitable in a case which might involve the disclosure of information or production of documents prejudicial to national interest or to the security of the State.

CHAPTER XXVIII

ORAL INQUIRY

1. Preliminary hearing of Inquiring Authority

1.1 The procedure laid down in rule 20 of the APCS (CCA) Rules, 1991 on oral inquiry is narrated below, followed by an interpretation of the provisions and discussion of related issues.

1.2 The Government servant and the Presenting Officer shall appear before the inquiring authority on the date fixed, and they appear accordingly.

1.3 If the Government servant informs the inquiring authority that he wishes to inspect the documents mentioned in the list of documents furnished with the articles of charge, for the purpose of preparing his defence, the inquiring authority shall order that he may inspect the documents within five days and the presenting officer shall arrange for the inspection accordingly.

1.4 The inquiring authority shall call upon the Government servant whether he admits the genuineness of any of the documents, copies (extracts) of which have been furnished to him and if he admits the genuineness of any document it may be taken as evidence without any proof by a formal witness.

1.5 The inquiring authority shall adjourn the case for inquiry to a date not exceeding ten days for production of evidence and require the presenting officer to produce the evidence by which he proposes to prove the articles of charges.

2. Evidence on behalf of Disciplinary Authority

2.1 On the dates fixed for recording the evidence, the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the disciplinary authority.

2.2 The evidence shall be recorded as far as possible on day-to-day basis till the evidence on behalf of the disciplinary authority is completed.

2.3 The witnesses shall be examined by the presenting officer and they may be cross-examined by or on behalf of the Government servant. The presenting officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the permission of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

3. New Evidence

If it appears necessary before the closure of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the presenting officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness. In such case the Government servant shall be entitled to have a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on record. New evidence shall not be permitted or called for and witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

4. Defence Evidence

4.1 When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence orally or in writing as he may prefer and to submit a list of witnesses to be examined on his behalf for which purpose the case may be adjourned to a date not exceeding five days. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence and the list of defence witnesses may be provided. The case shall be adjourned to a dae not exceeding ten days for production of defence evidence.

4.2 The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

5. Government servant questioned on evidence

The inquiring authority may after the Government servant closes his case and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

6. Arguments

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 cases, if they so desire.

7. When Disciplinary Authority is not competent

Where a disciplinary authority competent to impose any of the penalties specified in cls. (i) to (v) of rule 9 and rule 10 but not competent to impose any of the penalties specified in cls. (vi) to (x) of rule 9, has iteslf inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it is of the opinion that the penalties specified in cls. (vi) to (x) of rule 9 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last-mentioned penalties. The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall

the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government servant such penalty as it may deem fit in accordance with these rules.

8. Change of Inquiring Authority

8.1 Whenever an inquiring authority after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself. Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as provided.

8.2 A proforma is prescribed of the order of appointment of the successor inquiry officer in Form No.14 of Part II of Volume II.

9. Inquiry Report

After the conclusion of the inquiry a report shall be prepared and it shall contain —

(a) the articles of charge and the statement of the imputation of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

10. Where a different charge is established

If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original

articles of charge, it may record its findings on such article of charge: Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

11. Inquiry Officer to forward record of inquiry to Disciplinary Authority

11.1 The inquiring authority where it is not itself the disciplinary authority; shall forward to the disciplinary authority the record of inquiry which shall include

(a) the report prepared by the Inquiring Authority;

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the presenting officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

11.2 The procedure required to be followed as per the amended provisions of the oral inquiry under rule 20 of the APCS (CCA) Rules, 1991 is narrated above. The various aspects of the procedure and related issues are dealt with below.

12. Privileged Documents

12.1 The following are examples of documents, access to which may reasonably be denied:

(i) Reports of a departmental officer appointed to hold a preliminary enquiry and reports of preliminary investigation of Anti-Corruption Bureau:

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 Government servant makes a request for the production/inspection of the report of preliminary enquiry by the departmental officer or the Anti-Corruption Bureau, the Inquiry Officer should 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 20 of the A.P. Civil Services (CCA) Rules, 1989.

12.2 In the case of Vijay Kumar Nigam (dead) through Lrs. vs. State of M.P., 1997(1) SLR SC 17, the Supreme Court held that the preliminary enquiry report is not required to be supplied where it is not relied upon.

(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 servant are processed on this file. Such files are treated as confidential and access to them should be denied.

(iii) Advice of Vigilance Commission:

The advice tendered by the 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 Government servant:

The Character/Confidential Roll of the Government servant should not be shown to him.

12.3 A copy of the First Information Report registered by the Police, if any, may be made available to the Government servant, if asked for. If preliminary report of enquiry is referred to in the article of charge or statement of allegations, it has to be made available to the Government servant.

12.4 Unjust denial will amount to denial of reasonable opportunity envisaged in Article 311(2) of the Constitution. Access should 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 defence 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 the public interest or security of the State will clearly suffer.

13. Summoning of Witnesses

It is the duty of the Inquiry Officer to take all necessary steps to secure the attendance of witnesses of both sides. The Inquiry Officer, however, would be within his right to ascertain in advance from the charged Government servant what evidence a particular witness is likely to give. If the Inquiry Officer is of the view that such evidence would be entirely irrelevant to the charge against the Government servant and failure to secure the attendance of the witness would not prejudice defence, he should reject the request for summoning such a witness. In every case of rejection, the Inquiry Officer should record the reasons in full for doing so. The Supreme Court, in the State of Bombay vs. Narul Latif Khan, AIR 1966 SC 269, have observed that if the Government servant desires to examine witnesses whose evidence appears to the Inquiry Officer to be thoroughly irrelevant, the Inquiry Officer may refuse to examine such witnesses but in doing so he will have to record his special and sufficient reasons. The witnesses whom the charged Government servant proposes to examine, other than those who are found not relevant, should ordinarily be summoned by the Inquiry Officer. It is, however, not obligatory for the Inquiry Officer to insist on the presence of all such witnesses cited by the charged Government servant and to hold up proceedings until their

attendance has been secured. The inability to secure attendance of a witness will not vitiate the proceedings on the ground that the Government servant was denied reasonable opportunity. The Inquiry Officer conducting an inquiry has no power to enforce the attendance of witnesses under the provisions of the A.P. Civil Services (CCA) Rules, 1991, unless the provisions of the Andhra Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993 or the corresponding Central Act of 1972 are applicable and specifically extended to the particular inquiry. If they are official witnesses, the Head of Department or Head of Office may be approached. Action can be taken against official witnesses for failure to appear.

14. Enforcement of Attendence of Witnesses and Production of Documents

14.1 The Andhra Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1993 came into force on 2-2-1993. Every inquiring authority authorised under sec. 4 by an officer not below the rank of Secretary to Government as the State Government may designate (authorised Inquiring Authority) shall have the powers as are vested in a Civil Court under the Code of Civil Procedure under sec. 5, in respect of summoning and enforcing the attendance of any witness and examining him on oath, requiring the discovery and production of any document or other material which is producible as evidence etc.

14.2 Where, in a departmental inquiry, it is considered necessary to summon a person as a witness or to call for a document from him and the attendance of such person as a witness or production of such document may not otherwise be secured, the designated authority or Government may, on a reference from the inquiring authority, authorise the inquiring authority, under sec.4 of the Act, to exercise the powers specified in sec.5. The designated authority or Government may authorise the inquiring authority in this regard suo motu also where it considers it necessary to do so.

14.3 The inquiry officer will have to be authorised in this regard specifically in each case, and only when the circumstances warrant such a course, and then only he can exercise the powers to secure the attendance of witnesses and production of documents under the Act. The inquiry officer does not get vested with the power under the Act merely on his appointment by the disciplinary authority, as a matter of course.

14.4 Government, in exercise of the powers conferred by sec. 4 of the Act, designated the Principal Secretaries to Government and Secretaries to Government to authorise the Inquiring Authority to exercise the powers specified in sec. 5 of the Act in respect of the Departmental Inquiries pertaining to their Departments by G.O.Ms.No. 541 G.A. (Ser.C) Dept. dt. 2-11-94. By the same G.O., Government designated the Chairman, Commissionerate of Inquiries to authorise the Inquiring Authority to exercise the powers specified in sec. 5 of the Act in respect of Departmental Inquiries entrusted by the Government. Government, in exercise of the powers conferred by sec.4 of the Act, designated the Registrar, Andhra Pradesh High Court to authorise the inquiring authority to exercise the powers specified in sec. 5 of the Act in respect of departmental inquiries pertaining to Judicial department, by G.O.Ms.No. 56 G.A. (Ser.C) Dept. dt. 13-2-96.

14.5 The process issued by an authorised inquiring authority for attendance of any witness or for the production of any document shall be served and executed through the District Judge within whose jurisdiction the witness or other person resides or carries on business or personally works for gain, as per sec. 5(3) of the Act.

14.6 Government issued executive instructions regarding the procedure to be followed in summoning witnesses and prescribed the proformae of summons, request for transmission of summons, authorisation to the inquiring authority and authorisation of Notified Authority, under Memo.No. 394/Ser.C/96, G.A. (Ser.C) Dept.

dt. 3-7-96 (Form Nos. 24 to 27 of Part II of Volume II).

14.7 Government instructed that copies of statements of witnesses should, on request be furnished to the Anti-Corruption Bureau in their cases. (Memo.No. 2866/SC.F/87-3 dt. 13-7-89 G.A. (SC.F) Dept.)

14.8 There can be no objection in principle in accepting the request of the Government servant to summon the Presenting Officer or his Defence Assistant as a defence witness, if in the opinion of the Inquiry Officer their evidence is relevant to the inquiry.

14.9 The notices addressed to the witnesses will be signed by the Inquiry Officer. Those addressed to witnesses who are Government servants will be sent to the Head of Department/Office under whom the Government servant, who is to appear as witness, is working for the time being, with the request that the Head of Department/Office will direct the Government servant to attend the inquiry and to tender evidence on the date and time fixed by the Inquiry Officer. Noncompliance with the request of the Inquiry Officer by the Government servant summoned would be treated as conduct unbecoming of a Government servant and would make him liable for disciplinary action.

14.10 The notices addressed to non-official witnesses will be sent by registered post acknowledgment due. In cases emanating from the Anti-Corruption Bureau, the notices addressed to non-official witnesses may be sent to the Director General, Anti-Corruption Bureau for delivery to the witnesses concerned. The Presenting Officer, with the assistance of the Investigating Officer of the Anti-Corruption Bureau will take suitable steps to secure the presence of the State (Prosecution) witnesses on the date fixed for their examination.

14.11 A proforma is prescribed of the Notice to be issued for appearance before the Inquiry Officer as a witness. A proforma is prescribed of the certificate to be issued to the witness appearing at the inquiry. (Form Nos. 19, 20 of Part II of Volume II)

15. Presentation of Evidence on behalf of Disciplinary Authority

15.1 On the date fixed for the inquiry, the Presenting Officer will be asked to lead the presentation of the case on behalf of the disciplinary authority. The Presenting Officer will draw the attention of the Inquiry Officer to facts admitted by the Government servant in his written statement of defence, if any, so that it may not be necessary to lead any evidence to prove such facts.

15.2 The documentary evidence by which the articles of charge are proposed to be proved will then be produced by the officer having custody of documents or by an officer deputed by him for the purpose. The documents produced will be numbered as Ex.S1, Ex.S2 and so on. The Presenting Officer should not produce the documents as in that event he places himself in the position of a witness and the charged Government servant may insist on cross-examining him.

15.3 The witnesses mentioned in the list of witnesses furnished to the Government servant with the articles of charge will then be examined, one by one by the Presenting Officer. The witnesses may be numbered as S.W.1, S.W.2 and so on. During the examination, the Inquiry Officer may not allow putting of leading questions in a manner which will allow the very words to be put into the mouth of a witness which he can just echo back.

15.4 Rule 20(10)(c) of the APCS (CCA) Rules, 1991 provides that the witnesses may be examined by the Presenting Officer, whereas the corresponding rule 20(14) before amendment provided for examination of witnesses by the Presenting Officer or on his behalf.

15.5 In complicated cases involving technical aspects, it would be helpful to the Inquiry Officer as well as to the parties if the first State Witness to be called is an expert of the department concerned who may explain the background and various technicalities of the matter. The Presenting Officer should also consult the departmental experts and familiarise himself with the technical aspects of the

matter before the inquiry commences as also before the cross-examination of the defence witnesses. The departments should extend necessary help and facilities to the Presenting Officer on consulting the departmental experts and obtaining their assistance on technical aspects of the case. The technical experts, however, should not assist the Presenting Officer during actual cross-examination.

16. Cross-examination of Witnesses

16.1 The right of the Government servant to cross-examine a witness giving evidence against him in a departmental proceeding is a safeguard implicit in the reasonable opportunity to be given to him under Article 311(2) of the Constitution. But the rules of evidence laid down in the Evidence Act are, strictly speaking, not applicable and the Inquiry Officer, the Presenting Officer and the charged Government servant are not expected to act like judge and lawyers.

16.2 The scope and mode of cross-examination in relation to the departmental inquiries have not been set out anywhere. But there is no other variety of cross-examination except that envisaged under the Evidence Act. It follows, therefore, that the cross-examination in departmental inquiries should, as far as possible, conform to the accepted principles of cross-examination under the Evidence Act.

16.3 Cross-examination of a witness is the most efficacious method of discovering the truth and exposing falsehood. During the examination-in-chief, the witness may say things favourable to the party on whose behalf he tenders evidence and may deliberately conceal facts which may constitute part of the opponent's case. The art of cross-examination lies in interrogating witness in a manner which would bring out the concealed truth.

16.4 Usually considerable latitude is allowed in cross-examination. It is not limited to matters upon which the witness has already been examined-in-chief, but may extend to the whole case. The Inquiry Officer may not ordinarily interfere with the discretion of the cross-examiner in putting questions to the witness.

However, a witness summoned merely to produce a document or a witness whose examination has been stopped by the Inquiry Officer before any material question has been put is not liable to cross-examination. It is also not permissible to put a question on the assumption that a fact was already proved. A question about any matter which the witness had no opportunity to know or on which he is not competent to speak may be disallowed. The Inquiry Officer may also disallow questions if the cross-examination is of inordinate length or oppressive or if a question is irrelevant. It is the duty of the Inquiry Officer to see that the witness understands the question properly before giving an answer and of protecting him against any unfair treatment.

17. Re-examination of Witnesses

After cross-examination of witness by or on behalf of the Government servant, the Presenting Officer will be entitled to re-examine the witness on any points on which he has been cross-examined but not on any new matter without the leave of the Inquiry Officer. If the Presenting Officer has been allowed to re-examine a witness on any new matter not already covered by the earlier examination/cross-examination, cross-examination on such new matter covered by the re-examination, may be allowed.

18. Examination of Witness by Inquiry Officer

After the examination, cross-examination and re-examination of a witness, the Inquiry Officer may put such questions to the witness as he may think fit. The witness may then be cross-examined by or on behalf of the Government servant with the leave of the Inquiry Officer on matters covered by the questions put by the Inquiry Officer.

19. Where a witness turns hostile

19.1 If a Government servant who had made a statement in the course of a preliminary enquiry changes his stand during his examination at the inquiry and gives evidence which is materially different from his signed statement recorded earlier, his conduct

would constitute violation of rule 3(1) and (2) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 and disciplinary action should invariably be taken against such Government servants.

19.2 The Inquiry Officer may permit the party calling a witness to treat him as hostile and cross-examine him, when there is anything on record or in the testimony of the witness to show that there is material deviation.

19.3 Government servants are liable to be proceeded against for misconduct in violation of rule 3(1), (2) of the A.P.C.S. (Conduct) Rules, 1964, where having given a statement under sec.164 Cr.P.C. or having given a signed statement or being signatories to a mediators report as panch witnesses, deviate from the same materially in a departmental inquiry. (Memo. No.1886/SC.D/74-1 dt.29-10-74 GA (SC.D) Dept.)

20. Recording of Evidence

20.1 A typist may type the deposition of witness to the dictation of the Inquiry Officer.

20.2 The deposition of each witness will be taken down on a separate sheet of paper at the head of which will be entered the number of the case, the name of the witness, his age, parentage, calling etc about his identity.

20.3 The deposition will generally be recorded as narration but on certain points it may be necessary to record the question and answer verbatim.

20.4 As examination of each witness is completed, the Inquiry Officer will read the deposition as typed to the witness in the presence of the Government servant and/or the defence assistant or his legal practitioner as the case may be. Verbal mistakes in the typed depositions, if any, will be corrected in their presence. However, if the witness denies the correctness of any part of the deposition, the Inquiry Officer may, instead of correcting the deposition, record the objection of the witness. The Inquiry Officer will record and sign the following certificate at the end of the deposition of each witness:

"Read over to the witness in the presence of the charged officer and admitted correct/objection of witness recorded"

20.5 The witness will be asked to sign each page of the deposition. The charged Government servant when he examines himself as defence witness, should also be required to sign his deposition. If a witness refuses to sign the deposition, the Inquiry Officer will record this fact and append his signature.

20.6 If a witness deposes in a language other than English but the deposition is 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 deposition was translated and explained to the witness in the language in which the witness deposed.

20.7 Copies of the depositions will be made available at the close of the inquiry each day to the Presenting Officer as well as to the charged Government servant.

20.8 The documents exhibited and the depositions of witnesses will be kept in separate folders.

21. Additional Evidence on behalf of Disciplinary Authority

21.1 Before the close of the case on behalf of the disciplinary authority, the Inquiry Officer may, in his discretion allow the Presenting Officer to produce new oral or documentary evidence not included in the lists of documents and witnesses given to the Government servant with the articles of charge. In such a case the Government servant will be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiry Officer will also give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Government servant may also be allowed to produce new evidence, if production of such evidence is considered necessary in the interest of justice.

21.2 The Inquiry Officer may also, at his discretion permit the Presenting Officer to recall and re-examine any witness. In such a case, the Government servant will be entitled to cross-examine such witness again on any point on which that witness has been re-examined.

21.3 The production of further evidence and/or re-examination of a witness will not be permitted to fill up any gap in the evidence but only when there is an inherent lacuna or defect in the evidence which had been produced originally. The Presenting Officer should, therefore, when he finds that there is any inherent lacuna or defect in the evidence and that fresh evidence to remove the defect or lacuna is available or that the position can be clarified by recalling a witness, make an application to the Inquiry Officer to that effect.

22. Defence of Government servant

22.1 After the closure of the case for the disciplinary authority, the Inquiry Officer will ask the Government servant to state his defence orally or in writing, as he may prefer. If the defence is made orally, it will be recorded and the Government servant will be required to sign the record. If he submits his defence in writing, every page of it should be signed by him. In either case a copy of the statement of defence will be given to the Presenting Officer.

22.2 Rule 20(12)(a) of the A.P. Civil Services (CCA) Rules, 1991 provides that “when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence .....”. In regard to the use of the word “shall” in sub-rule (12)(a), a question arises whether the Inquiry Officer can waive the provision of the sub-rule and proceed with the case where the charged Government servant fails to submit his defence. It is considered that the Government servant shall be formally called upon to state his defence and it is up to him to make or not to make a statement and the Inquiry Officer cannot compel him to state his defence if he does not wish to do so.

23. Evidence on behalf of Government servant

23.1 The defence witnesses summoned by the Inquiry Officer will then be produced on behalf of the Government servant one by one. The documents produced by the defence will be numbered Ex.D1, Ex.D2 and so on and the witnesses who give oral evidence will be numbered as D.W.1, D.W.2 and so on.

23.2 Each witness will be examined by the Government servant or on his behalf by his Defence Assistant or legal practitioner as the case may be. The witness may be cross-examined by the Presenting Officer and may then be re-examined by or on behalf of the Government servant on any points on which the witness has been cross-examined but not on any new matter without the leave of the Inquiry Officer. After the examination and cross-examination and re-examination of a witness, the Inquiry Officer may also put such questions to him as he may think it fit. In that event the witness may be re-examined by or on behalf of the Government servant and cross-examined by the Presenting Officer with the leave of the Inquiry Officer on matters covered by the questions put by the Inquiry Officer.

23.3 The Government servant may offer himself as his own witness. In that case, he may allow himself to be examined by his Defence Assistant or legal counsel as the case may be or he may make a statement as a witness. In such a case the Government servant will be liable to cross-examination by or on behalf of the Presenting Officer and examination by the Inquiry Officer in the same way as other witnesses. If the Government servant does not offer himself as his own witness, this fact may not be relied upon by the Presenting Officer to deduce therefrom his guilt in any way.

23.4 The record of their depositions will be made and signed and made available to the parties concerned in the same way as described in the above paragraphs.

23.5 If the charged Government servant wants to examine the Presenting Officer as a defence witness, there can be no objection in principle in accepting the request. In such an event,

he cannot function simultaneously as a Presenting Officer while deposing as a defence witness and another officer can be authorised to cross-examine him. He can resume his functions as Presenting Officer after his examination as defence witness was over.

24. Fresh Evidence on behalf of Government servant

Before the close of the case on his behalf, the Government servant may request for permission to produce a witness or a document not included in the list of witnesses and documents furnished by him earlier and the Inquiry Officer may permit the examination of a fresh witness or production of a fresh document if in the opinion of the Inquiry Officer, it is necessary in the interest of justice. Such fresh evidence on behalf of the Government servant will be permitted only if there is an inherent lacuna or defect in the evidence produced originally and not to fill any gap in the evidence.

25. Examination of Government servant by Inquiry Officer

After the Government servant closes his case, the Inquiry Officer should question the Government servant generally for the purpose of enabling him to explain any circumstances appearing in the evidence against him. But if the Government servant has examined himself as a witness, the Inquiry Officer has discretion whether or not to question the Government servant.

26. Oral Arguments/Written Briefs

After the completion of the production of evidence on both sides, the Inquiry Officer may hear the Presenting Officer and the charged Government servant or permit them to file written briefs of their respective cases, if they so desire. In the case of written briefs, the Presenting Officer should submit his brief first and furnish a copy thereof to the charged Government servant and the charged Government servant will thereafter submit his written brief. (Collector of Customs vs. Mohd. Habibul, 1973(1) SLR CAL 321)

27. Inquiry Officer to assess evidence and give findings

27.1 In his report, the Inquiry Officer should discuss and assess the evidence on record and give reasons for his findings. Mere

incorporation of extracts of statements of witnesses or a summary of the evidence does not meet the requirements.

27.2 Findings should be based on the evidence adduced during the inquiry and brought on record. He should not take any extraneous material not forming part of the proceedings into consideration or impart his personal knowledge to the inquiry.

27.3 Evidence of a hostile witness need not be disregarded totally and can be taken into consideration. (U.O.Note No.1615/ SC.E1/98-1 dt.11-9-98 GA (SC.E1) Dept.)

27.4 The Inquiry Officer should give findings whether the charged Government servant is guilty of the charge or not guilty. He may give a finding that the charge is proved in part, if the charge is not proved in its entirety and only some of the aspects of the charge are proved. There is no question of giving benefit of doubt. The proof required is preponderance of probability.

28. Requests, Representations etc during Inquiry

Representations are made by both sides during the course of the inquiry. The Inquiry Officer should pass appropriate orders and place them on record.

29. Daily Order Sheet

The Inquiry Officer should maintain Daily Order Sheet in which should be recorded in brief the day-to-day transaction of business including date, time, venue of inquiry and progress of inquiry. A gist of the representations made and the orders passed thereon should also be recorded therein.

30. General Principles

30.1 The provision of the Indian Evidence Act and the Criminal Procedure Code are not applicable to the departmental enquiries. The spirit of these enactments should, however, be followed in departmental enquiries. The Inquiry Officer should afford reasonable opportunity to both sides to present their respective cases including full opportunity for cross-examining witnesses.

30.2 In Gabrial vs. State of Madras, the Madras High Court set out the requirements of an enquiry in the following terms:

"All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards. One is that the person proceeded against must be given a fair and reasonable opportunity to defend himself. Another is that the person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stages of enquiry, but also in dealing with the evidence and the material on record when drawing up the final order. A further requirement is that the conclusion must be rested on the evidence and not on matters outside the record. And, when it is said that the conclusion must be rested on the evidence, it goes without saying that it must not be based on a misreading of the evidence. These requirements are basic and cannot be whittled down, whatever be the nature of the inquiry, whether it be judicial, departmental or other".

30.3 In disciplinary proceedings in disproportionate assets cases a presumption of corruption fairly and reasonably arises against an Officer who cannot account for his wealth disproportionate to his known sources of income and accordingly, the Inquiry Officer can hold that such assets were amassed by the Government servant in a corrupt way.

30.4 Evidence in the form of affidavits, cannot be ruled out in departmental proceedings. At the same time, it cannot be taken as conclusive. The person swearing to the affidavit may be called for cross-examination and the value to be attached to an affidavit should be decided in each case on merits on the basis of the totality of evidence including the results of the cross-examination etc.

30.5 The standard of proof required in a departmental oral inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has given clear rulings to that effect that a disciplinary proceedings is not a criminal trial

and that the standard of proof required in a disciplinary enquiry is that of preponderance of probability and not proof beyond a reasonable doubt (Union of India vs. Sardar Bahadur, 1972 SLR SC 355 State of A.P. vs. Sree Rama Rao AIR 1963 SC 1723 and Nand Kishore Prasad vs. State of Bihar and others 1978(2) SLR SC 46)

31. Report of Inquiry Officer

31.1 An oral inquiry is held to ascertain the truth or otherwise of the allegations and is intended to serve as the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Government servant is called for.

31.2 The findings of the Inquiry Officer must be based on evidence adduced during the inquiry and in respect of which the Government servant had an opportunity to rebut. While the assessment of documentary evidence should not present much difficulty, to evaluate oral testimony the evidence has to be taken and weighed together, including not only what was said and who said it, but also when and in what circumstances it was said, and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour. The Inquiry Officer who actually records the oral testimony is in the best position to observe the demeanour of a witness and to form a judgment as to his credibility. Taking into consideration all the circumstances and facts, the Inquiry Officer as a rational and prudent man has to draw inferences and to record his reasoned conclusion as to whether the charges are proved or not.

31.3 The Inquiry Officer should take particular care to see that no evidence which the charged Government servant had no opportunity to refute is relied on against him. No material from the personal knowledge of the Inquiry Officer should be imported into the case.

31.4 The report of the Inquiry Officer should contain:

(i) an introductory paragraph in which reference is made about the appointment of the Inquiry Officer and the dates on which and the places where the inquiry was held;

(ii) charges that were framed;

(iii) charges which were admitted or dropped or not pressed, if any;

(iv) charges that were actually inquired into;

(v) brief statement of facts and documents which have been admitted;

(vi) brief statement of the case of the charged Government servant in respect of the charges inquired into;

(vii) brief statement of the defence;

(viii) points for determination;

(ix) assessment of the evidence in respect of each point set out for determination and the finding thereon;

(x) finding on each article of charge.

31.5 Government evolved a format of Inquiry Report for guidance (Form No.22 of Part II of Volume II). (Cir. Memo. No. 56183/Ser.C/99 dt.15-10-99 GA (Ser.C) Dept.)

32. Role and Responsibility of Disciplinary Authority

In a departmental action, the disciplinary authority is the sole judge and he is in the picture throughout from the beginning to the end. The disciplinary authority verifies the allegation by conducting a preliminary enquiry himself or getting it done, decides on instituting disciplinary proceedings, frames charges against the Government servant, considers the statement of defence and decides to hold an inquiry and conducts a regular inquiry or gets it done by appointing an Inquiry Officer for the purpose and appoints a Presenting Officer to present the case in support of the charges on his behalf and the

Presenting Officer examines witnesses in support of the charges on behalf of the disciplinary authority, obtains representation of the charged Government servant on the inquiry report and finally arrives at a finding of guilty even in disagreement with the findings of the Inquiring Authority and imposes a penalty. The disciplinary proceedings are thus entirely different from criminal trials, where the prosecuting authority will have to appear before a neutral third-party Judge or Magistrate. (Memo.No.24637/Ser.C/2000-2 G.A. (Ser.C) Dept. dt.5-9-2000)

33. Record of Major Penalty Proceedings

33.1 The Inquiry Officer may maintain the record in a major penalty proceedings in the following folders:

(i) a folder containing:

  (a) list of exhibits produced in proof of the articles of charge;

  (b) list of exhibits produced by the charged Government servant in his defence;

  (c) list of witnesses examined in proof of the charges;

  (d) list of defence witnesses.

(ii) a folder containing depositions of witnesses arranged in the order in which they were examined;

(iii) a folder containing exhibits;

(iv) a folder containing daily order sheet;

(v) a folder containing written statement of defence, if any, written briefs filed by both sides, application, if any, made in the course of the inquiry with orders thereon and orders passed on any request or representation orally made.

33.2 The Inquiry Officer will forward to the disciplinary authority his report together with the record of the inquiry including the exhibits. Spare copies of the report may be furnished, as many

copies as the number of charged Government servants, and one more copy for the Anti-Corruption Bureau in cases investigated by them.

33.3 The Inquiry Officer, after signing the report, becomes functus officio and cannot thereafter make any modification in the report.

34. Functions and Powers of Inquiry Officer

The following are the functions which an Inquiry Officer will have to discharge and powers which he can exercise in the conduct of an inquiry:

(1) There should be a proper order of appointment issued by the Disciplinary authority in respect of the inquiry in his favour and the Inquiry Officer should check up the order to satisfy himself that it is properly worded and signed by the competent authority.

(2) Any employee (superior in rank) or a public servant or any other person can be appointed as Inquiry Officer, as the case may be, as provided under the Rules.

(3) Inquiry Officer can proceed with the inquiry, except when there is a specific order of stay issued by Court.

(4) Inquiry Officer is a delegate of the Disciplinary Authority.

(5) Inquiry Officer cannot delegate power of conducting inquiry.

(6) Inquiry Officer is not subject to the directions of the Disciplinary authority or his own superior officers in the conducting of the inquiry.

(7) A witness cannot be Inquiry Officer.

(8) Inquiry Officer should stay the proceedings where bias is alleged against him and await orders of competent authority. Bias should have existed before the enquiry had started.

(9) He should check up whether the enclosures to the charge memo and other records are received.

(10) Venue of inquiry should normally be the place where witnesses and documents are readily available, but any other place can be fixed according to the requirements of the case and convenience of the parties.

(11) Inquiry Officer should ensure that the charged employee is given facilities to inspect the documents listed in the charge and is furnished copies of prior statements of listed witnesses.

(12) He should arrange for production of documents required by the charged employee for his defence. He can reject the request to summon documents considered not relevant to the inquiry, and in such a case he should record reasons for rejecting the request. Where the competent authority claims privilege, he is bound by such decision and he cannot demand their production.

(13) Inquiry Officer can reject the request to call any witnesses cited by the delinquent, if their examination is considered irrelevant or vexatious or causes harassment or embarrassment.

(14) Inquiry Officer may summon defence witnesses and write to the employer and not merely leave it to charged employee to produce them.

(15) Charged employee can examine himself as a witness in his own behalf in which case he can be subjected to cross-examination on behalf of the disciplinary authority.

(16) At the preliminary hearing, he should apprise the charged employee, the defence assistant, if any, and the presenting officer, of the procedure of the inquiry and draw up a programme in consultation with them.

(17) The charged employee may be asked whether he would admit the genuineness and authenticity of the listed documents, and admitted documents may be marked as exhibits straightaway. This would obviate the necessity of examining witnesses to prove them.

(18) Depositions of witnesses may be recorded in a narrative form. Wherever considered necessary, question and answer may be recorded verbatim. The statement should be read over to the deponent, and corrections if any made in the presence of both sides. The signature of witness should be obtained on each page and the Inquiry Officer should also sign on each page. At the end, the Inquiry Officer should record the following certificate:

"Read over to the witness in the presence of the charged officer and admitted by him as correct/Objection of the witness recorded."

(19) During the examination of a witness, the Inquiry Officer should see that the witness understands the question before answering. If he gives evidence in a language other than English, it shall be correctly translated into English and recorded, unless recorded in the language spoken. If the witness deposes in a language other than English and the deposition is recorded in English the deposition should be translated in the language in which it is made and read over to the witness and a certificate recorded as follows: "Translated and read over to the witness in — (mention the language) and admitted by him to be correct."

(20) Leading questions i.e. questions suggesting answers to the witness should not be allowed in chief-examination or reexamination, unless such questions relate to matters which are introductory or undisputed or which have already been sufficiently proved.

(21) Inquiry Officer may record the demeanour of the witnesses wherever considered necessary and discuss it in his report.

(22) Inquiry Officer may put such questions, as he deems fit, to witnesses for obtaining clarification on any point, but he shall not cross-examine witnesses.

(23) The Inquiry Officer may permit the party calling a witness to treat him as hostile and cross-examine him, when the witness

deviates from his previous statement or from the material on record. In such a case, the Inquiry Officer should discuss the evidence of such hostile witness while rejecting or accepting it, in the inquiry report.

(24) Where a number of witnesses to an incident or any aspect are cited in the charge sheet, there is no obligation to call all of them. Presenting Officer has discretion as to which of them should be called and the Inquiry Officer cannot interfere with his discretion unless it is shown that there is some oblique motive for not examining them.

(25) Combined statements of two or more witnesses should not be recorded. Separate statement should be recorded of each witness.

(26) No other witness or outsider shall be allowed during the examination of each witness.

(27) Previous statements recorded during preliminary enquiry, investigation, trial cannot be relied upon, unless those witnesses are produced for cross-examination.

(28) Inquiry Officer has no power to compel the attendance of witnesses and production of documents, unless the provisions of the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, are applicable and specifically extended to the inquiry. If they are official witnesses, the head of the department or office may be requested. Action can be taken against official witnesses for failure to appear.

(29) Before the close of the evidence on behalf of the disciplinary authority, the Inquiry Officer may in his discretion allow the Presenting Officer to produce evidence not included in the list and may himself call for new evidence or recall and reexamine any witness. In such a case he shall make available to the charged employee a list of the further evidence and allow him to inspect the documents and adjourn the

inquiry. He may also allow the charged employee to produce new evidence, if he is of opinion that production of such evidence is necessary in the interests of justice.

(30) If the past bad record of the charged employee is to be considered for the purpose of determining the quantum of penalty, he should be informed of the same and given a chance to explain, and in the case of persons to whom Art. 311(2) applies, the past record should be made subject matter of specific charge in the charge sheet itself.

(31) Inquiry Officer should examine the charged employee on the circumstances appearing against him in the evidence on record to enable him to explain them.

(32) Inquiry Officer cannot cross-examine the charged employee or put incriminating questions.

(33) Arguments may be heard on both sides. Where written briefs are submitted, it is necessary that a copy of the brief of the Presenting Officer is furnished to the charged employee before the latter is asked to submit his own.

(34) Inquiry Officer is well within his right to regulate the inquiry in such a manner as to cut out delay, but in the process cannot refuse oral or documentary evidence relevant to his case which the charged employee wants to lead in his defence. He can check and control cross-examination of witnesses, if made in irrelevant manner.

(35) Inquiry Officer examining himself as a witness cannot continue as Inquiry Officer.

(36) Where there is no provision for appointment of a Presenting Officer or where a Presenting Officer is not appointed, Inquiry Officer can discharge the functions of Presenting Officer.

(37) Adjournment may be granted where there are weighty reasons and the Inquiry Officer is satisfied about the genuineness and bonafides of the request. Reasons for rejecting the request for

adjournment should be recorded and a mention made in the Daily Order Sheet.

(38) Representations received from both sides should be kept in separate files.

(39) A daily order sheet should be maintained where the day-to-day transaction of business including date and time, venue of inquiry and brief particulars of progress of inquiry should be recorded.

(40) A gist of representations and requests of charged employee and Presenting Officer and orders passed thereon should be recorded in the Daily Order Sheet.

(41) Orders passed by the Inquiry Officer on any issue in the course of the inquiry, are not appealable.

(42) Where, during the course of the inquiry, the Inquiry Officer is succeeded by another Inquiry Officer, the successor shall proceed with the inquiry from the stage at which it was left by the predecessor, unless he considers it necessary to recall and reexamine any of the witnesses already examined.

(43) Inquiry Officer should not take any extraneous material or material not brought on record in the inquiry, into consideration.

(44) Inquiry Officer should not refer to the preliminary enquiry report or report of investigation by the police or any other record or documents, when they are not part of the record of inquiry.

(45) Inquiry Officer should not make any reference to advice of any legal or other officer, or act on such advice.

(46) Inquiry Officer should not impart his personal knowledge into the inquiry.

(47) For any decision taken and orders passed on any matter in the course of the inquiry, cogent reasons should be given in justification in writing and placed on record.

(48) Inquiry Officer should discuss and assess the evidence, oral

and documentary, on record and give reasons for the findings arrived at by him. Mere incorporation of extracts of statements or a summary of evidence does not meet the requirements.

(49) Findings on the charges should be based entirely on the evidence adduced during the inquiry.

(50) Inquiry Officer should give his findings on each charge.

(51) Inquiry Officer cannot recommend penalty.

(52) The approach of the Inquiry Officer in arriving at a decision on any issue should be that of a reasonable man taking a reasonable view of the matter.

(53) Inquiry Officer should just do what is “lawful” without being “legalistic”.

CHAPTER XXIX

COMMON PROCEEDINGS, EX PARTE PROCEEDINGS, TIME LIMITS ETC.

1. Common Proceedings

1.1 Where two or more Government servants are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all the Government servants may make an order directing that disciplinary action against all of them be taken in a common proceedings under rule 24 of the Andhra Pradesh Civil Services (CCA) Rules, 1991. If the authorities competent to impose the penalty of dismissal from service on such Government servants are different, an order for common proceedings may be made by the highest of such authorities with the consent of the others. The order should specify:—

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;

(ii) the penalties which such disciplinary authority will be competent to impose;

(iii) whether the proceedings shall be instituted as for a major penalty or for a minor penalty.

1.2 Proformae are prescribed for order for taking disciplinary action, order for appointment of Inquiring Authority and order for appointment of Presenting Officer in common proceedings. (Form Nos. 16,17,18 of Part II of Volume II)

1.3 Common proceedings cannot be instituted if one of the Government servants involved has retired from service. Proceedings against the retired person will have to be held under rule 9 of the Andhra Pradesh Revised Pension Rules, 1980 and against the persons in service in terms of rule 24 of the A.P. Civil Services (CCA) Rules, 1991. The oral inquiry against them in such a case should be entrusted to the same Inquiring Authority. Common proceedings, when once commenced can however be continued

even if one of the persons retires from service in the course of the proceedings. The proceedings will have to be suspended if one of them dies or is dismissed or removed or compulsorily retired from service.

1.4 In the case of Vijay Kumar Nigam (dead) through Lrs. vs. State of M.P., 1997(1) SLR SC 17, the Supreme Court held that taking into account the statement of the co-charged official in common proceedings in adjudging misconduct, is not objectionable.

1.5 A common proceeding against the accused and accuser is an irregularity and it should be avoided.

1.6 There may be cases where two or more persons concerned therein are governed by different disciplinary Rules. In such cases proceedings will have to be instituted separately in accordance with the respective Rules applicable to each one of them and such public servants cannot be dealt with in a common proceeding. (G.O. Ms. No.82 dt.1-3-96 GA (Ser.C) Dept.; Memo.No.59391/Ser.C/2000-2 dt.11-1-2001 G.A. (Ser.C) Dept.)

2. Ex parte Proceedings

2.1 Occasions may arise when the charged Government servant fails, omits or refuses to be present during inquiry proceedings, despite proper notice to him. Under such circumstances the Inquiry Officer is left with no alternative but to hold the proceedings ex parte, i.e. in the absence of the charged Government servant.

2.2 If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiry Officer or otherwise fails or refuses to comply with the provisions of the A.P.Civil Services (CCA) Rules, 1991, the Inquiry Officer may hold the inquiry ex parte. If the Government servant does not avail himself of the opportunity given to him to explain any facts or circumstances which appear against him, the Inquiry Officer will be justified in proceeding ex parte.

2.3 Where proceedings are conducted ex parte, the Inquiry Officer should record the reasons why he is proceeding ex parte.

2.4 In an ex parte proceeding the full inquiry has to be held i.e. the witnesses and documents should be produced and evidence recorded, as in the normal course. Notice of each hearing should be sent to the Government servant and he is at liberty to take part in the inquiry at any stage of the proceedings. If he has not attended the inquiry at one stage, it does not take away his right to attend the inquiry at any subsequent stage. It shall not be necessary to repeat the proceedings already taken lawfully.

2.5 Where the Government servant absconds and it is not possible to trace him, efforts should be made to serve the charges in the manner prescribed and inquiry conducted in his absence ex parte.

3. Proceedings against Officers borrowed or lent

3.1 Where the services of a Government servant have been lent or borrowed by one department to or from another department or have been lent to or borrowed from the Government of India or the Government of another State or an authority subordinate thereto or a local or other authority, the borrowing authority will have the powers of the disciplinary authority for initiating disciplinary proceedings against the Government servant. The lending authority will, however, be informed forthwith of the circumstances leading to the commencement of the disciplinary proceedings. Even if the misconduct was committed while the officer was serving under the lending authority, the borrowing authority is competent to initiate action in respect of such misconduct.

3.2 If the borrowing authority, who has the powers of the disciplinary authority for the purposes of conducting a disciplinary proceedings against him is of the opinion that any of the minor penalties specified in clauses (i) to (v) of rule 9 or in rule 10 of the A.P. Civil Services (CCA) Rules, 1991 should be imposed, it may make such orders on the case as it deems necessary after consultation with the lending authority. In the event of difference of opinion between the borrowing authority and the lending authority,

the services of the Government servant will be replaced at the disposal of the lending authority.

3.3 If in the light of the findings in the Disciplinary proceedings conducted against the Government servant, the borrowing authority at whose instance the proceedings were instituted is of the opinion that any of the major penalties should be imposed on the Government servant, it will replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it may deem necessary. The lending authority may, if it is also the disciplinary authority, pass such orders thereon as it may deem necessary, or if it is not the disciplinary authority submit the case to the disciplinary authority which will pass such orders on the case as it may deem necessary. The disciplinary authority may make an order on the basis of record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry, as it may deem necessary.

4. Action against Government servant after return to Central Government

If a Central Government servant while on deputation to the State Government commits a misconduct which is noticed only after his reversion to the Central Government, the disciplinary authority under whose control he was employed may make a preliminary enquiry and forward the relevant records to the Central Government for institution of disciplinary proceedings and further necessary action. It is necessary to do so, as rule 31 of the A.P. Civil Services (CCA) Rules, 1991 is not applicable for instituting proceedings against a Central Government servant, whose services have since been replaced at the disposal of the Central Government.

5. Previous sanction of Government necessary for removal etc. of Inspector and below of A.C.B., Vigilance and Enforcement and Institution of Lokayukta and Upa-Lokayukta

5.1 Police Officers of and below the rank of Inspector of Police of Anti-Corruption Bureau, Vigilance and Enforcement Department and Institution of Lokayukta and Upa-lokayukta cannot be

compulsorily retired, removed or dismissed from service during the period of their service with the Bureau etc. and for a period of 3 years thereafter except with the prior sanction of the State Government, as per Rule 27 of the A.P.C.S. (C.C&A) Rules, 1991. No such sanction is required for imposition of the penalty for any act done prior to the said employment.

5.2 Permission of the Vigilance Commission is necessary for transfer of the above-mentioned officers before tenure ends.

6. Order passed by Inquiry Officer not appealable

6.1 Order passed by the Inquiry Officer on any issue in the course of the inquiry, any order of an interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceedings, are not appealable and hence the question of granting an adjournment on account of going in appeal against such an order does not arise. However, where bias is alleged, Inquiry Officer should stay the proceedings and await orders of the competent authority, as bias is alleged against him and doing so would amount to being a judge in his own cause.

6.2 Adjournment may be granted where there are weighty reasons and the Inquiry Officer is satisfied about the genuineness and bonafides of the request.

6.3 Proceedings need not be adjourned or stayed in the following circumstances:

i) on receipt of a notice under Sec.80 of Civil Procedure Code;

ii) on receipt of intimation that the impugned officer proposes to file a writ petition;

iii) on receipt of a mere show-cause notice (or rule nisi) from a court asking —

   a) why the petition should not be admitted; or

   b) why the proceeding pending before disciplinary authority/ inquiring authority should not be stayed;or

c) why the writ or an order should not be issued.

6.4 The proceedings should be stayed only when a court of competent jurisdiction issues an injunction or clear order staying the same.

6.5 No disciplinary proceedings, however, should be started subsequent to the initiation of the court proceedings, if they have the effect of deterring or intimidating the petitioner from proceeding with the court case.

7. Time-limits for various stages of inquiry

7.1 The Government had fixed time limits for disciplinary proceedings under rule 20 of the APCS (CCA) Rules, 1991. In view of the amendment of this rule (on 19-12-2003) this is in need of review. However, the general necessity is that a departmental enquiry should be finalised in all respects in six months except in rare cases where number of witnesses go up to 30 or 40 in which case the time limit can be longer.

7.2 One reason for the delay in completing departmental enquiries within time limit is taking unreasonable time by the disciplinary authorities or appellate authority in disposing the representation of the charged officer alleging bias against the Inquiry Officer. The disciplinary authorities or Appellate authority should, therefore, decide the representation of the Charged Officer within fifteen days after receipt of the representation of the Charged Officer failing which an adverse view will be taken against the concerned authority.

7.3 Government reiterated that the Secretaries or Principal secretaries to Government shall review the progress of the enquiries ordered in all disciplinary cases and submit a note on the cases pending beyond the stipulated time to the Chief Secretary to Government and also to the Chief Minister.

7.4 The Government further directed that not more than one week time shall be taken to seek the concurrence of the Service Commission.

7.5 The Government further clarified that the time schedule shall also apply to the departmental proceedings instituted against retired Government servants. (Memo.No. 23537/Ser.C/99-5 dt.28.7.99 G.A.(Ser.C) Dept.; Memo.No.51883/Ser.C/2002-2 G.A. (Ser.C) Dept. dt.19-12-2002; Memo.No. 82494/Ser.C/2003 G.A. (Ser.C) Dept. dt.28-7-2003)

8. Relaxation of Time-limit and Condonation of Delay

The authority competent to make an order under the C.C.A. Rules may, for good and sufficient reasons, or if sufficient cause is shown, extend the time specified in the Rules for anything required to be done under the Rules or condone any delay, save as otherwise expressly provided in the Rules, as per rule 43 of the A.P. Civil Services (CCA) Rules, 1991.

9. Officer conducting Preliminary Enquiry, whether can be appointed Inquiry Officer

9.1 There is a distinction between personal bias in the sense that an officer is personally so situated with reference to a dispute that he cannot bring to bear upon the subject of the enquiry that independence of mind and impartiality which are associated with an adjudicator and an official connection with a dispute at anterior stage which officer may have upon a matter in the discharge of his official duties. It cannot be said that, in all cases where an officer has dealt with a matter at an anterior stage, he becomes disqualified to deal with the matter at a subsequent stage on the basis of principle of bias. Whether he should be so considered to have been biased would depend upon the facts and circumstances of each case.

9.2 An Officer who conducts a preliminary enquiry is, therefore, not precluded from being appointed as an Inquiry Officer, unless the circumstances show that he has a personal bias against the delinquent Government servant.

10. Authority conducting Preliminary Enquiry, whether can institute Disciplinary Proceedings

The object of a preliminary enquiry is to ascertain whether a prima facie case exists against the official and it is on the basis of this enquiry that the disciplinary authority decides whether disciplinary proceedings should be initiated. No firm conclusion regarding the guilt of the official is or need be expressed on the conclusion of a preliminary enquiry. The fact that the disciplinary authority conducted the preliminary enquiry, therefore, operates as no bar to the same authority initiating formal disciplinary proceedings.

11. Disciplinary Authority cannot handle case if Delinquent dealt with Enquiry against him earlier

No Officer should either enquire into or deal with a case against a person who had either conducted an enquiry against him or been in any manner associated with it, to avoid unpleasantness or misapprehension.

12. Proposed reinstatement to be referred to Government

Government directed that every proposed case of reinstatement should invariably be referred to General Administration (Services) Department in order to examine the merits and the aspect of departmental discipline, public interest, loss to Government, gross misconduct etc. A formal intimation about the closure of the proceedings should be sent to the charged Government servant and to the authorities concerned. (Memo. No.637/Ser.C/83-1 dt.28-6-83 GA (Ser-C) Dept.)

13. Cessation of Disciplinary Proceedings on Death

Disciplinary proceedings come to an end immediately on the death of the Government servant. No disciplinary proceedings either under the C.C.A. Rules or the Pension Rules can be continued after the death of the Government servant concerned.

CHAPTER XXX

DISCIPLINARY PROCEEDINGS BEFORE TRIBUNAL

1. Constitution of Tribunal

The State Government constituted a Tribunal for Disciplinary Proceedings under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, with effect from 18-7-1961. The Tribunal functions under the provisions of the said Act and the A.P.C.S. (D.P.T.) Rules, 1989 framed thereunder, which came into force in supercession of the earlier Rules of 1961. The Tribunal consists of a Chairman and 2 Members who are judicial officers of the status of a District Judge.

2. Jurisdiction

2.1 The Tribunal has jurisdiction to conduct inquiry into charges of misconduct against Government Servants, Gazetted Officers as well as Non-Gazetted Officers, as are referred to it by the State Government. The Tribunal has no jurisdiction over officers and servants of the High Court and cases arising in the Judicial Department of the State. It has no application to the All India Services. A format to place the Government servant on his defence before the TDP is prescribed (Form No.23 of Part II of Volume II).

2.2 The Anti-corruption bureau, Departmental or such other Authority shall, on completion of enquiry or investigation, submit a report to the Government in cases investigated or enquired into by them, where it is considered that an enquiry by the Tribunal is called for, and Government refers cases as are decided by it in consultation with the Vigilance Commissioner to the Tribunal for enquiry and report. Where two or more Government Servants are concerned in any case, the Government may make an order directing that disciplinary proceedings against all of them may be taken in a common proceedings and the Tribunal shall conduct the enquiry accordingly.

2.3 The Director General, Anti Corruption Bureau's final report to Government may be sent through the Vigilance Commission in two parts i.e parts 'A' and 'B' in **duplicate**. Part 'A' contains a secret report given in complete confidence containing full particulars of the investigation for the information of the Government, and Part 'B' contains confidential report of only relevant information and also the statements of witnesses to be communicated by Government to the Tribunal for Disciplinary Proceedings for taking further action. Part 'B' will be sent by the Anti Corruption Bureau only after Government take a decision on the recommendations contained in the Part 'A' report. The duplicate copy of Part 'B' and the statement of witnesses should not contain any signature or indication as to who took the statements. The ACB also assists the Tribunal in framing charges by providing draft articles of charge.

2.4. Where the Vigilance Commission is of the opinion that the case does not warrant the filing of a criminal prosecution, it may advise the Government to refer to the Tribunal for Disciplinary Proceedings for enquiry and report under Section 4 of A.P.C.S (Disciplinary Proceedings Tribunal) Act, 1960.

3. Procedure

The Tribunal follows the procedure laid down under Rule 6 in recording oral and documentary evidence, which is broadly on the lines of the procedure for a regular inquiry in major penalty proceedings. The inquiry is held in camera, normally. The Tribunal has power to enforce attendance of witnesses and production of documents and issue commission with liability to penalties for disobedience. The witnesses are examined on oath and they are bound to speak truly. The Government and the charged Government servant are represented by counsel. The charged Government servant may offer himself as a witness in his own defence. The charges are framed by the Tribunal. Where the charged Government servant pleads guilty to the charges, the Tribunal shall return a finding of guilty. The Government Counsel is entitled to supply of certified copies of depositions of witnesses recorded by the Tribunal and the documents exhibited before it, on plain unstamped paper.

4. Report of Tribunal

On the conclusion of the inquiry, the Tribunal is required to send its report of findings to the Government within 30 days. The Tribunal does not recommend penalty. In cases in which exoneration of the Government servant is recommended, the Tribunal shall specify whether the Government servant is fully exonerated for purposes of Fundamental Rule 54-A and if no opinion is expressed it shall be presumed that he is not fully exonerated.

5. Consultation with Vigilance Commission

5.1 Departments of Secretariat shall while referring cases to the Tribunal for Disciplinary Proceedings for inquiry, send a copy of such reference to the Vigilance Commission. The Final Report of the Tribunal shall be sent to the Vigilance Commission in duplicate together with all relevant records by the Administrative Department of the Secretariat for its advice. The Vigilance Commission may after examination of the case advise further inquiry or suggest acceptance of the report, or advise deviation from the finding wholly or partly. When further inquiry is advised department will consider the same and may for reasons to be recorded in writing remit the case to the Tribunal for inquiry and the Tribunal shall hold further inquiry. Vigilance Commission will be consulted both before arriving at the provisional conclusion and after receiving the representation of the charged Government servant and before arriving at a final conclusion on the penalty to be imposed (vide rule 6(2)(b) proviso 1 of A.P.C.S. (DPT) Rules, 1989). The Vigilance Commission will examine the record and forward it to the administrative department of the Secretariat with advice as to further action. A copy of the Final Orders issued by the Government shall be furnished to the Vigilance Commission. (Lr.No.66/VC.A2/93-3 dt.10-10-94 — Vigilance Commission Procedural Instructions)

5.2 Government shall furnish a copy of the report of the Tribunal to the charged Government servant. Where they disagree with the whole or any part of the findings of the Tribunal, the point or points of disagreement together with a brief statement of the grounds therefor, in case where it affects the Government servant adversely

or prejudicially will also be forwarded to the delinquent officer along with a copy of the report of the Tribunal. The delinquent officer will be required to submit representation if any thereon within the specified time. On expiry of the specified time or on receipt of the representation whichever is earlier, Government shall provisionally decide on the delinquency of the charged officer and the punishment to be awarded and seek the advice of the Vigilance Commission. On receipt of the advice of the Commission the Government shall pass final orders within a reasonable time not exceeding one month.

6. Consultation with Public Service Commission

It is not necessary for the Government to consult the Public Service Commission in any case in which an inquiry has been held by the Tribunal for Disciplinary Proceedings (Regulation-17(2)(h) of Andhra Pradesh Public Service Commission Regulations, 1963).

7. Government alone competent authority

Government alone are competent to refer a case to the Tribunal for inquiry and report and they alone are the authority competent to pass orders and impose a penalty in a case inquired into by the Tribunal.

8. Application of C.C.A. Rules

The provisions of the Andhra Pradesh Civil Services (C.C&A) Rules, 1991 apply in regard to any matter for which no specific provision has been made in the A.P.C.S. (D.P.T.) Rules, 1989.

9. Ex parte inquiry

Where the Government servant has absconded or where it is impracticable to communicate with him or where he willfully fails to take part in the inquiry, the inquiry shall be conducted or continued in his absence.

10. Tribunal can continue proceedings after retirement of Government Servant

10.1 The Tribunal has no jurisdiction to conduct inquiry into charges against retired Government servants. However, if in

disciplinary proceedings instituted before the Tribunal, the charged Government servant retires from service on superannuation during the course of the proceedings, the inquiry can be continued and completed as per rule 6(1)(k) of A.P.C.S. (TDP) Rules.

10.2 The State Government held that proceedings against the Government servant should be construed to commence on the date on which the statement or memorandum of charges has been issued to the Government servant or the date on which he has been placed under suspension, if earlier. (Lr.No.46499/Ser.C/99 G.A. (Ser.C) Dept. dt.21-8-99, Lr.No.144/Ser.C/75-2 dt.29-5-75 G.A.(Ser.C) Dept.)

11. Draft charges for guidance of Tribunal

Draft charges should be prepared by the Investigating Officer and vetted by the legal officer and enclosed to the A.C.B. Report, for the guidance of the Tribunal in framing charges against the Government servant concerned. The rule applicable of the A.P. Civil Services (Conduct) Rules, 1964 should be quoted and the conduct laid down thereunder spelt out in the charge framed, besides Rule 2(b) of the A.P.Civil Services (D.P.T.) Rules, 1989.

12. Securing of witnesses etc.

The Investigating Officer should ensure that summonses are secured and served and witnesses attend the Tribunal and where necessary arrange their production. He should himself attend the Tribunal and assist the Government Counsel/Asst. Government Counsel. The Counsel should maintain a watch and furnish timely intimation to the Investigating Officer of postponement of hearing so that witnesses need not attend.

13. Progress Reports of proceedings

The Government Counsel/Addl. Government Counsel in charge of the case should submit progress report of the proceedings of each day's hearing in the form prescribed. He should keep the Investigating Officer informed of the proceedings in the event of his unavoidable absence.

14. Action against hostile witness

Government have directed that in all cases where a Government Servant gives evidence before the Tribunal which is materially at variance with the statement recorded from him under his signature earlier, disciplinary action should invariably be taken against him for deviating from his prior statement for misconduct in violation of Rule 3(1)(2) of the A.P.C.S. (Conduct) Rules, 1964. (Memo.No.1886/SC.D/74-1 dt.29-10-74 G.A.(SC.D) Dept.)

15. Tribunal not to refer to A.C.B. Report

Tribunal should not refer to the A.C.B. Report in the memorandum of charges framed by it and communicated to the Government servant or in its report of inquiry. (Lr.No.844/Ser.C/80-1 dt.6-8-80 G.A.(Ser.C) Dept.)

16. Tribunal Report, Government Orders, to be communicated to A.C.B.

Government ordered that a copy of the Report of Inquiry of the Tribunal and the final orders of the Government should be furnished to the Anti-corruption bureau, by the Govt., in A.C.B. cases. (U.O.Note No.75025/Ser.C/97-1 dt.14-10-97 G.A.(Ser.C) Dept.)

17. Government's power to withdraw cases, in consultation with Vigilance Commission

Government may where it considers it appropriate, for reasons to be recorded in writing, withdraw any case referred to the Tribunal at any time before the Tribunal concludes its inquiry. Government decided that whenever it is proposed to withdraw a case before the Tribunal for Disciplinary Proceedings, the advice of the Vigilance Commission should be obtained before taking a final decision. (Memo.No.18/SC.D/94-3 dt.1-6-94 G.A.(SC.D) Dept.; U.O.Note No.1166/SC.D/94-1 dt.13-10-94 G.A.(SC.D) Dept.)

CHAPTER XXXI

PROCEEDINGS AFTER RETIREMENT (REVISED PENSION RULES, 1980)

1. Pension subject to future good conduct

After pension has been granted, future good conduct is an implied condition of its continued payment. Pension sanctioning authority not lower than the authority competent to make an appointment to the post held by the pensioner immediately before his retirement can withhold or withdraw a pension or any part of it if the pensioner is convicted of serious crime or is found guilty of grave misconduct, vide rule 8 of the Andhra Pradesh Revised Pension Rules, 1980. It is necessary to ensure that cases where pensioners are convicted by court, of any crime are brought to the notice of the Government and the Finance Department. (Memo.No.42240-A/977/Pen.I/69 Finance (Pen.I) Dept. dt.21-7-69)

2. Pension Rules provide for cut in pension

2.1 The Andhra Pradesh Civil Services (C.C.&A.) Rules, 1991 do not apply to a retired Government servant and as such there is no question of instituting disciplinary proceedings after his retirement or imposing any of the penalties specified under the Rules. But an equally potent provision is available under the pension rules.

2.2 Under rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, which govern the Andhra Pradesh State Civil Services, the State Government have the right of withholding a pension or gratuity or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specific period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused, to the Government and to the local authority, if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service.

3. Action lies under Rule 9 of Revised Pension Rules, even if no pecuniary loss is caused

Proceedings for serious or grave act of misconduct/ negligence committed by a Government servant can be instituted or continued in terms of Rule 9 of Revised Pension Rules, 1980, even if no pecuniary loss is caused to the Government. (Memo.No.3026/18/A2/Pen.I/99 Fin. & Plg. (FW.Pen.I) Dept. dt.1-6-99)

4. Disciplinary proceedings instituted before retirement

4.1 The departmental proceedings if instituted while the Government servant was in service shall after his retirement be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service, as per rule 9(2)(a) of the said Rules.

4.2 If the proceedings had been initiated by an authority subordinate to the Government such authority will submit the report of the Inquiring Authority, after recording its findings to the Government, as the power to pass orders in such cases vests in the Government under Rule 9 of the Pension Rules.

4.3 In terms of Rule 9(2)(a) of the Pension Rules, the Government has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted against the Government servant, while in service, and continued after his retirement, provided grave misconduct or negligence is established. It should however be the endeavour of the disciplinary authority to see that minor penalty proceedings instituted against a Government servant, who is due to retire, are finalised quickly and preferably before his retirement so that the need for continuing such proceedings beyond the date of retirement does not arise.

4.4 Even though there is no statutory requirement in Rule 9(1) of the Pension Rules for giving a show-cause notice, the principles of natural justice would have to be followed. It would, therefore, be necessary to issue a show-cause notice to the pensioner, giving him an opportunity to represent against the proposed penalty (if no inquiry has been held in the manner provided in Rule 20 of the

APCS (CCA) Rules) and take his representation into consideration before obtaining the advice of the APPSC and passing the final order. However, there is no need to issue a show-cause notice where an oral inquiry in which the Government servant/pensioner has had a reasonable opportunity to defend his case was held. In such cases, a copy of the inquiry report may be sent to him giving him an opportunity to make any representation or submission on the inquiry report.

5. Depriving pensionary benefits

The Government will consider the reply and, in consultation with the Public Service Commission, issue orders in the name of the Government. (Note under Rule 9(2)(a) of the Revised Pension Rules, 1980)

6. Disciplinary proceedings instituted after retirement

6.1 The departmental proceedings, if not instituted while the Government servant was in service, (i) shall not be instituted except with the sanction of the Government, (ii) shall not be in respect of any event which took place more than four years before such institution and (iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service. (Rule 9(2)(b))

6.2 For the purpose of this rule, departmental proceedings are deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government servant has been placed under suspension from an earlier date, on such date. (Rule 9(6)(a))

6.3 In respect of proceedings instituted before the Tribunal for Disciplinary Proceedings, the institution of the proceedings should be construed to commence on the date on which the statement or memorandum of charges has been issued to the Government servant or the date from which the Government servant has been placed under suspension.

6.4 A Memorandum of charges is to be served on the pensioner. On receipt of his reply an inquiry will be held in accordance with the procedure prescribed for major penalty proceedings. On receipt of the report of the Inquiring Authority, if Government decides to take action under Rule 9 of the Pension Rules, further action will be taken as stated earlier.

6.5 After considering the reply of the pensioner and the advice of the Public Service Commission, orders will be issued under the signature of an officer authorised to authenticate order on behalf of the Government. However, it is not necessary to consult the Public Service Commission when the pensioner is found guilty in any judicial proceedings, as per the amendment issued to sub-rule(1) of rule 9 at the end of the first proviso, by G.O.Ms.No.442 Finance (Pen.I) Dept. dt.25-9-2003.

6.6 A judicial proceeding will be deemed to be instituted —

(a) in the case of criminal proceedings, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(b) in the case of civil proceedings on the date of presentation of the plaint in the court.

6.7 If a Government servant is found guilty of a grave misconduct for negligence as a result of judicial proceedings instituted against him before his retirement, including re-employment, action may be taken against him by Government under Rule 9 of the Pension Rules. Such action cannot, however, be taken on the results of any proceedings instituted after his retirement unless the proceedings relate to a cause of action which arose or an event which took place not more than four years before the date of the institution of such proceedings.

7. Pecuniary Loss caused to Government, Recovery from Pension

7.1 In cases where pension as such is not withheld or withdrawn but the amount of any pecuniary loss caused to Government is ordered to be recovered from pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension

7.2 Even though a Government servant has retired from service and was not before his retirement charge-sheeted or called upon to explain why a pecuniary loss caused to the Government (or a local authority) due to his negligence, while he was in service, should not be recovered from him, the Government if they are satisfied that the loss is due to him, shall recoup the pecuniary loss besides all Government dues (or local authority dues) from the Retirement Gratuity. For this purpose, it shall not be necessary to get the consent of the Government servant or the consent of the members of his family in the case of a deceased Government servant, as the case may be. In such cases, it shall be indicated in the sanction clearly the amount of Retirement Gratuity admissible, a stated amount which shall be deducted from the Retirement Gratuity on account of Government dues or local authority dues or loss sustained by the Government due to negligence and the net amount of Retirement Gratuity payable to the retired Government servant. (Sub rule (7) of rule 9 of Revised Pension Rules, substituted by G.O.Ms.No.995 Finance Dept. dt.21-12-2002.)

8. Depriving Pensionary Benefits

While reiterating that in proven cases of bribery, corruption, misappropriation, bigamy, moral turpitude, forgery, outrage the modesty of women etc., the penalty of dismissal shall be imposed. Government resented the fact that on account of delay in taking expeditious action to finalise and award punishment before retirement, officers who have retired in the meantime are being lightly left off by imposing a cut in pension ignoring the fact that they would have been dismissed from service resulting in their being deprived of all pensionary benefits. Government intention is that in such cases pension and gratuity shall be withheld or withdraw in full. (Memo.No.178/Spl.C/2003-1 G.A. (Spl.C) Dept. dt. 7-5-2003)

9. Action where Govt. servant concerned in common proceedings retires

Where common proceedings are instituted against two or more Government servants and one of them retires from service during originally sanctioned including any amount which may have been commuted.

the pendency of the proceedings, the proceedings against the retired Government servant can be continued under rule-9 of the Revised Pension Rules along with the others, but on completion, the disciplinary authority can pass orders against the Government servants continuing in service, in the normal course but the findings against the retired Government servant should be submitted to the Government for orders under Rule-9.

10. Position same with All India Services and Public Sector Undertakings

10.1 Same power vests with the Central Government under Rule 6 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 in respect of retired members of the All India Services.

10.2 Similar provisions are available to deal with retired employees of State Public Sector Undertakings like the Andhra Pradesh State Electricity Board and the Andhra Pradesh State Road Transport Corporation.

11. Retirement, no bar against prosecution

There is no bar against prosecution in a court of law of a person who has retired from service and the 4-year period of limitation under rule 9 of the Revised Pension Rules, 1980 has no application.

12. Proformae prescribed

The Government have prescribed proformae (Form Nos. 32, 33 of Part II of Volume II) for issue of sanction of Government and Memorandum of Articles of Charge for taking departmental action against pensioners under rule 9 of the Revised Pension Rules, 1980. (Memo.No.17757-A/216/A2/Pen.I/94 Fin. & Plg. (FW.Pen.I) Dept. dt.24-5-94)

13. Terminal Benefits, where disciplinary proceedings or criminal prosecution are pending

13.1 The Government have issued the following orders on the question of payment of terminal benefits on retirement where disciplinary proceedings or criminal prosecution are pending.

13.2 The following are the terminal benefits to which a Government servant is entitled on retirement:

1) Family Benefit Fund
2) Andhra Pradesh Group Insurance Amount
3) General Provident Fund amount
4) Andhra Pradesh Government Life Insurance amount
5) Encashment of Earned Leave
6) Retirement Gratuity
7) Pension/Provisional pension
8) Commuted Value of Pension

13.3 None of the benefits need be released if departmental proceedings or criminal proceedings are initiated and pending at the time of retirement. A Government servant who attains age of superannuation while under suspension should be allowed to retire on the due date of superannuation. The payment of the terminal benefits should be regulated as follows.

A. The following amounts should be paid as no recoveries can be made from them:

1. Family Benefit Fund
2. Andhra Pradesh Group Insurance Scheme
3. General Provident Fund
4. Andhra Pradesh Government Life Insurance

B. Encashment of Earned Leave

The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave if in his view there is a possibility of some money becoming recoverable from him on conclusion of the proceedings, and the balance amount due can be paid on his retirement.

C. Retirement Gratuity

As per cl. (c) of sub-rule (1) of rule 52 of the A.P. Revised Pension Rules, 1980, no gratuity shall be paid until the conclusion of the departmental or judicial proceedings and issue of final orders. According to the proviso to the said rule, where departmental

proceedings have been instituted under rule 9 of the A.P.Civil Services (CCA) Rules, 1991, for imposing any of the penalties specified in clauses (i), (ii) and (iv) of the said rule 9 except the cases falling under sub-rule (2) of rule 22 of the said rules, the payment of gratuity shall be authorised to be paid to him and where a conclusion has been reached that a portion of pension only should be withheld or withdrawn and the retirement gratuity remains unaffected in the contemplated final orders, the retirement gratuity can be released upto 80% of the eligible retirement gratuity.

D. Provisional Pension

1. As per sub-rule(4) of rule 9 of the A.P.Revised Pension Rules, 1980, the retired employees mentioned in the above cases shall be sanctioned provisional pension (not exceeding the eligible pension and not less than 75% of the normal pension) as provided in rule 52 of the said rules. The provisional pension shall be paid from the date of retirement to the date on which final orders are passed by the competent authority on conclusion of the departmental or judicial proceedings.

2. Pension sanctioning authorities are competent to sanction provisional pension to the non-gazetted officers and Government in the case of Gazetted Officers.

3. In the above mentioned cases, the department shall send pension papers to the Accountant General pointing out that departmental / judicial proceedings are pending and requesting to indicate only the quantum of pension that would be admissible which should not be released till further orders as only provisional pension can be released. The Accountant General may then verify the pensionery benefits admissible and indicate the quantum of pension, whereupon, the Head of the department may intimate the quantum of provisional pension for payment in case of Gazetted Officers, so that Government can sanction the same. The Accountant General, A.P., Hyderabad will straight away authorise the minimum provisional pension i.e., 75% of the quantum of pension verified by his office, pending sanction by the pension sanctioning

authority and if the appropriate authority sanctions more than 75% of the eligible pension as provisional pension, the Accountant General will issue an amendment.

E. Commuted Value of Pension

No commutation of pension shall be allowed in the above mentioned cases since sub-rule (3) of rule 3 of the A.P. Commutation Rules do not permit a Government servant against whom judicial or departmental proceedings have been instituted or pending, to commute any part of his pension during the pendency of such proceedings. Further, in the case of those to whom only provisional pension is granted, if after conclusion, entire pension is withheld, the question of commutation does not arise. In the case of others to whom pension was allowed either in full or in part, the period of one year for commutation without medical examination has to be reckoned from the date of issue of orders on conclusion of the proceedings.

4. Action can be taken against a retired Government servant who has committed irregularities, on three counts:

   1) Criminal Prosecution;

   2) Disciplinary action; and

   3) Recovery of the amount

In case of the death of the retired Government servant, action on first two counts will abate but as per the orders issued in the G.O.Ms.No.85 Finance and Planning (FW.Pen-1) Department dated 12-7-1999, the loss or mis-appropriated amounts can be recovered from his terminal benefits.

5. If any irregularity of a retired employee is noticed after his retirement and no departmental proceedings can be instituted under sub-rule (2)(b) of rule 9 of A.P. Revised Pension Rules, 1980, the department can initiate criminal action or action under the A.P. Revenue Recovery Act, 1884 to recover the loss if any caused to the Government by him. (G.O.Rt.No.1097 Fin. & Plg. (FW.Pen.I) Dept. dt.22-6-2000).

CHAPTER XXXII

ACTION ON INQUIRY REPORT

1. Consideration by Disciplinary Authority

On receipt of the Inquiry Report, the Disciplinary Authority can take action as follows:

(i) He may, for reasons to be recorded in writing, remit the case to the Inquiry Officer for further inquiry and report. He can do so for the purpose of setting right any procedural lapses for giving reasonable opportunity. He cannot do so because the inquiry report does not appeal to him or to induce the Inquiry Officer to fall in line with him. He cannot appoint a different Inquiry Officer for the purpose.

(ii) He may disagree with the findings of the Inquiry Officer and arrive at his own findings on the charge, if the evidence on record is sufficient for the purpose.

(iii) He shall forward a copy of the inquiry report to the employee who shall be required to submit his written representation. Where the inquiring officer holds the charge as not proved and the disciplinary authority holds a contrary view, the reasons for such disagreement should also be communicated.

(iv) He shall consider the representation, if any, before proceeding further.

(v) He may impose a minor penalty, even though the disciplinary proceedings are for imposition of a major penalty.

(vi) Where the authority is not competent to impose a major penalty, it shall forward the record of inquiry to the authority competent to impose a major penalty and the latter authority may act on such record.

(vii) He may impose any of the major penalties.

(viii) It is not necessary to give an opportunity of making arepresentation on the penalty proposed to be imposed

as far as the Civil Services governed by Art. 311(2) of the Constitution are concerned. It is however necessary to give such an opportunity where there is a specific provision in that regard in the Rules/Regulations like those applicable to Andhra Pradesh State Electricity Board Employees, Andhra Pradesh State Road Transport Corporation Employees. ix) The penalty imposed should be commensurate with the gravity of the charge established.

(x) The disciplinary authority shall refer inquiry report in all cases involving vigilance angle to the Vigilance Commission for advice and give due consideration to the advice of the Commission. Such advice shall be sought both before arriving at a provisional conclusionupon receipt of the report and after receiving representation if any of the charged offcial on the inquiry report. Deviation, if any, from the advice of the Commission shall be made only after obtaining orders of the Chief Minister through the Minister concerned and the Chief Secretary.

(xi) The Disciplinary Authority will have to apply his mind and arrive at his own decision, on findings on guilt and quantum of penalty.

(xii) The Andhra Pradesh Public Service Commission shall be consulted wherever so provided in the APPSC Regulations.

(xiii) He should pass a speaking order. He should record reasons where he differs with the findings of the Inquiry Officer.

2. Check Lists of Disciplinary Proceedings

Government evolved check lists (Form Nos. 35, 36 of Part II of Volume II) of action at various stages of disciplinary proceedings to ensure that the prescribed procedure is followed, and they may be referred to for guidance. (Memo.No.20922/Ser.C/99 dt.28-9-99 GA (Ser.C) Dept.; Memo.No.13673/Ser.C/ 2002-3 G.A.(Ser.C) Dept. dt.5-7-2002)

3. Imposition of Penalty

3.1 The order passed by the disciplinary authority is in exercise of quasi-judicial powers vesting in him and he should pass a self-contained speaking order and record reasons where he differs with the findings of the inquiry officer. He will have to apply his mind and arrive at his own decision on findings of guilty and quantum of penalty and should not call for remarks of any officer. He should not seek the views/remarks of Head of Department or the Anti-Corruption Bureau. (Memo. No. 1649/65-2 dt.23-9-65 GA (Ser.C) Dept.; U.O.Note No.11107/Ser.C/99 dt.1-3-99 GA (Ser.C) Dept.)

3.2 The penalty should be commensurate with the gravity of the charge established. Rule 9 of the A.P.C.S.(C.C.&A.) Rules, 1991 and Rule 6 of the A.I.S. (D&A) Rules, 1969 have a specific provision that in proven cases of bribery and corruption, a penalty of dismissal or removal from service should normally be imposed. To ensure a clean and efficient administration, Government directed that in all proven cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery, outraging the modesty of women, the penalty of dismissal from service should be imposed. Government further laid down that disciplinary action should be taken against the officials where a minor penalty is imposed in cases of the type mentioned above in violation of the proviso to rule 9 of the APCS (CC&A) Rules, 1991. (U.O. Note No.23552/Ser-C/97-1 dt.7-5-97 GA (Ser.C) Dept.; G.O. Ms.No.2 dt. 4-1-99 GA (Ser.C) Dept.; Circular Memo No.698/Spl-B3/99-1 dt.30-8-99 GA (Spl.B) Dept.)

3.3 “Warning”, “let off”, “to be more careful in future” and the like are not penalties specified under rules 9 and 10 of the APCS (CC&A) Rules 1991. The disciplinary authority should impose a specified penalty, or exonerate him in case he is held not guilty of the charge. (Cir.Memo. No.60897/Ser.C/99 dt.12-11-99 GA (Ser.C) Dept.)

3.4 The report of the Inquiry Officer is intended to assist the disciplinary authority in coming to a conclusion about the guilt or otherwise of the Government servant. The findings of the Inquiry Officer are not binding on the disciplinary authority and it can disagree with the findings of the Inquiry Officer and come to its own assessment of the evidence forming part of the record of the inquiry.

3.5 On receipt of the report and the record of the inquiry, the disciplinary authority will examine them carefully and dispassionately and after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself, will record its findings in respect of each article of charge whether, in its opinion, it stands proved or not. The disciplinary authority must apply its mind to all relevant facts which are brought out in the inquiry report and other case record for arriving at an opinion as to the findings on the charges.

3.6 If the disciplinary authority disagrees with the findings of the Inquiry Officer on any article of charge, it should, while recording its own findings, record reasons for its disagreement.

4. Further Inquiry

4.1 If the disciplinary authority considers that a clear finding is not possible or that there is any defect in the inquiry, for instance where the Inquiry Officer had taken into consideration certain factors without giving the Government servant an opportunity to defend himself in that regard, the disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the Inquiry Officer for further inquiry and report. A further inquiry, for instance, may be ordered when there are grave lacunae or procedural defects vitiating the inquiry. If the disciplinary authority comes to the conclusion that the inquiry was not made in conformity with the principles of natural justice, it can remit the case for further inquiry. The Inquiry Officer will, thereupon, proceed to hold the further inquiry according to the provisions of rule 20 of the A.P. Civil Services (CCA) Rules, 1991, as far as may be.

4.2 The disciplinary authority cannot order a further inquiry because the inquiry had gone in favour of the charged Government

servant. In such cases, the disciplinary authority can, if it is satisfied on the evidence on record, disagree with the findings of the Inquiry Officer (Dwarka Chand vs. State of Rajasthan, AIR 1958 RAJ 38).

5. Order on Report of Inquiry Officer

5.1 After considering the advice of the Public Service Commission, where the Public Service Commission is consulted, the disciplinary authority will decide whether the Government servant should be exonerated or whether a penalty should be imposed upon him and will make an order accordingly. The penalty imposed can be minor or major.

5.2 In arriving at a finding on the articles of charge and deciding the quantum of penalty, the disciplinary authority should take into account only evidence adduced during the inquiry and which the Government servant had the opportunity to rebut.

5.3 The order should be signed by the disciplinary authority competent to impose the penalty.

6. Orders where charges held not proved

Having regard to its own findings on the articles of charge, if the disciplinary authority is of the opinion that the articles of charge have not been proved and that the Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the Inquiry Officer, its own findings on it and brief reasons for its disagreement, if any, with the findings of the Inquiry Officer.

7. Action where Proceedings instituted by Authority competent to impose Minor Penalty but Major Penalty proposed to be imposed

7.1 If the disciplinary proceedings were instituted by an authority competent to impose any of the minor penalties but not competent to impose a major penalty and if such authority is of the opinion that any of the major penalties should be imposed on the Government servant it will forward the record of the inquiry to the authority competent to impose a major penalty and that authority will take further action.

7.2 If the disciplinary authority to which the records are so forwarded is of the opinion that a further examination of any witness is necessary in the interest of justice, it may recall the witness and examine, cross-examine and re-examine the witness and may then take action for the imposition of such penalty as it may deem fit.

8. Minor Penalty, authority competent to impose

If the disciplinary proceedings had been instituted by a higher authority competent to impose a major penalty and on receipt of the report of the Inquiry Officer, it appears that a minor penalty will meet the ends of justice, the final order imposing a minor penalty should be passed by the same higher disciplinary authority which had initiated the proceedings and not a lower disciplinary authority though it may be competent to impose a minor penalty.

9. Show Cause Notice

9.1 Article 311(2) of the Constitution was amended in 1963 making it necessary to give the Government servant concerned a reasonable opportunity of making representation on the penalty proposed to be imposed. The Article was further amended in 1976 dispensing with the need to give such an opportunity. As from 3-1-77, when the amendment came into force, it was not necessary to give opportunity to the Government servant of making representation on the penalty proposed to be imposed.

9.2 Still where the inquiry is conducted by an officer other than the disciplinary authority himself, it is necessary for the disciplinary authority to furnish a copy of the Inquiry Officer's report to the charged officer and give him an opportunity to make a representation against it before taking a decision on the charges. (Union of India vs. Mohd. Ramzan Khan, 1991(1) SLR SC 159: AIR 1991 SC 471)

10. Consultation with the Vigilance Commission

The advice of the Vigilance Commission shall be sought both before arriving at a provisional conclusion upon receipt of the inquiry report and after receiving the submission of the charged officer if

any and before arriving at a final conclusion regarding the findings on the delinquency and the penalty to be imposed on the charged officer. The disciplinary authority shall give due consideration to the advice of the Commission. Deviation if any from the advice shall be made only after obtaining orders of the Chief Minister through the Minister concerned and the Chief Secretary to Government. Though the advice of the Commission is not binding on the disciplinary authority or the Government such deviation from the advice of the Commission will be included in the Annual Report of the Commission.

11. Consultation with Public Service Commission

In cases in which it is necessary to consult the Andhra Pradesh Public Service Commission, the record of the inquiry together with relevant documents will be forwarded by the disciplinary authority to the Public Service Commission for advice, and its advice taken into consideration before imposing the penalty. While referring the case to the Public Service Commission, particulars should be furnished in the proforma prescribed.

12. Consultation with Anti-Corruption Bureau

The Supreme Court held in the case of State of Assam vs. Mahendra Kumar Das, AIR 1970 SC 1255 that the inquiry is not vitiated if consultations are held with the Anti-Corruption Branch if the material collected behind the back of the charged officer is not taken into account and the inquiry officer is not influenced.

13. Inquiry Report etc, furnishing of copy to ACB

Government decided that a copy of the inquiry report along with the order of the disciplinary authority on the inquiry report in cases where the inquiry has been instituted based on the report of the ACB, should be furnished to ACB and that it is not necessary to furnish the whole record of disciplinary proceedings, that the ACB should not reopen or review the action taken by the disciplinary authority and they can be utilised only for internal analysis and record. (G.O.Rt.No. 977 G.A. (Spl.B) Dept. dt. 26-2-2003)

14. Communication of Order

14.1 The order made by the disciplinary authority will be communicated to the Government servant together with:

(a) a copy of the report of the Inquiry Officer;

(b) a statement of findings of the disciplinary authority on the inquiry officer's report together with brief reasons for its disagreement, if any, with the findings of the Inquiry Officer;

(c) a copy of the advice, if any, given by the Public Service Commission and where the disciplinary authority has not accepted the advice of the Public Service Commission a brief statement of the reasons for such non-acceptance.

14.2 A copy of the order will be sent to:

(i) the Vigilance Commission, in cases in which the Vigilance Commission had given advice;

(ii) the Public Service Commission in cases in which they had been consulted;

(iii) the Head of Department or Office where the Government servant is employed for the time being unless the disciplinary authority itself is the Head of Department or Office; and

(iv) the Anti-Corruption Bureau in cases investigated by the Anti-Corruption Bureau.

CHAPTER XXXIII

DEPARTMENTAL REMEDIES (APPEAL, REVISION, REVIEW)

1. Orders against which Appeal lies

Under rule 33 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, a Government servant including a person who has ceased to be in Government service, may prefer an appeal against the following orders:

(i) an order of suspension made or deemed to have been made;

(ii) an order imposing any of the prescribed penalties whether made by the disciplinary authority or by an appellate or revising authority;

(iii) an order enhancing a penalty;

(iv) an order discharging him in accordance with the terms of his contract, after continuous service for a period exceeding five years;

(v) an order reducing or withholding the maximum pension;

(vi) an order passed by an authority subordinate to Government varying conditions of service, pay, allowances or pension and interpreting the provisions of any rules or contract of service in respect of a member of a subordinate service.

2. Orders against which Appeal does not lie

As per rule 32 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, no appeal lies against the following orders:

(i) any order made by the Governor;

(ii) any order of interlocutory nature or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of the inquiry.

3. Appellate Authorities

3.1 A Government servant including a person who is no longer in Government service, may prefer an appeal against any order referred to in paragraph 1 above to the authorities as follows as per rule 34 of the APCS (CCA) Rules, 1991:

(i) an appeal from an order passed by the High Court lies to the Governor.

(ii) an appeal from an order imposing a penalty or placing under suspension passed by the Head of Department lies to the Government and an appeal from an order passed by a lower authority lies to the Head of Department.

(iii) an appeal from an order imposing penalty or placing under suspension a member of a Subordinate Service passed by an authority lower than the Government lies to the next higher authority.

(iv) an appeal against an order referred to in item (vi) of paragraph 1 above lies to the Government.

(v) an appeal against an order in a common proceeding lies to the authority to which the authority functioning as the disciplinary authority is immediately subordinate.

3.2 Where the person who made the order appealed against becomes the appellate authority, the appeal against such order lies to the authority to which such person is immediately subordinate or, if there is no such authority, by an authority appointed by the Government.

4. Period of Limitation for Appeals

No appeal shall be entertained unless it is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant. However, the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time (rule 35 of the APCS (CCA) Rules, 1991).

5. Form and Content of Appeal

Every appeal shall be preferred separately and in the name of the appellant, and addressed to the authority to whom the appeal lies and a copy forwarded to the authority which made the order appealed against. The appeal shall contain all material statements and arguments relied on by the appellant and shall be complete in itself and shall not contain any disrespectful or improper language (rule 36 of the APCS (CCA) Rules, 1991).

6. Channel of submission of Appeal

6.1 The appeal will be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.

6.2 The authority which made the order appealed against will, on receipt of a copy of the appeal, forward the same with the comments thereon together with the relevant records to the appellate authority, without any avoidable delay and without waiting for any direction from the appellate authority with its comments on all points raised by the appellant. Misstatements, if any, should be clearly pointed out (rule 36 of the APCS (CCA) Rules, 1991).

7. Consideration of Appeal

7.1 In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of the rule governing suspension and the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order (rule 37 of the APCS (CCA) Rules, 1991).

7.2 Where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all the relevant circumstances of the case, allow the appellant at its discretion, a personal hearing, though the APCS (CCA) Rules, 1991 does not provide for it.

7.3 In the case of an appeal against an order imposing or enhancing a penalty, the appellate authority, while considering the appeal, should see –

(i) whether the procedure laid down in the rules has been complied with and if not whether such noncompliance has resulted in the violation of any provisions of the Constitution or in the failure of justice,

(ii) whether the findings of the disciplinary authority are warranted by the evidence on the record, and

(iii) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

8. Orders by Appellate Authority

8.1 In the light of its findings, the appellate authority shall pass an order —

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

8.2 In the order passed, there should be a clear mention of the application of mind by the appellate authority to all issues required to be considered under the rules. It is, however, not essential for the appellate authority to record reasons when such authority agrees with the disciplinary authority. (R.P.Bhat vs. Union of India and ors, 1986(1) SLR SC 470) (rule 37 of the APCS (CCA) Rules, 1991).

9. Minor Penalty, enhancement to Major Penalty

If the appellate authority proposes to enhance minor penalty to a major penalty, and inquiry according to the procedure laid down in rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 has not already been held in the case, the appellate authority shall itself hold such inquiry or direct

that such inquiry be held in accordance with the provisions of rule 20 and thereafter, on a consideration of the proceedings of such inquiry, make such orders as it may deem fit (rule 37 of the APCS (CCA) Rules, 1991).

10. Imposition of higher Major Penalty

If the appellate authority proposes to impose a higher major penalty than that already imposed and an inquiry under rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 has already been held in the case, the appellate authority will make such orders as it may deem fit (rule 37 of the APCS (CCA) Rules, 1991).

11. Imposition of higher Minor Penalty

No order imposing a higher minor penalty than that already imposed in the disciplinary proceedings will be made unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 22 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, of making a representation against such enhanced penalty.

12. Consultation with Public Service Commission

The State Public Service Commission will be consulted before orders are passed in all cases where consultation is necessary.

13. Orders in Appeal, implementation of

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

14. Revision and Review

14.1 The Central Civil Services (Classification, Control and Appeal) Rules, 1965 contained a provision of “review”. The Delhi High Court, in its judgment in the case of R.K. Gupta vs. Union of India, (1981(1) SLR DLI 752) observed that the power of “review” is in the nature of revisionary power and not in the nature of reviewing one’s own order. The judgment indicated that the President cannot exercise his revisionary powers in case in which

the power had already been exercised after full consideration of the facts and circumstances of the case but there is no objection to providing for a review by the President of an order passed by him earlier in revision if some new fact or material having the nature of changing the entire complexion of the case comes to his notice later.

14.2 Based on the decision of the High Court, the then existing provision of "review" was converted into one of "revision" and a new provision made for "review" by the President. The APCS (CCA) Rules, 1991 provide for "revision" and "review" under rules 40 and 41.

15. Revising Authorities

15.1 The following authorities may at any time, either on their own or otherwise, call for records of any inquiry and revise any order made under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

(i) the Government, or

(ii) the Head of Department, directly under the Government in the case of a Government servant serving in a department or office under the control of such Head of Department or Departments, or

(iii) the appointing authority, within six months of the date of the order proposed to be revised, or

(iv) any other authority specified in this behalf by the Government by a general or special order and within such time as may be prescribed in such general or special order.

15.2 A revising authority after passing an order of revision becomes functus officio and cannot again revise its own order.

16. Orders by Revising Authority

16.1 After considering all the facts and circumstances of the case and the evidence on record, the revising authority may pass any of the following orders:

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case, or

(d) pass such other orders as it may deem fit.

16.2 If the penalty proposed to be imposed after revision including enhancement of penalty, is a minor penalty, the Government servant concerned shall be given a reasonable opportunity of making a representation against the action proposed. In case the penalty proposed to be imposed by enhancing the penalty already imposed or otherwise is a major penalty, or a penalty of withholding of increments falling within the scope of sub-rule (2) of rule 22, the Government servant concerned shall be afforded reasonable opportunity and oral inquiry be held.

16.3 The State Public Service Commission will be consulted before orders are passed in all cases where such consultation is necessary.

17. Procedure for Revision

17.1 An application for revision will be dealt with as if it were an appeal under the A.P. Civil Services (CCA) Rules, 1991.

17.2 No revision proceedings shall commence until after the expiry of the period of limitation for an appeal or if an appeal has been preferred already, until after the disposal of the appeal.

18. Review by Governor

18.1 The Government may, at any time, either on his own motion or otherwise, review any order passed under the A.P. Civil Services (CCA) Rules, 1991 including an order passed in revision under rule 40, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to its notice. The Government may exercise the power of review within a period of three years.

18.2 This is subject to the provision that no order imposing or enhancing any penalty shall be made by the Government, unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under rule 20 of the A.P. Civil Services (CCA) Rules, 1989 has not already been held in the case, no such penalty should be imposed except after such an inquiry and except after consultation with the State Public Service Commission, where such consultation is necessary.

19. Government passing Original Orders

Where the Government servant is not entitled to appeal in view of Government passing original orders, there is provision of review in lieu of appeal.

20. Mercy Petitions

Mercy petitions against imposition of penalty addressed to the Government falling within the terms of Instruction XV(14)(c) of "Instructions regarding submission and receipt of Petitions" issued as Appendix-I to Andhra Pradesh Government Business Rules and Secretariat Instructions are liable for summary rejection. Government, while drawing attention to these instructions, directed that in no case shall the penalty that had become final be set aside without consulting the Vigilance Commission. (U.O.Note No. 3362/ SC.F/95-1 dt. 29-1-96 G.A. (SC.F) Dept.)

CHAPTER XXXIV

ACTION AFTER REINSTATEMENT (F.Rs. 54, 54A, 54B)

1. Reinstatement

A Government servant will be reinstated in service:

(i) if he had been placed under suspension pending criminal or departmental proceedings against him and is acquitted by the court of law or if the disciplinary proceedings instituted against him are withdrawn for any reason or if he is exonerated or is awarded a penalty other than that of compulsory retirement, removal or dismissal from service;

(ii) if the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a court of law or by the appellate, revising or reviewing authority.

2. Order passed on Reinstatement

When a Government servant is reinstated in service, the authority competent to order the reinstatement shall make a specific order as per F.R. 54(1)—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as period spent on duty.

3. Dismissal/Removal/Compulsory Retirement set aside by Court/Departmental Authority for non-compliance with Article 311 of Constitution

3.1 If an order of dismissal, removal or compulsory retirement from service is held by a court of law or by the appellate, revising or

reviewing authority to have been made without following the procedure prescribed under Article 311 of the Constitution and no further inquiry is proposed to be held, action to regulate his pay and allowances for the period of absence from duty and to specify whether the said period shall be treated as duty for any specific purpose will be taken in accordance with F.R. 54 or F.R. 54A, as the case may be.

3.2 In such cases, if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/ removal/compulsory retirement under rule 8(3) or (4) of the A.P.C.S. (CCA) Rules, 1991, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension under F.R. 53.

4. Dismissal/Removal/Compulsory Retirement or Suspension set aside by Departmental Authority for other than non-observance of Procedure

4.1 If an order of suspension or the penalty of dismissal/ removal/compulsory retirement imposed in a disciplinary proceedings is set aside by the appellate/revising/ reviewing authority on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution i.e. on grounds of equity, the payment of pay and allowances for the period of absence from duty and the treatment of the period on duty or otherwise will be governed by F.R. 54 as set out in the following sub-paragraphs.

4.2 The authority competent to order the reinstatement of the Government servant will first consider and decide whether, in its opinion, the Government servant has been fully exonerated or, in the case of suspension, whether it was wholly unjustified, in the light of the facts and circumstances of each case.

4.3 If the competent authority is of the opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be entitled to—

(i) full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsory retired or suspended, as the case may be, under F.R. 54(2); and

(ii) the period of his absence from duty for the entire period will be treated as period spent on duty for all purposes under F.R. 54(3).

4.4 In cases where the competent authority is of the opinion that the Government servant has not been fully exonerated or in the case of suspension, that it was not wholly unjustified, the Government servant shall be entitled to—

(i) such proportion of pay and allowances as the competent authority may prescribe under F.R. 54(4) which shall not be the whole. The term "proportion" used in F.R. 54(4) does not mean "whole". In cases where a Government servant had been straight away dismissed/removed/ compulsory retired without having been placed under suspension at any stage, the proportion of pay and allowances payable to him will be determined with reference to the subsistence allowance which would have been admissible to him under the substantive part of F.R. 53(1)(ii)(a) without taking into account the proviso thereunder. The proviso will be attracted only in cases where the Government servant was under suspension prior to his reinstatement and whose subsistence allowance was either decreased or increased during the period of suspension exceeding three months. An order in this regard will be issued by the competent authority after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in that notice; and

(ii) the period of his absence from duty shall not be treated as period spent on duty unless the authority competent to reinstate the Government servant specifically directs that it shall be so treated for any specified purpose or purposes or for all purposes. If no order is passed directing that the period of absence be treated as duty for any purpose(s), the period should be treated as non-duty.

4.5 In the case of M. Gopalakrishna Naidu vs. State of Madhya Pradesh, AIR 1968 SC 240, the Supreme Court held that where in a departmental inquiry, charges were not proved beyond reasonable doubt but it was held that suspension and departmental inquiry "were not wholly unjustified" and Government servant was reinstated in service and simultaneously retired, he having attained superannuation age but not allowed and pay beyond what had already been paid under F.R. 54, the Government servant was entitled to an opportunity to show cause against the action proposed but did not question the treatment of the period of absence as not on duty and denial of pay for the period. In the case of Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra, 1997(2) SLJ SC 166, the Supreme Court held that acquittal does not automatically entitle the Government servant on reinstatement from suspension to get the consequential benefits as a matter of course.

5. Dismissal/Removal/Compulsory Retirement set aside by Court or Government Servant under suspension Acquitted for other than non-observance of Procedure

In cases in which a Government servant under suspension is acquitted by a court of law or where the penalty of dismissal, removal or compulsory retirement is set aside by court of law on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution and the order reinstating the Government servant is passed some time after the date of acquittal, the pay and allowances for the period of absence from duty and the counting of that period as duty should be regulated under F.R. 54A as follows:

(i)	from the date of suspension/dismissal/ removal/compulsory retirement to the date of acquittal	(a) If the Government servant is treated as having been fully exonerated, full pay and allowances and period to be treated as duty for all purposes.
		(b) If not treated as having been fully exonerated, proportionate pay and allowances and the period to be treated as non-duty or as duty for specific purpose or purposes or for all purposes as determined by the competent authority. Notice to the Government servant concerned giving him an opportunity to represent against the quantum of pay and allowances proposed is necessary before orders are passed.
(ii)	from the date of acquittal to the date of rejoining duty	Full pay and allowances and the period to be treated as duty for all purposes.

6. Acquittal by Court, when treated as Exoneration

In law, the expression "full exoneration" is not recognised or made use of. It is for the authority competent under F.R. 54A to determine from the circumstances of each case whether the acquittal by a court of law should be taken to mean full exoneration or not. For example—

(i) If the entire available evidence was placed before the court and the court after due consideration thereof came to the conclusion that the Government servant concerned was

not proved to be guilty on that score, he could ordinarily be deemed to have been acquitted of blame and fully exonerated;

(ii) If the order of acquittal is recorded on grounds of technical flaw in the prosecution, eg. want of sanction to prosecute, misjoinder of charges, want of court's jurisdiction to try the case etc or if the matter is not proceeded with merely on technical grounds, the Government servant cannot be treated as fully exonerated. Likewise, if the available evidence could not be produced before the court, for example, owing to the death or unavailability of the material witnesses or destruction or unavailability or relevant statements and the prosecution for that reason failed to bring home the guilt of the Government servant, the acquittal cannot be regarded as honourable and the Government servant cannot be said to have been fully exonerated;

(iii) When a Government servant who is detained in custody under any law providing for preventive detention and who is deemed to be under suspension on that account is subsequently reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54B ie. if the detention is held by the competent authority to be unjustified, the case may be dealt with under F.R. 54B(3) and (4); otherwise it should be dealt with under F.R. 54B(5) and (7). In the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the Government servant and if it comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.

(iv) In the case of a Government servant against whom proceedings had been taken for his arrest for debt but who was not actually detained in custody and who is placed under suspension on that account but ultimately it is proved that his liability arose from circumstances beyond his control, the case may be dealt with under F.R. 54B (3) and (4); otherwise under F.R. 54B (5) and (7).

7. Law of Limitation, Applicability

In all cases falling under above paragraphs, where full pay and allowances are allowed under F.R. 54(2) or F.R. 54A(3), as the case may be, while paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement, the law of limitation ie. restricting the payment to a period of three years prior to the date of reinstatement need not be invoked.

8. Earnings during period of absence, deduction of

In all cases covered by paragraphs 4 and 5, any payment made to the Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible are equal to or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant.

9. Period of absence, conversion into leave

9.1 Under the provisions of F.R. 54, F.R. 54A and F.R. 54B, if the Government servant so desires, the period of absence from duty may be allowed by the competent authority to be converted into leave of any kind due and admissible to the Government servant. Any order passed in this regard by the authority competent to reinstate the Government servant is absolute and the sanction of any higher authority will not be necessary for the grant of extraordinary leave in excess of three months in the case of

temporary Government servants and leave of any kind in excess of five years in the case of permanent Government servants.

9.2 On the conversion of the period of absence from duty in such cases into leave with or without allowances, if it is found that the total amount of subsistence and compensatory allowances drawn during the period of suspension exceeds the amount of leave salary and allowance admissible, the excess will have to be recovered.

CHAPTER XXXV

CONSULTATION WITH PUBLIC SERVICE COMMISSION

1. Constitutional Provision

1.1 Article 320(3)(c) of the Constitution provides that the Andhra Pradesh Public Service Commission shall be consulted on all disciplinary matters affecting a person serving under the Government of the State in a civil capacity, including memorials or petitions relating to such matters. The proviso to the Article provides that the Governor may make regulations specifying the matters in which either generally or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Public Service Commission to be consulted.

1.2 Under this proviso, the Governor made the Andhra Pradesh Public Service Commission Regulations, 1963.

2. Consultation with Public Service Commission, when necessary

It is necessary to consult the Andhra Pradesh Public Service Commission in the following types of cases, as per clause(1) of regulation 17:

(a) where the State Government proposes to pass an original order imposing any of the following penalties:

  (i) recovery from pay of the whole or part of any pecuniary loss caused to the Government or to a local body by negligence or breach of orders;

  (ii) stoppage of increments with cumulative effect;

  (iii) reduction to a lower rank in the seniority list or to a lower post or time-scale whether in the same service or in another service, State or Subordinate or to a lower stage in a time-scale;

(iv) compulsory retirement otherwise than under Article 465(2) or under note 1 to article 465A of the Civil Service Regulations;

(v) removal from service; or

(vi) dismissal;

(b) where the State Government propose to pass an order, on appeal or in revision against an order of a subordinate authority which results in the imposition of any penalty higher than the one imposed by a subordinate authority;

(c) where the State Government propose to allow a memorial or a petition against an order on appeal passed by a subordinate authority;

(d) where the State Government propose to review an order passed by them in consultation with the Commission; or

(e) where the State Government propose to pass an order under Article 351 or Article 351A of the Civil Service Regulations in the Andhra Pradesh Pension Code or under rule 235 or rule 239 of the Hyderabad Civil Service Rules Manual (corresponding to rule 8 and rule 9 of the Andhra Pradesh Revised Pension Rules, 1980).

3. Consultation with Public Service Commission, when not necessary

It is not necessary to consult the Andhra Pradesh Public Service Commission in regard to cases—

(a) relating to the termination of probation of any person before the expiry of the prescribed or extended period of probation or to the discharge of a person after the expiry of such period on the ground that he is unsuitable for full membership of the service;

(b) relating to the discharge or reversion of an officer otherwise than as a penalty;

(c) relating to the termination of the employment of any person in accordance with the terms of his contract of employment;

(d) relating to compulsory retirement under Article 465(2) or under note 1 to Article 465A of the Civil Service Regulations of any person who has rendered 25 years of qualifying service or more;

(e) relating to the imposition of any penalty laid down in any rule or order for failure to pass any test or examination within a specified time;

(f) in which the Commission has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination;

(g) in which the State Government propose to pass an order, on an appeal or in revision reducing or annulling any penalty imposed by a subordinate authority;

(h) in which an enquiry has been held by the Tribunal for Disciplinary Proceedings;

(i) where the State Government pass orders of compulsory retirement under the Andhra Pradesh Civil Services (Safeguarding of National Security) Rules, 1962;

(j) in which the State Government propose to revise their orders passed under sub-clause (h);

(k) in which the State Government propose to pass an order rejecting a memorial or petition relating to any disciplinary matter;

(l) in which an enquiry has been held by the Lokayukta or the Upa-Lokayukta;

(m) in which orders are passed on the ground of conduct which has led to conviction on a criminal charge, in any judicial proceedings. Under Rule 9 of A.P. Revised Pension Rules,

1980 if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement, it was necessary to consult the A.P.Public Service Commission before any final orders are passed. But Government have issued orders amending the rule to the effect that consultation with A.P.Public Service Commission shall not be necessary before any final orders are passed in any judicial proceeding if the pensioner is found guilty of misconduct which has led to his conviction. (G.O.Ms.No.442 Finance (Pen.I) Dept. dt.25-9-2003)

4. Consultation in Minor Penalty Cases

4.1 In cases in which proceedings have been instituted under rule 22(1)(a) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 and where no oral inquiry has been held, a reference will be made to the State Public Service Commission after the representation, if any, of the Government servant against the proposal to take action against him has been received. A self-contained factual note may be sent where necessary giving clarifications/comments to explain the points made in the Government servant's explanation. The clarifications and comments should, however, be only factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case.

4.2 In cases in which proceedings were instituted under rule 22(1)(b) of the Andhra Pradesh Civil services (Classification, Control and Appeal) Rules, 1991, the State Public Service Commission will be consulted after the receipt of the report of the Inquiring Authority. The record of the case will be forwarded to the Commission with clarifications/comments, where necessary to explain any factual/procedural points only in the light of any remarks contained in the Inquiry report. This note will form part of the record.

5. Consultation in Major Penalty Cases

In cases where an inquiry has been held under rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, and the Government consider that a major penalty is called for, the reference to the State Public Service Commission will be made after the receipt of the report of the Inquiry Authority. The record of the case will be forwarded to the Commission with a separate note, if necessary giving clarificatory remarks on any factual or procedural points, only in the light of any remarks contained in the inquiry report. The note should not, however, discuss the merits of the case and should not record any findings on the charges or express any opinion regarding the penalty to be imposed on the Government servant. The note will form part of the record.

6. Appeal, Revision, Review etc

6.1 While forwarding an appeal to the State Public Service Commission, no opinion should be expressed on the merits of the case. As per regulation 17 of the Public Service Commission Regulations, 1963, the Commission is required to be consulted where the State Government propose to pass an order on appeal or in revision against an order of a subordinate authority which results in the imposition of any penalty higher than the one imposed by a subordinate authority or where the State Government propose to allow a memorial or a petition against an order on appeal passed by a subordinate authority or where the State Government propose to review an order passed by them in consultation with the Commission. In such cases, there is no objection to the Government indicating in a separate note or in the forwarding letter the considerations on account of which a modification of the order already passed in the case is called for.

6.2 In cases where the Government servant has been given a reasonable opportunity of making a representation against the penalty proposed to be imposed or enhanced, the Government's comments on any factual/procedural points raised by the Government servant in his representation should be forwarded to

the Commission together with all relevant papers. The clarifications/ comments should, however, be factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case. Where an inquiry has been held, the record of the case will be forwarded to the Commission with a separate note, if necessary, giving clarificatory remarks on any factual or procedural points only in the light of any remarks contained in the Inquiry report. This note will form part of the record.

7. Particulars of Disciplinary case to be forwarded to Public Service Commission

Whenever a disciplinary case is referred to the State Public Service Commission, it should be accompanied by a statement in the proforma prescribed giving full particulars about the Government servant and the case. Meticulous care should be taken to see that the entries made therein are correct and are complete in all respects.

8. Advice of Public Service Commission, where proposed not to accept

8.1 Where it is proposed to deviate from the advice tendered by the Public Service Commission, the case shall be submitted to the Chief Minister through the Minister-in-charge before the issue of orders, as per item (xxiii) of sub-rule (1) of rule 32 of the Business Rules.

8.2 The annual report of the Public Service Commission is placed before the state Legislature with a memorandum explaining cases where the advice of the Commission was not accepted giving reasons for non-acceptance, as per Article 323(2) of the Constitution.

9. Non-consultation, effect of

The consultation prescribed by sub-clause (3)(c) of Article 320 of the Constitution is to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent official as well as the suitability of the penalty to be imposed. Opinion of the Public

Service Commission is only advisory and it is not binding on the disciplinary authority. Consultation with the Public Service Commission is not mandatory and is only directory. Absence of consultation or any irregularity in consultation does not afford a cause of action. (A.N.D'silva vs. Union of India, AIR 1962 SC 1130; U.R. Bhatt vs. Union of India, AIR 1962 SC 1344)

10. Public Service Commission — deviation from advice

In cases in which it is proposed to differ from the advice tendered by Public Service Commission, it will be sufficient if the case is circulated to the Governor for information. (U.O.Note No.11145/55-2 Home (Ser.C) Dept. dt.1-6-55)

11. Public Service Commission — where consultation not necessary

11.1 Government have clarified that consultation with the Public Service Commission under regulation 17 of the A.P.Service Commission Regulations, 1963 will be necessary only where the departments of Secretariat at Government level propose to pass an original order of penalty and not where the order is passed by any other authority. (Memo.No. 32667/Ser.C/98-8 G.A. (Ser.C) Dept. dt.13-5-99)

11.2 The Government have prescribed Check List for consultation with the Public Service Commission to ensure that there is no delay and all required papers are furnished vide item No.34 of Part II of Volume II of the Manual. (Memo.No.655/Ser.C/90-1 G.A. (Ser.C) Dept. dt.17-8-90)

CHAPTER XXXVI

ORIGINAL APPLICATIONS AND WRIT PETITIONS

1. Administrative Tribunal — jurisdiction of High Court

1.1 The Supreme Court analysed the jurisdiction of High Court over Administrative Tribunals in the case of L. Chandra Kumar vs. Union of India, 1997(2) SLR SC 1 and observed that the power of judicial review over legislative action vested in the High Courts under Art. 226 of the Constitution and in the Supreme Court under Art. 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. A situation where the High Courts are divested of all other judicial functions apart from that of Constitutional interpretation is equally to be avoided. Cl.2(d) of Art. 323-A and Cl.3(d) of Art. 323-B to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Arts. 226/227 and 32 of the Constitution are unconstitutional. Sec. 28 of the Administrative Tribunals Act, 1985 and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Arts. 323-A and 323-B would to the same extent be unconstitutional. The jurisdiction conferred on High Courts and Supreme Court is a part of the inviolable basic structure of the Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Arts. 226/227 and 32 of the Constitution.

1.2 The Tribunals created under Arts. 323-A and 323-B of the Constitution are possessed of the competence to test the Constitutional validity of the statutory provisions and rules. All decisions of these Tribunals will, however, be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the area of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except when that legislation which creates the

particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Sec. 5(6) of the Act is valid and constitutional and is to be interpreted in the indicated manner. When a question involves the interpretation of a statutory provision or rule in relation to the Constitution, proviso to Sec. 5(6) will automatically apply and the matter will be referred by Chairman to a Bench of two members one of which will be judicial member and vires of statutory provision and rule will never arise for adjudication before a single member Bench or a Bench which does not consist of a judicial member.

2. Action on Petitions filed before Tribunal/High Court

2.1 The department concerned should keep the Anti-Corruption Bureau informed of the Representation Petition/Writ Petition filed by accused officials in A.C.B. cases, so that the Bureau could furnish draft para-wise remarks and the Investigating Officer assist the Government Pleader. The department should address the Director General, A.C.B. in this regard and the I.O. should submit para-wise remarks to the H.O. for vetting and transmission. (U.O Note No.849/SC.E/85-7 dt.22-4-86 GA (SC.E) Dept.)

2.2 Government are of the view that it is not desirable to implead the A.C.B. for the purpose of filing counter affidavit.

2.3 The Standing Counsel for A.C.B. may appear in cases where the A.C.B. is made a party and the Government may be represented by the Government Pleader separately and they should act in co-ordination with each other where the interests of the Government and the A.C.B. are not adverse.(Memo.No.14796/L/86-4 dt.3-12-86 Law Dept.)

2.4 Where the Government desire to contest a case, the notice received from the Supreme Court indicating the name of the advocate appearing for the petitioner together with a vakalat may be sent to the Advocate-on-Record in the Supreme Court to enable them to file vakalat within the prescribed time. (U.O Note No.2063/L/83-1 dt.20-3-83 Law Dept.)

2.5 The Advocate-on-Record for Andhra Pradesh in Supreme Court at New Delhi should inform the dates of hearing and other developments of cases in which Special Leave Petitions are filed either by the State or by the accused officials well in advance to the Anti-Corruption Bureau or other authorities concerned so that the concerned officers could be deputed to assist the Advocate-on-Record. (Memo. No. 12798/LSP/L1/92 dt.12-1-93 Law Dept.)

3. Suspension pending inquiry / investigation

3.1 Supreme Court has consistenly held that it is the prerogative of the disciplinary authority to place an officer under suspension pending inquiry/investigation/trial and that it shall not be ordinarily interfered with. In Government of Andhra Pradesh vs. K.K. Satyanarayana, E.O.-cum-Deputy Commissioner, S.V.V.S.S. Devasthanam, Annavaram, Civil Appeal No.2480 of 1991, the Supreme Court held that the Andhra Pradesh Administrative Tribunal committed serious error in quashing the order of the Government placing the Government servant under suspension pending inquiry and that the Tribunal was not entitled to enter into the merit of the allegations of the defence at that stage and that the Tribunal committed grievous error in interfering with the order of suspension. (Memo.No.3924/L2/99 dt.20-5-92 Law Dept.)

3.2 In the case of Secretary to Government, Prohibition and Excise Department vs. L.Srinivasan, 1966(2) SLR SC 291, Supreme Court observed that “the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order (and charges) even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.”

3.3 In the case of State of Orissa vs. B.K. Mohanty, 1994(2) SLR SC 384, the Supreme Court held that "where serious allegations of misconduct are alleged against an employee, the Tribunal would not be justified in interfering with the orders of suspension of the disciplinary authority pending enquiry" and observed that the Tribunal appears to have proceeded in haste in passing the order even before the ink is dried on the order passed by the appointing authority. (U.O.Note No.814/SC.D/94-1 dt. 14-6-94 G.A.(SC.D) Dept., and Memo.No.26788/Ser.C/98-1 dt.18-5-98 G.A.(Ser.C) Dept.). Government reiterated that all departments should bring the ruling to the notice of the Andhra Pradesh Administrative Tribunal, the Central Administrative Tribunal and the High Court of Andhra Pradesh whenever orders of suspension are challenged. The Advocate General, High Court of Andhra Pradesh was requested to bring the decision to the notice of the Government Pleaders and to issue instructions to them to lay stress on the decision. (Memo.No.1032/SC.E/96-1 dt. 9-4-96 G.A.(SC.E) Dept.)

3.4 In this context Government observed that suspended accused officers in serious allegations of misconduct ae approaching the APAT and the High Court and the APAT and High Court are issuing ex parte orders without any opportunity to the Government Departments to place its stand before the Courts or the Tribunal as the case may be. The Judgment of the Supreme Court of India is also not being projected in the counters filed by the respective Departments. It is essential in cases of such interference with by way of an ex parte order of stay of suspension or revocation of suspension the matter should be immediately taken up in appeal to the High Court. (U.O.Note No.415/Spl.C/2003-1 dt. 4-8-2003)

4. Judgment against Government's Interest, obtaining of Stay Orders

In all cases where the judgments are against the interest of the Government and implementation is time-bound, immediate action should be taken to file an appeal either in the High Court or the Supreme Court along with stay petition and such appeals should be pursued vigorously. In cases of urgency and where appeal has

to be filed in the Supreme Court, the concerned authority may personally approach the Advocate-on-record of the Government at New Delhi and impress on him the need to obtain early stay orders in the Supreme Court. It is necessary to take these urgent measures to avoid contempt proceedings.

5. Quantum of Penalty — interference by Tribunal and High Court

5.1 It is the settled law that the Administrative Tribunal or the High Court should not interfere with the decision of the disciplinary authorities except where the penalty is disproportionate and shocks the judicial conscience as reiterated by the Supreme Court in Director General, RPF vs. Ch. Sai Babu, 2003(4) Supreme 313, setting aside the decision of the Division Bench of the Andhra Pradesh High Court holding that "normally the punishment imposed by the disciplinary authority should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department / establishment in which the concerned delinquent person works. Normally in cases where it is found that the punishment imposed is shockingly disproportionate, High Courts or Tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment".

5.2 While bringing the above decisions to the notice of the Departments of Secretariat, Heads of Departments and the Government Pleaders dealing with service matters in the APAT and the High Court, Government requested to see that the Tribunal and the High Court decisions are strictly in conformity with the above ruling. It was further requested to examine the judgment in the light of the Supreme Court ruling and to take immediate steps to appeal against any such decisions and to strictly follow the above instructions. (Memo.No.107309/Ser.C/2003 G.A. (Ser.C) Dept. dt.3-9-2003)

6. Legal Cell

The Government ordered that there shall be a legal cell in major departments consisting of an officer of District Judge cadre to tender advice on legal issues and court matters. A Desk Officer in each department in the rank of Assistant Secretary shall be responsible for the legal work of the department in the subjects assigned to him. It was also decided to have a penal of Advocates. (G.O.Ms.No.508 G.A. (AR&T.I) Dept. dt.3-12-99)

7. Standing Counsel

The Standing Counsel appointed by the Government will maintain liaison with the Andhra Pradesh Administrative Tribunal, High Court and Supreme Court and look after and pursue all appeals and appear personally and argue before the Administrative Tribunal and the High Court. He will also conduct cases entrusted to him before the Special Judges and offer opinion in cases when asked.

8. Filing of Counter Affidavits

The High Court of Andhra Pradesh has observed in a contempt case that it has been the frustrating experience of the court that many a time Counter Affidavits are not filed in time with the result that the case is held up from disposal and delayed. The Government requested the Heads of the Departments and others to take immediate action in the court cases to comply with the directions of the court for filing counter affidavits and to avoid recurrence of any such non-filing of counter affidavits before the courts whenever the courts direct them to file counter affidavits. (Memo.No.12008/Genl.C/96-1 G.A. (Genl.C) Dept. dt.3-12-96)

9. Suing Government

The Government have directed that Government servants seeking redress of their grievances arising out of their employment or conditions of service should, in their own interest and also consistent with official propriety and discipline, first exhaust the normal official channels for redress before they take the issue to a court of law. Whenever a Government servant asks for

permission to sue Government in a court of law for the redress of his grievances either before exhausting the normal official channels of redress or after exhausting them, he may be informed that such permission is not necessary and that if he decides to have recourse to a court of law, he may do so on his own responsibility. A Government servant going to court before exhausting the normal channels of redress renders himself liable for departmental action. (G.O.Ms.No.949 G.A.(Ser.A) Dept. dt.15-6-59)

10. Court cases — prompt compliance with orders

The Government issued instructions to all concerned to take prompt action for complying with any court order and failure to do so will be viewed seriously and deterrent action will be taken in such cases. (Memo.No.1374/SC.D/96-2 G.A.(SC.D) Dept. dt.19-11-96)

11. Impleading of Inquiring Authority or Chief Secretary in court proceedings to be opposed

11.1 Heads of Departments and Departments of Secretariat should advise the Government Pleaders to point out at the very first appearance in any case before a Court of Law/Tribunal, the incorrectness of impleading the Inquiring Authority as a respondent by a charged official feeling aggrieved with punitive action by the Disciplinary Authority. (Memo. No.2139/SC.F/92-1 dated 7-5-94 GA (SC.F) Dept.)

11.2 Similarly, where Government is the respondent, it should be represented by the Secretary to the Government in the department and not by the Chief Secretary. In case the Chief Secretary is made a respondent, measures should be taken to have his name deleted. (Memo. No.2983/SC.E3/98-1 dt.23-12-98 GA (SC.E) Dept.)

12. Impleading VC before APAT

All Government Pleaders have been instructed to urge before the Tribunal at the admission stage of the Representation Petition itself for striking off of the name of the Vigilance Commissioner wherever impleaded as a respondent and to claim privilege under

sec. 123 or sec. 124 of the Indian Evidence Act from production of records of the Vigilance Commissioner. (Memo.No.1396/SC.D/77-6 G.A. (SC.D) Dept. dt.27-10-77; Memo.No.1396/SC.D/77-9 G.A. (SC.D) Dept. dt.3-6-78)

13. Advice of Vigilance Commission — Supply of copy to the official

13.1 A charged Government servant may go to a court of law either during the currency of the disciplinary proceedings or on their completion, pleading inter alia that a copy of the advice tendered by the Vigilance Commission, to the disciplinary authority had not been made available to him, and therefore, the rules of natural justice were violated. In such cases, the Vigilance Commission should be consulted and it would advise the disciplinary authority in regard to the drafting of the affidavit-in-opposition mainly with reference to procedural aspects of departmental inquiries or advice tendered by it on the report of the Inquiry Officer, if any. The Supreme Court in Sunil Kumar Banerjee vs. State of West Bengal, 1980(2) SLR SC 147, have held inter alia that the disciplinary authority could consult the Central Vigilance Commission and that it was not necessary for the disciplinary authority to furnish the charged Government servant with a copy of the Central Vigilance Commission's advice. The decision of the Supreme Court may be kept in view in contesting such cases.

13.2 There may be instances where the Vigilance Organisation is impleaded as a respondent in Representation Petitions/Appeals before the Andhra Pradesh Administrative Tribunal. The Vigilance Organisation is only an advisory/ recommendatory body and does not have anything which either the petitioner, the Government and the competent authority do not have with them. Government Pleaders should, therefore, argue before the Administrative Tribunal at the admission stage itself for the striking off of the name of the Vigilance Organisation whenever impleaded as a respondent in Representation Petitions / Appeals and claim privilege under section 123 or section 124 of the Indian Evidence Act wherever the Administrative Tribunal calls for the records of the Vigilance Organisation.

CHAPTER XXXVII

PUBLICITY

1. Guidelines

1.1 Publicity may be given in the press, of creditable work done by the Anti-Corruption Bureau in its drive against bribery and corruption like traps laid, searches conducted, disproportionate assets discovered, successful prosecutions launched, dismissals and removals of public servants secured so as to demonstrate to the public the Government's resolve to maintain purity in administration and thereby create public awareness and public interest and enlist public co-operation.

1.2 A press communique may be issued in the following types of cases, situations and stages of action.

i) Successful laying of a trap.

ii) Successful search or surprise check.

iii) Filing of a charge sheet in a court of law.

iv) Conviction in a court of law.

v) Cases in which penalty of dismissal, removal or compulsory retirement from service or reduction in rank has been imposed.

vi) Any successful operation of public interest.

1.3 To be effective, publicity should be prompt. The communique should be factually correct and carefully vetted to ensure accuracy. Brief particulars should be given of the case bringing out the nature of the offence committed from the lay man's point of view, the 'modus operandi' adopted by the public servant in preparing the ground for extorting the bribe, the amount obtained, the assets amassed, the nature and form of the assets, method of concealment, physical or otherwise, the huge disproportion, particulars of conviction, the sentence of imprisonment awarded, the fine imposed, property confiscated, result of departmental action etc.

1.4 The designation of the accused public servant can be given and name also except in the case of item No.(ii) above.

1.5 Names of the complainant, mediator witnesses and Investigating Officers should not be mentioned.

1.6 No reference should be made to the sodium carbonate-phenolphthalein test, and the significance of the test should not be revealed. What is of purely professional interest should not be divulged. Nothing should be given out which is detrimental to the interests of investigation of the case or interests of the Bureau in the long run.

1.7 There should be nothing which has the effect of scandalising an individual or bringing a department to disrepute. There should be no sensationalising either.

2. Director General/Director alone to issue press communique

2.1 Press communique should be issued and briefing of the press done by the Director General or the Director alone.

2.2 Others should not go to the press regarding any matter of the Bureau.

3. When Range Office can give oral information

3.1 However, whenever a trap is laid successfully, the Deputy Superintendent of Police of the Range may give brief particulars of the trap to a representative of a news paper or a news agency orally. Name and designation of the officer trapped, the department to which he belongs, motive for the demand, bribe amount, place where trapped and such other particulars may be given. Names and designations of the A.C.B. team, names of mediators, particulars of the phenolphthalein test should not be divulged.

3.2 The news item should not identify the Bureau as the source.

3.3 Such information should not be given about searches and surprise checks etc.

4. A.C.B. to verify correct facts on raids, from departments

In respect of Joint Surprise Checks, the Bureau should ascertain from the concerned Department the correct facts before going to the press. Otherwise, it may result in damage to the public image of the department and the Government and even if a belated clarification is issued, the damage is already done in the public mind by the original news item and it affects the morale of the officers of the department concerned. Government have clarified that in such a situation, the concerned department reserves the right to issue a correction or clarification in the press and advised the Bureau to exercise due restraint and satisfy itself that the facts are well authenticated by due verification with the departmental Head or the Secretary to Government. (Memo. No. 1944/SC.E/87-4 dt.21-11-87 GA (SC.E) Dept.; Memo. No. 3073/SC.E/87-1 dt.8-1-88 GA (SC.E) Dept.)

5. Official spokesman of Government

The Director, Information and Public Relations, Hyderabad is designated as the official spokesman of the Government of Andhra Pradesh and he shall be responsible for issuing all press releases on behalf of the State Government. Departments of Secretariat and Heads of Department are required to route their press releases through him only. (G.O.Ms.No.367 dt.24-6-88 GA (I & PR) Dept.)

6. Counter Statements by Public Servants

Government of India in the Ministry of Information and Broadcasting, New Delhi has been addressed by the State Government not to entertain any representations from individual public servants issued as counter statements to official press releases of the Anti-Corruption Bureau. (Lr. No. 398/SC.D/87-1 dt.6-4-88 from State Govt. to Central Govt.; Memo. No.398/SC.D/87-3 dt.24-11-89 GA (SC.D) Dept.)

7. Press statements by Government Servants

Government servants indulging in criticism of the policy or action of the Government and giving press statements constitutes

violation of Rule 17 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 calling for disciplinary action, and Government view it seriously. (Cir. Memo. No.115/Ser.C/93-1 dt.26-4-93 GA (Ser.C) Dept.)

8. Rejoinders on allegations of corruption against Government servants

The General Administration (I&PR) Department are required to see that rejoinders are issued on allegations of corruption appearing in newspapers bringing out the facts and indicating the action being taken to enquire into the matter, so as to put an end to frivolous complaints and enhance the reputation of the Government. (U.O.Note No.176/Spl.C/2003-1 G.A. (Spl.C) Dept. dt. 9-6-2003)

9. Utilisation of Electronic media

Publicity should also be given over the radio and television, besides in the Press, of important cases and credit-worthy achievements, even by way of paid advertisements and through programmes like “Do you know?” and “Corruption does not pay” towards image building and creating public awareness of the anti-corruption agency and its functioning.

10. Display of Notice soliciting complaints on corruption

State Government has decided that a notice should be displayed on the notice board at the reception in the offices asking public not to pay bribes and soliciting information on corruption, in the standard form (Form No. 46 of Part II of Volume II) prescribed. (U.O. Note No. 858/SPL.B/ 2000-2 dt. 10-7-2001 G.A. (SPL.B) Dept.)

11. Publicity of Cases of Departmental Action and Prosecution

11.1 The following procedure should be observed in giving publicity of the names and particulars of Government servants involved in criminal prosecution and departmental proceedings.

11.2 Where a case is registered or an arrest is made or a search is carried out and something substantial is found there should

be no objection to publicity being given of the Government servant involved, the department to which he belongs and nature of the allegations but no name should be given.

11.3 When cases are taken to a court against a Government servant, publicity may be given as soon as the case is put in the court regarding the nature of the offence and the designation of the Government servant. The name of the Government servant should not be published.

11.4 When a Government servant is convicted by a court of law, the main facts of the case and relevant details of the case should be given as also the name and designation of the Government servant and the sentence awarded.

11.5 In cases which are not taken to a court, but in which only departmental action is taken, no publicity should be given till the conclusion of such proceedings.

11.6 In disciplinary cases not ending in a major punishment, publicity may be given regarding the designation of the Government servant, details of the case and the punishment awarded to him. In no event should the name be published.

11.7 In disciplinary cases ending in dismissal, removal or compulsory retirement, the name, designation, department and other particulars of the Government servant should be published. No publicity should be given to the name of the Government servant reduced in rank as the person concerned will be still in service.

11.8 Publicity in respect of persons convicted or on whom a major penalty is inflicted should be done periodically over the Radio, Television and in the Press, even by way of paid advertisements, under the caption “Do you know?”, “Corruption does not pay” etc.

11.9 In cases investigated by the Anti-Corruption Bureau, the information to be published should be decided by the Anti-Corruption Bureau.

CHAPTER XXXVIII

FURTHER MEASURES TO COMBAT CORRUPTION

1. Action against corrupt and inefficient officers

The Government have examined measures to intensify action against corrupt and inefficient officers, with a view to cleaning the administration and ensuring integrity and efficiency in higher ranks. Corruption, especially in higher ranks is of a rather devious nature and, therefore, very often it may be difficult to get sufficient evidence for proving a specific offence in a court of law or in a departmental inquiry even against an officer who has a reputation of being corrupt. Again though an officer may be in the latter part of his service when the demands of his family will be highest, reports of inefficiency will be undesirable. Therefore, cases of such officers should not be viewed leniently. In order to deal with such cases of corruption and inefficiency, the following instructions are issued:

(i) Confidential reports on corrupt officers:-

The officers, who become notorious for corruption generally start their corrupt practices in a small way and gradually enlarge their activities if they are not checked in the initial stage. If the Head of the Department is vigilant and makes efforts to know what his subordinates are doing, not only inside their office but outside he will often get information, soon after an officer starts indulging even in small corruption and if at that stage the officer is called and reprimanded he will most probably reform himself. In those cases, in which an officer has been reprimanded once but is again complained of, some more severe action viz., transfer to a less important charge or an adverse remark in the confidential annual report, could be taken. For this purpose it would be useful if each officer, maintains a confidential register in which he may enter all the information that comes to his notice and which has a bearing on the integrity of the officers immediately subordinate to him. This register will also come in handy at the time of writing annual

confidential reports. In this connection, an officer should keep a careful eye on the standard of living and social habits etc. of his immediate subordinates of Gazetted rank, so as to know if they are living beyond their means. Remarks about integrity are not always made freely in confidential annual reports. Even when something damaging is known it is not mentioned because, if challenged, the entry may have to be justified. It is necessary that there should be no reservation in making such entries in the Personal Files.

(ii) Expeditious action to be taken in disciplinary cases of corruption:-

In most of the disciplinary cases delay could be avoided, if the disciplinary proceedings are pursued from day-to-day, by the concerned officers. This is necessary because a time lag of a few years between the starting of the investigation against an officer and the punishment awarded to him, reduces much of the effect of the punitive action. As for the actual conduct of disciplinary proceedings, delays could be avoided by entrusting important cases, especially against Gazetted Officers, to one of the senior officers in superior ranks. In Departments where the number of disciplinary proceedings against Non-Gazetted Officers is high, special inquiry officers could be appointed for conducting oral enquiry in such cases.

(iii) Punishment to be imposed on officers in proved cases of bribery and corruption:-

In most of the departmental inquiries the charges relate to some departmental misdemeanour or negligence in the discharge of duties. Quite often, however, such negligence in the shape of failure to take some action or breach of departmental rules is attributable to corrupt motives, even though it may be impossible to prove actual mala fides. Such corrupt motives come into play in most of the cases, in which some pecuniary advantage has been given to some contractor at the cost of Government. In all such cases involving a substantial loss to Government and a corresponding gain to the contractor severe punishment which should generally be dismissal, should be awarded even though the charge

which is established, relates only to negligence or breach of departmental rules. The importance of awarding adequate punishment in proved cases of corruption cannot be over-emphasised. Administrative consideration should not be allowed, as a general rule, to influence the action to be taken in such cases. No punishment other than that of dismissal should be considered adequate in proved cases of bribery and corruption; and if any lesser plunishment is to be awarded in such cases, adequate reasons should be given for it in writing.

(iv) Action to be taken against officers with respect to whom evidence for prosecution or departmental action may not be available:-

It is desirable that some action should be taken even against those officers, with respect to whom sufficient evidence for prosecution or departmental action may not be available. Such action can only be administrative and can broadly be classified as follows:

(i) Expression of displeasure by the Head of the Department or the Government;

(ii) transfer to a less important charge;

(iii) reversion to substantive rank, where it is possible without resort to regular Disciplinary Proceedings; and

(iv) premature retirement.

The measures at items (i) to (iii) above, may be adopted wherever possible. As regards item (iv) above, all the gazetted officers against whose integrity there is slightest doubt or those Government servants who have not been coming up to their responsibilities and who are found inefficient, and especially cases of officers of all categories who merely mark time and actually clog the wheels of administration, should not be viewed leniently. Action may be taken to retire them from service, under Article 465-A of the Andhra Pradesh Pension Code or under rule 293 in the Hyderabad Civil Service Rules Manual, if they have completed 25 years or 30 years of qualifying service, as the case may be, according to the pension rules applicable to

them. Heads of Departments and Departments of Secretariat are requested to undertake annual reviews of the cases of this type. Action taken by each Head of Department may be reported to the concerned department of Secretariat, and action taken by the Secretaries to Government in respect of their establishment to Chief Secretary. (Memo.No.3037/64-3 G.A. (Ser.C) Dept. dt.26-11-64)

2. Lists of Officers of doubtful integrity, Suspect Officers etc.

The Government have decided upon preparation and maintenance of lists of officers of doubtful integrity etc. as a measure in the drive for providing a clean and corruption-free administration, as follows by their G.O.Ms.No.232 G.A. (Spl.C) Dept. dt.6-8-2003.

2(i) List of Public Servants of Gazetted status of doubtful integrity.

2(i)1 The list should include names of officers of Gazetted status of the following categories, involved in vigilance cases:

(i) convicted by a court of law;

(ii) acquitted by a court on technical grounds;

(iii) awarded a major penalty in disciplinary proceedings;

(iv) against whom a court case is pending;

(v) against whom a departmental action for major penalty is pending.

2(i)2 The list is intended to keep the Departments / Public Undertakings informed about such officers of doubtful integrity to ensure that they are not posted to sensitive assignments and this fact is given due consideration when deciding administrative matters affecting their service and the need of special attention and close supervision and scrutiny.

2(i)3 The Vigilance organisation of the Departments will prepare a list of public servants of Gazetted status against whom disciplinary proceedings for a major penalty are in progress or who have been imposed penalty in disciplinary proceedings on a charge of lack of

integrity and send the list to the Anti-Corruption Bureau every year in the last week of February. The Vigilance Officer should bring any adverse report against an officer to the notice of the Secretary/ Head of the Department immediately. A decision for inclusion in the list should be taken as soon as possible. The ACB will suggest addition or deletion on the basis of information available and then return the lists to the Secretary and the latter would furnish to the Heads of Department/Chief Executives of Public Enterprises. The following administrative action can be taken as found necessary and feasible.

(i) withholding certificate of integrity;

(ii) transfer from a "sensitive" post;

(iii) Non-promotion after consideration of his case, to a service, grade or post to which he is eligible for promotion;

(iv) compulsory retirement (non-penal);

(v) refusal of extension of service or re-employment;

(vi) non-sponsoring of name for foreign assaignment/ deputation;

(vii) refusal of permission for commercial re-employment after retirement.

2(i)4 The name will be retained for 3 years. On the conclusion of the period, the case will be reviewed by the Department in consultation with ACB and the name removed if there is no further complaint. In case of transfer, the Department/Public Undertaking should be intimated of the officer's name being in the list. The list will be treated as secret.

2(ii) Agreed list of suspect Officers

The list should include officers of Gazetted status against whose integrity, honesty there are complaints, doubt or suspicion. The list is to be finalised by mutual discussion between the Department and the Anti-Corruption Bureau. The following action should be taken against officers in the list.

(i) closer and more frequent scrutiny and inspection of their work and performance;

(ii) quiet check about their reputation, by the department and ACB;

(iii) unobtrusive watch of their contacts, style of living etc. by ACB;

(iv) secret enquiry by ACB about their assets and financial resources;

(v) collection of information by ACB of instances of bribery and corrupt practices.

The list will remain in force for one year.

2(iii) List of points or places of corruption

2(iii)1 The points are those of items of work and stages at which decisions are taken or orders are passed which provide scope for corruption namely processing of tenders, grant of quota certificates etc. Places are sections, sectors, units of an office/department/public undertaking etc.

2(iii)2 The following action should be taken by the department/ public undertaking and by the ACB:

i. closer and more frequent scrutiny and inspection by the department/public undertaking of the work;

ii. surprise checks by the department/public undertaking;

iii. quiet and unobtrusive watch by ACB followed by raid;

iv. collection of information of specific instances of bribery and corrupt practices.

2(iv) List of unscrupulous contractors, suppliers and firms

2(iv)1 The list should be prepared by the department/ undertaking and sent to the ACB. The ACB will pass on information

of corrupt practices of contractors, suppliers and firms for considering their inclusion in the list. Proper criteria should be laid down, and in respect of Building Contractors, a Committee should be appointed for the purpose.

2(iv)2 The list should be circulated by the departments/ undertakings to the officers enjoining them to be careful and cautious in all dealings with them, and exercise closer check and scrutiny and keep a quiet and unobtrusive watch.

2(v) Banning Business with Firms/Contractors

2(v)1 It has been decided that the use of the word 'black-listing' should be avoided and instead business dealings with firms/ contractors may be banned where necessary.

2(v)2 The banning of business will be of two types, namely (i) banning confined to one department and (ii) banning to be implemented by all departments. Business with a firm/contractor is banned where removing the name of the firm/contractor from the approved list is not considered adequate. The banning shall be extended to the allied firms and partners also. No contract of any kind whatsoever shall be placed with a banned firm including its allied firms or partners. Contract concluded before the issue of the banning order shall, however, not be affected by the banning order.

2(vi)List of Unscrupulous Contactmen

The ACB should prepare a list of unscrupulous contactmen and communicate to the departments/undertakings, so that care and caution is exercised in dealing with them.

3. Sealed Cover Procedure (Deferring of Promotion)

3(i) Promotion of Officers facing inquiry, investigation or trial

3(i)1 Government laid down what is known as 'Sealed Cover Procedure'.

3(i)2 Officers who are facing inquiry, trial or investigation can be categorised into the following groups based on the nature of the allegations/charges pending against them or about to be instituted.

(i) an officer with a clean record, the nature of charges/ allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which, even if held proved, would not stand in the way of his being promoted;

(ii) an officer whose record is such that he would not be promoted, irrespective of the allegations/charges under inquiry, trial or investigation; and

(iii) an officer whose record is such that he would have been promoted had he not been facing inquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supercede him.

3(i)3 The suitability of all officers eligible for promotion including those mentioned above should be assessed at the time of consideration of promotion by the Departmental Promotion Committee or other authority, as the case may be. The Departmental Promotion Committee or other authority may consider promotion of officers coming under category (i) above and indicate the rank to be assigned to such officers in the promotion list, notwithstanding the inquiry, trial or investigation. Similarly, supercession may be recommended straight away in respect of officers coming under category (ii) on grounds of their being unfit for promotion. In the case of officers coming under category (iii), the Departmental Promotion Committee or other authority should consider whether such an officer would have been recommended for promotion, had his conduct not been under inquiry, trial or investigation, and make its recommendations and the rank to be assigned to him in the promotion list. In such cases, the Departmental Promotion Committee may make a specific recommendation that their promotion should be deferred until after the termination of the disciplinary proceedings or criminal prosecution.

3(i)4 Promotion or appointment by transfer to a higher post can be deferred only when charges of misconduct are framed by the competent authority and served on the concerned delinquent

officer or a charge sheet has been filed against him in a criminal court, and not when a case is under investigation or against whom departmental proceedings or criminal prosecution is about to be instituted.

3(i)5 The promotion or appointment by transfer to a higher post of an officer included in the panel can be deferred, if between the date of inclusion in the panel and the date of actual promotion, charges of misconduct are framed and served or a charge sheet has been filed in a court of law.

3(i)6 In the event of there being an officer whose promotion has been recommended to be deferred, the vacancy that could have gone to the officer should be filled only on a purely temporary basis by the next person in the approved list of candidates for promotion. If the officer concerned is completely exonerated, he should be promoted to the post filled on a temporary basis, restoring him to his rightful place in the list of promoted officers with retrospective effect.

3(i)7 In cases where an officer is under suspension pending inquiry, investigation or trial, the provisional withholding of promotion would be justified.

3(i)8 In partial modification of the above instructions, Government directed that promotion/appointment by transfer to a higher post in respect of officers who are facing disciplinary proceedings or a criminal case or whose conduct is under investigation and whose case falls under the group referred to in category (iii) mentioned above shall be deferred, only when charges of misconduct are framed by the competent authority and served on the Government servant concerned or a charge sheet has been filed against him in criminal court, as the case may be. (G.O.Ms. No. 66, G.A. (Ser.C) Dept. dt.30-1-1991)

3(ii) Ad hoc promotion

3(ii)1 Government laid down the following procedure and guidelines for considering employees against whom disciplinary

cases or criminal prosecution are pending or whose conduct is under investigation, for appointment by promotion or transfer to next higher category.

(A) The particulars of employees in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i) officers under suspension;

(ii) officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; and

(iii) officers in respect of whom prosecution for a criminal charge is pending.

(B) Officers who are facing inquiry, trial or investigation can be categorised into the following groups based on the nature of the allegations or charges pending against them or about to be instituted, namely;

(i) an officer with a clean record, the nature of charges or allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which even if held proved, would not stand in the way of his being promoted;

(ii) an officer whose record is such that he would not be promoted, irrespective of the allegations or charges under enquiry, trial or investigation; and

(iii) an officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges which, if held proved, would be sufficient to supersede him.

(C) The suitability of the officers for inclusion in the panel should be considered on an overall assessment based on the record which should include:

(i) adverse remarks recorded in the Annual Confidential reports, the penalties awarded and the bad reputation of the officer as vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned. These cases should be considered as falling under category (ii) of item (B) above.

(ii) officers who do not have any adverse entry in the Annual Confidential Report and who have no penalties awarded against them in the entire duration of the post and not merely in the past five years and whose reputation is vouchsafed by the Head of the Department and Secretary to Government of the Department concerned. They should be considered as falling under category (iii) of item (B) above.

The officers categorised as under item (iii) above only should be considered for ad hoc promotion after completion of two years from the date of the Departmental Promotion Committee meeting in which their cases were considered for the first time.

3(ii)2 The appointing authority should consider and decide that it would not be against public interest to allow adhoc promotion and this shall be decided with reference to the charge under enquiry. If the charge is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty, then the appointing authority should consider as not in the public interest to consider adhoc promotion to such charged officer. But, if the charge is not a grave one but is a minor one, not involving moral turpitude, misappropriation, embezzlement and grave dereliction of duty, then only in such cases the appointing authority should consider that it would not be against public interest to allow ad hoc promotion. The appointing authority should strive to finalise the disciplinary cases pursuing them vigorously so that within two years the proceedings are concluded and final orders issued. (G.O. Ms. No.257 dt.10-6-99 GA (Ser.C) Dept.)

3(ii)3 If the officer is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as regular one from the date of the ad hoc promotion with all attendant benefits. In case the officer could have normally got his regular promotion from a date prior to the date of his ad hoc promotion with reference to his placement in the Departmental Promotion Committee proceedings and the actual date of promotion of the person ranked immediately junior to him by the Departmental Promotion Committee, he would also be allowed his due seniority and benefit of notional promotion. (G.O.Ms.No.257 dt.10-6-99 GA (Ser.C) Dept.)

3(ii)4 If the officer is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher Court or to proceed against him departmentally or if the officer is not exonerated in the departmental proceedings, the ad hoc promotion granted to him should be brought to an end. (G.O.Ms.No.257 dt.10-6-99 G.A.(Ser.C) Dept.)

3(iii) Disciplinary Proceedings, Prosecution, to institute before D.P.C. meeting

Immediate action should be taken to frame charges in all A.C.B. cases and disciplinary cases and serve them on the official before the D.P.C. Screening Committee meetings. While sending their proposals to the D.P.C./Screening Committee, it should be confirmed that in all disciplinary cases action has been taken against the official to prosecute him or place him on his defence before the Tribunal for Disciplinary Proceedings or that charges have been framed and served on the official. (U.O.Note No.779/ Ser.C/90-4 dt.30-1-91 G.A.(Ser.C) Dept.)

3(iv)Cases arising between date of inclusion and date of actual promotion

Government decided that promotion/appointment by transfer to higher post of an officer included in the panel, shall be deferred

until after the termination of the proceedings, if between the date of inclusion in the panel and the date of actual promotion, disciplinary proceedings/investigation/enquiry/trial has been taken up against the said officer. (G.O.Ms.No.104 dt.16-2-90 G.A.(Ser.C) Dept.)

3(v) Supreme Court on Sealed Cover Procedure

3(v)1 In Union of India vs. Tejinder Singh, Civil Appeal No.2964 of 1986 dated 26-9-86, the Supreme Court held that they were not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental enquiry or pendency of a departmental proceeding cannot be ground for withholding consideration for promotion or the promotion itself and that they were not aware of any rule or principle to warrant such a view.

3(v)2 Government instructed that if the Andhra Pradesh Administrative Tribunal or the High Court or any court orders/directs that officers facing disciplinary cases whose promotions/ appointments by transfer are withheld may be promoted, an appeal may be preferred in the Supreme Court simultaneously moving the Administrative Tribunal/High Court/other court to suspend operation of the order until the Supreme Court admits the appeals and grants stay or otherwise of the orders appealed against. (Memo.No. 1053/ Ser.C/87-3 dt.29-12-87 G.A.(Ser.C) Dept.)

3(v)3 In Delhi Development Authority vs. H.C.Khurana, 1993(2) SLR SC 509 and Union of India vs. Kewal Kumar, 1993(2) SLR SC 554, the Apex Court held that to consider the case of the employee for promotion and to determine if he is otherwise suitable for promotion and keep the result in abeyance in sealed cover and in case he is exonerated in the disciplinary proceedings to promote him with all consequential benefits, is the only fair and just course.

3(vi)Watch to be kept by I.Os.

3(vi)1 Whenever an officer is kept under suspension, Anti-corruption bureau should address the appointing authority as well as the Head of Department and the Secretary to Government requesting that a proper watch should be maintained to know whether the accused officer is approaching the Andhra Pradesh

Administrative Tribunal, and the Government Pleader should be requested to be alert and to oppose any ex parte decision and to request the Tribunal for time to file counter-affidavit. The Department should intimate the Anti-corruption bureau without loss of time of the receipt of any writ petition so that the Bureau can give information and assist the Government Pleader for filing counter-affidavit for opposing reinstatement or to vacate stay etc.

3(vi)2 I.Os. also should keep in touch with the local office of the accused officer and the appointing authority to know whether any orders have been issued keeping the officer under suspension, when the order was served and whether the official is taking any steps to move the Administrative Tribunal for stay, reinstatement etc. and to intimate the Head Office for taking timely action.

4. Focal Points

4.1 The Government directed that a list of focal points (posts dealing with purchase of stores etc.) should be made out in all Government Departments / Offices and suitable steps taken to ensure that the employees in such focal points are not allowed to continue indefinitely so as to prevent establishment of corruption and no employee should be kept in the focal point for more than three years and where it is proposed to deviate from this principle, the authority concerned should obtain the approval of Government in the administrative department in respect of Gazetted Officers and of the next higher authority above the appointing authority in respect of non-gazetted officers and that the authority approving the retention should record the reasons therefor.

4.2 The Government further directed that whenever instances of corruption and malpractices come to notice, the concerned officials should be shifted immediately from the posts declared as focal points, even though the three year-period of service of the official in the post is not completed. No officer with doubtful integrity or against whom enquiries relating to charges of corruption are pending should be posted to a focal point. (Memo.No.2016/66-3 G.A.(Addl.Cell) Dept. dt.12-12-66; Memo.No.1973/AC/75-1 G.A.(AC) Dept. dt.29-10-75; Memo.No.620/Ser.A/84-1 G.A.(Ser.A) Dept. dt.1-5-84)

4.3 The Government reviewed the entire matter relating to postings and transfers of Government employees and directed that as a rule no transfer be effected before completion of 3 years of service rendered in focal point posts as well as in non-focal point posts except on grounds of promotion or as a measure of penalty or at the officer's own request in very special cases with the orders of the competent authority viz. Government in the case of gazetted officers and next higher authority above the appointing authority in the cases of non-gazetted officers. However, persons working in the focal point posts or non-focal point posts whether in the same place or not, may be subjected to transfer immediately after completion of 3 years except in the case of solitary posts in a unit of appointment. In respect of transfers made by competent authorities below the Head of Department level, the transfer should be reviewed by the Head of Department and a copy of the review should be sent to the concerned Administrative Department in the Secretariat. For the purpose of review, the authority competent to effect the transfer should send a monthly periodical report in the proforma prescribed (Form No.45 of Part II of Volume II) so as to reach the Head of the Department and the Government before 10th of every month indicating the position as on the last day of the previous month. In respect of transfers effected by the Head of Department, the concerned Administrative Department should review the transfers effected. All the Departments of Secretariat and Heads of Departments are directed to take disciplinary action against persons responsible if any transfer has been made in deviation of the guidelines. All the Secretaries to Government are requested to review the transfers effected in various Departments under their administrative control every month and wherever it is found that the transfers are unwarranted, they should take prompt action to cancel the orders of such transfers and ensure that guilty persons are properly dealt with by taking departmental action, since mere transfer does not serve the purpose. (Memo.No.510/Ser.A/85-1 G.A.(Ser.A) Dept. dt.14-5-85; Memo.No.864/Ser.A/85-1 G.A.(Ser.A) Dept. dt.3-7-85; U.O.Note No.567/Ser.A/89-1 G.A.(Ser.A) Dept. dt.9-3-89)