

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005

Part-V

Penalties and Disciplinary Authorities

14. Minor and Major Penalties. - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely: -

Minor Penalties: -

- (i) censure;
- (ii) withholding of promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect;
- (v) withholding of increments of pay without cumulative effect.

Major Penalties: -

- (vi) Withholding of increments of pay with cumulative effect.
- (vii) Save as provided for in clause (iv), reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (viii) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

- (ix) compulsory retirement;
- (x) removal from service which shall not be a disqualification for future employment under the Government;
- (xi) dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided 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 forbearing to do any official act is established, the penalty mentioned in clause (x) or clause (xi) shall be imposed:

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed.

Explanation (1). - The following shall not amount to a penalty within the meaning of this Rule, namely: -

- (i) withholding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the Rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
- (ii) withholding of promotion of a Government servant after consideration of his case to a service, grade or post for which he is eligible, whether he is in a substantive or in officiating capacity;
- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post of promotion to which he is eligible;
- (iv) reversion of a Government servant officiating in a higher-Service, grade, or post to a lower Service, grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion of a Government servant, appointed on probation to any other Service, grade or post to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms and conditions of his appointment or the Rules and order governing such probation;

(vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or an authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government servant had been borrowed;

(vii) compulsory retirement of a Government servant in accordance with the provisions relating to superannuation or retirement under Rule 74 of the Bihar Service Code;

(viii) termination of the service-

(a) of a Government Servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms and conditions of his appointment or the Rules and orders governing such probation; or

(b) of a Government Servant, employed under an agreement, in accordance with the terms of such agreement.]

Explanation (2). - The penalties mentioned in the clauses (i), (ii), (iv), (v), (vi), (vii) and (viii) are explained as follows within the meaning of this Rule-

(i) *Censure.* - 'The Censure shall be entered in the character roll of the year the allegation or omission & commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next *three* consecutive years after the year of allegation or omission & commission for which he or she is censured. For example, if a Government Servant is censured for the allegation or omission & commission of the year 2002-2003, it shall be entered in the character roll of 2002-2003 and its adverse effect shall be from the year 2003-2004 to 2005-2006.

Such Government Servant who has been awarded with three censures, shall be deemed to be fit for promotion only if after expiry of the period of adverse effect of last (third) censure, during the next five years his work and conduct of at least three years is extraordinary and has not been awarded any adverse remarks for the period of next five years. For example, if the adverse effect of third censure of a Government servant expires in 2002 and his promotion is due in 2008 or before that, in that case his promotion shall be deemed to be due in 2008, i.e. five years after the expiry of adverse effects of last censure, with the condition that during the five years of 2003 to 2007 his work and conduct of at least three years

is extraordinary and during the said' five years he has not been awarded any adverse remarks.

(ii) *Withholding of Promotion.* - While awarding the penalty of withholding of promotion, it shall be essential to explain in the order of the disciplinary authority whether this penalty shall be for a particular period or for the whole service period.

(iii) *Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect.* - This penalty shall be effective from the date of issue of order. In this penalty the 'stage' means the stage of pay scale. As it is without cumulative effect, therefore after the expiry of the period of penalty the next stage shall be admissible adding the benefit of all the effected stages.

(iv) *Withholding of increments of pay without cumulative effect.* - Such penalty shall be effective from the date of issue of order, i.e. the increments due after the issue of the order shall be withheld. It will be essential to mention clearly the number of annual increments withheld in the order by the disciplinary authority. After the communication of order of penalty the increment shall remain withheld from the due date of next increment. For example, if two increments of a Government Servant are withheld without cumulative effect, it will mean that after the date of communication of order of penalty, from the due date of next increment till one year the first increment and from the second due date till one year the second increment shall remain withheld. As the penalty is without cumulative effect, the salary from the due date of third increment after the withholding of increments shall be paid with increment after adding the stages of both the withheld increments, but the financial benefit of withheld period shall not be admissible.

No promotion shall be considered during the period of operation of this penalty, i.e. for the number of years the increments are withheld. Only after the expiry of the period of penalty, it will be possible to consider on the promotion from the due date.

(v) *Withholding of increments of pay with cumulative effect.* - Such penalty shall be effective from the date of issue of order, i.e. the increments due after the issue of the order shall be withheld. It will be essential to mention clearly the number of annual increments withheld in the order by the disciplinary authority. After the communication of order

of penalty the increment shall remain withheld from the due date of next increment. For example, if two increments of a Government Servant are withheld with cumulative effect it will mean that after the date of communication of order of penalty, from the due date of next increment till one year the first increment and from the second due date till one year the second increment shall remain withheld. The cumulative effect shall be for such number of years as is the increments withheld, but as the penalty is with cumulative effect therefore the withheld increments shall remain withheld for the whole service period. Under these circumstances, the salary from the due date of third increment after the withholding of increments shall be paid with increment without adding the stage of both the withheld increments.

No promotion shall be considered during the period of operation of this penalty, i.e. for the number of years the increments are withheld. Only after the expiry of the period of penalty it will be possible to consider on the promotion from the due date.

(vi) *Reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.* - It shall be essential to mention clearly in the order the period of effect of such penalty and also whether annual increment will be earned during such period or not. It shall also be essential to explain whether on the expiry of period of penalty, further increments will be automatically admissible or will remain postponed, and if postponed the period of such postponement.

If the future increments are postponed after expiry of period of such reduction, in that case the promotion will be withheld for such number of years as is the number of years of withholding of increment.

(vii) *Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government Servant was reduced and his seniority and pay on such restoration to that grade, post or service.* - It shall be essential to mention clearly in the order concerning this penalty whether its limit of effect shall be permanent or

for indefinite period, or not. If the intention is not to make its limit of effect permanent or for indefinite period, in that case it shall be essential to mention the period of such reduction and the conditions of restoration after the completion of period of such reduction in the proposed penalty. Therefore, it shall be desirable for the disciplinary authority to invariably specify the following instructions in the order of penalty-

- (a) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period;
- (b) where the period of reduction is specified whether on the expiry of the period the Government Servant is to be promoted automatically to the post from which he was reduced; and
- (c) whether on such re-promotion, the Government Servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

Explanation (3) Warning. - The warning is not a penalty within the meaning of this Rule and due to this it has not been placed in any of the category of penalty. But the occasion may come when the disciplinary authority or his sub-ordinate authority may need to criticize a Government Servant due to his carelessness, lack of interest, delay in execution of work etc. Such criticism may be done by warning him orally or in writing, so that the work of the Government Servant may be improved. It is also possible that after the procedure of disciplinary proceeding for an allegation i.e. after the scrutiny of explanation it is concluded that it will be sufficient to warn the delinquent person instead of censuring him. In that circumstances the 'Warning' awarded should be entered into the character roll. But with the entering into character roll such 'warning' cannot be converted into 'censure'. However such warning has the effect on the merit of the Government Servant or on his being considered for promotion on higher post. Such 'warning' cannot be a 'censure' because while awarding 'warning' he was not considered to be censured. If there is entry of 'two warnings' in the character roll of a Government Servant, the said 'warnings', due to the aforesaid reasons, neither be deemed to be converted into 'censure' nor be equivalent to 'a censure'. But it does not mean that Government Servant may have so many 'warnings' entered into his character roll. The 'warnings' has the effect of adverse remarks. If there is no improvement in the work despite warning, the reporting/reviewing officer is competent to record the remarks accordingly.

If a Government Servant is awarded 'warning' after adopting the prescribed procedure of awarding penalty (i.e. after giving an opportunity to explain his conduct and keeping in view the explanation submitted by him) and which is entered into character roll, in that case it shall have the adverse effect for next one year on the confirmation and promotion of the Government Servant. If five 'warnings' are entered into the character roll of a Government Servant, he shall be deemed to be fit for promotion, if after expiry of the period of adverse effect of the fifth warning, during the next five years his work and conduct of at least three years is extraordinary and he has not been awarded any adverse remarks for the period of next five years.]

15. Disciplinary Authorities. - (1) The Government may impose any of the penalties specified in Rule 14 on any Government Servant.

(2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in Rule 14 may be imposed on a Government Servant by the appointing authority or any authority to which the appointing authority is subordinate or by any other authority empowered in this behalf by a general or special order of the Government.

16. Authority to institute proceedings. - (1) The Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may-

(a) institute disciplinary proceedings against any Government Servant;
(b) direct a disciplinary authority to institute disciplinary proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule 14 under these Rules.

(2) A disciplinary authority, competent under these Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 14, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the penalties under clauses [(vi) to (xi)] of Rule 14.

Part-VI

Procedure for Imposing Penalties

17. Procedure for imposing major penalties. - (1) No order imposing any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.

(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.

Explanation. - Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may

be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the government servant;

(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this Rule.

(iv) evidence proving the delivery of the documents specified to in sub-Rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the

date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) (a) The Government Servant may take the assistance of other Government Servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:

Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided also that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:

Provided further that the Government Servant shall not take the assistance of any such other Government Servant who has three pending disciplinary cases on hand in which he has to give assistance.

(b) The Government Servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.

(9) If the Government Servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove

the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence,-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note:-If the Government Servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.

(iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this Rule:

Provided that the Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition specified in sub-rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring

authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and 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 leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his 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 and in such case the Government Servant shall 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 inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) 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. 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 shall be given to the Presenting Officer, if any, appointed.

(17) 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 they shall be liable to examination, cross-examination and, re-examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) 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 the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

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

(20) 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 inquiring authority or otherwise fails or refuses to comply with the provisions of this Rule, the inquiring authority may hold the inquiry ex parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of Rule 14 [but not competent to impose any of the penalties specified in clauses[(vi) to (xi)] of Rule 14], has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his 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 clauses [(vi) to (xi)] of Rule 14 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 penalties mentioned in clause [(vi) to (xi)] of Rule 14.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the records or may, if he 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 penalties as it may deem fit in accordance with these Rules.

(22) Whenever any 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 basis of 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 reexamine any such witnesses as hereinbefore provided.

(23)(i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

- (a) the articles of charge and the statement of the imputations 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 thereof.

Explanation. - If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his 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.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

- (a) the report prepared by it under clause (i) of this sub rule;

- (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.

18. Action on the inquiry report.- (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during

the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.

19. Procedure for imposing minor penalties. - (1) Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except after-

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the 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 imputations of misconduct or misbehaviour delivered to him;

- (iii) his representation if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings of each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.

20. Special procedure in certain cases.- Notwithstanding anything contained in Rules 17 to 19-

- (i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or
- (iii) where the Government is satisfied that in the interest of the State, it is not expedient to hold any inquiry in the manner provided in these Rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.

21. Communication of Orders.- Orders made by the disciplinary authority shall be communicated to the Government Servant who shall also be supplied with a copy of its finding on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

22. Common Proceedings.- (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 such Government Servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note.-If the authorities competent to impose the penalty of dismissal on such Government Servants are different an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Any such order shall specify-

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- (ii) the penalties specified in Rule 14 which such disciplinary authority shall be competent to impose;
- (iii) whether the procedure laid down in Rule 17 and Rule 18 or Rule 19 shall be followed in the proceeding.

Part-VII

Appeals

23. Orders against which appeal lies.- A Government Servant may prefer an appeal against order of suspension or order of punishment.

24. Appellate Authorities.- (1) A Government Servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified:-

- (i) where such Government Servant is or was a member of Civil Service, Group-A or Group-B or holder of Civil Post, Group-A or Group-B,-
 - (a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or
 - (b) to the Government where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Civil Service, Group-C or Group-D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however, review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorised for this purpose by the Government.

25. Period of limitation for appeals.- No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if he is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

26. Forms and content of appeal.- (1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal may be filed and a copy of appeal will be forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against, shall on receipt of a copy of the appeal, forward the same with its 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.

27 Consideration of appeal.- (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in view of the provisions of Rule 9 and having regard to the circumstances of the case,

the order of suspension is justified or not and confirm or revoke or modify the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 14, the appellate authority shall consider-

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (i) to (v) of Rule 14 and an inquiry under Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, himself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 18 and thereafter on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of clause (ii) of Rule 18, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (i) to (v) of Rule 14 and an inquiry under Rule 17 has already been held in the case, the appellate

authority shall, make such orders as it may deem fit, after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, of making a representation against such enhanced penalty.

(3) The appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

Part-VIII

Revision

Revision- (1) Notwithstanding anything contained in these Rules,-

(i) the Government, or

(ii) the head of a 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 a department, or

(iii) the appellate authority, 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,

may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may-

(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, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses(vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed without an inquiry in the manner laid down in Rule 17 and after giving a reasonable opportunity to the Government Servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary:

Provided further that no power of revision shall be exercised by the head of department, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules.