

CHAPTER X

INSTRUCTIONS FOR THE GUIDANCE OF OFFICIALS DEALING WITH DISCIPLINARY CASES, APPEALS, REVISION AND REVIEW UNDER THE RAILWAY SERVANTS (DISCIPLINE & APPEAL), RULES 1968.

1001. Responsibility of Disciplinary Authority:

The officials dealing with disciplinary action cases should carefully exercise checks at difference stages in order to eliminate procedural defects and to ensure that the extant rules and instructions are not overlooked or violated. A “Model Time Schedule” for finalising departmental proceedings in major penalty cases is given in Para 825 of this Manual. They should keep in mind, among others, the points indicated in the following paras.

1002. Service of charge sheet:

- (1) It should be ensured that the charge sheet is issued in the prescribed Standard Form, filled and completed in all respects.
- (2) It should be signed by the Disciplinary Authority or by an officer to whom the power for signing the charge-sheet, on behalf of the competent disciplinary authority, has been delegated constitutionally and legally.
- (3) If the disciplinary action proposed is for imposition of a major penalty, the charge-sheet shall consist of - (a) a statement of articles of charge framed against the concerned Railway servant, (b) a statement of imputations of misconduct or misbehaviour in support of the articles of charge, (c) a list of documents by which the articles of charge are proposed to be sustained (Relied upon documents), and (d) a list of witnesses by whom the articles of charge are proposed to be sustained; and a covering Memorandum requiring the charged official to submit a reply to the charge-sheet within a specified time.
- (4) However, if the disciplinary action proposed is for imposition of a minor penalty, the charge-sheet shall comprise only the statement of imputations of misconduct or misbehaviour, and a covering Memorandum requiring the charged official to submit a reply to the charge-sheet within a specified time.
- (5) The charged official shall be required to acknowledge receipt of the charge-sheet.

1003. Inspection of documents:

It should be ensured that the charged official is afforded reasonable opportunity to inspect the relied-upon documents and also the additional documents which, after considering the request of the charged official, have been permitted by the Inquiry Officer. However, the Disciplinary Authority may, for reasons to be recorded by it in writing, refuse permission to inspect any of the additional documents which in its

opinion would be against the public interest or security of the State to allow the charged official access thereto. Copies of statements, if any, of the relied-upon witnesses should also be supplied to the charged official if asked for by him.

1004. Reply to charge-sheet:

The Disciplinary Authority should ensure that :

- (i) the charged official is allowed the prescribed time limit to reply to the charge-sheet and that the charged official does not unduly delay his reply; and
- (ii) the intimation of nomination of defence counsel has been received from the charged official within twenty days from the date of appointment of the inquiry authority in the case of a major penalty charge-sheet.

1005. Consideration of and decision on the reply to the charge-sheet:

1005.1 It is the duty of the Disciplinary Authority to consider the reply to the charge-sheet submitted by the charged official and place on record the reasons in case of non-acceptance of the defence put forward by the charged official.

1005.2 In case no reply is received from the charged official within the stipulated time limit, the Disciplinary Authority may take a decision ex-parte.

1005.3 The course of action to be taken by the Disciplinary Authority will be different in the case of a 'minor penalty charge-sheet' and 'major penalty charge sheet' as indicated below :

- (a) **Minor Penalty Charge sheet** - The Disciplinary Authority, after considering the defence statement or without it if, the defence statement is not received in time, should ensure that-
 - (i) that he records his findings on each imputation;
 - (ii) that he specifically indicates his decision of either exoneration or for imposition of any particular minor penalty;
 - (iii) that the CVC is consulted where such consultation is necessary; and
 - (iv) that an oral inquiry is held in case it is proposed to impose a minor penalty of the nature described in Rule 11 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968.
- (b) **Major Penalty Charge sheet** - The Disciplinary Authority, after considering the defence statement or without it if the defence statement is not received in time, shall ensure -

- (i) that where all the articles of charge have been admitted by the Railway servant in his written statement of defence, record its findings on each charge, after taking such further evidence as it may think fit and shall act in the manner laid down in Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968.
- (ii) that, where the charged official has denied the charges or has admitted the charges with qualification, he passes speaking orders as to whether the case should be remitted for oral inquiry or whether the charged official should be exonerated or should be given a minor penalty not attracting the provision of sub-rule (2) of Rule 11 of Railway Servants (D&A) Rules, 1968.
- (iii) that, where the charged official has not submitted his defence statement within the specified time, he passes orders for remitting the case for an oral inquiry.
- (iv) that, if an oral inquiry is ordered, the Inquiry Officer (or the Board of Enquiry) and the Presenting Officer where necessary are appointed.
- (v) that specific orders are passed if common proceedings or simultaneous proceedings are desired if two or more officers have been charged in the same case.
- (vi) that the CVC and UPSC are consulted where such consultation is necessary, and
- (vii) that intimation of the proposed oral inquiry is given to the charged official and alongwith the relevant documents to the Inquiry Official and the Presenting Officer.

1006. Action after Inquiry Report:

- (i) On receipt of Inquiry Officer's report, the disciplinary authority will process the case for obtaining CVC's 2nd stage advice, charged official's representation, if any, on the IO's report and the points of disagreement with the IO's finding, etc. in accordance with the procedure laid down in para 819 of this Manual.
- (ii) After receipt of the representation of the charged official on the IO's report or after expiry of the time allowed to him for submission of representation, whichever is later, the Disciplinary Authority should carefully examine the IO's Report and record his findings on each article of charge.
- (iii) Pass speaking orders giving his decision, i.e. for imposing one of the statutory penalties or exoneration, based on the evidence adduced in the inquiry.
- (iv) Ensure consultation with the CVC and UPSC where such consultation is necessary.

- (v) Issue the punishment notice to the charged official along with a statement of the findings of the Disciplinary Authority on each article of charge in accordance with Rule 10(5) of the RS (D&A) Rules.
- (vi) Supply the accused Railway Servant with a copy of the advice, if any, given by the UPSC and (where the Disciplinary Authority has not accepted the advice of the UPSC) with a brief statement of reasons for non-acceptance.
- (vii) Issue copy of the punishment notice to the authority concerned for implementation.
- (viii) Ensure that the punishment orders take effect from the date of issue of the punishment notice or the prospective date indicated therein and not from any date earlier than the date of punishment order.

1007. Appeals:

The following are important guidelines and instructions on the subject.

- (i) The appeal against the orders of the Disciplinary Authority is required to be submitted within the specified period of limitation.
- (ii) In the case of delayed appeal, any explanation given by the employee for delayed submission is required to be considered by the Appellate Authority.
- (iii) The appeal is required to 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.
- (iv) The punishing authority should offer remarks on each point raised in the appeal and send the same with connected papers to the appellate authority.
- (v) In the disciplinary cases against non-gazetted officials where any of the penalties listed in sub-rules (iii-b) to (ix) of Rule 6 of the Railway Servants (D&A) Rules, 1968 has been imposed, the appellate authority has the discretion to grant personal hearing if the same is prayed for by the appellant.
- (vi) The appellate authority should ensure :-
 - (a) that there is no violation of the provisions of the Consultation or failure of justice;
 - (b) that the inquiry proceedings are in order; and
 - (c) that the penalty imposed is appropriate or commensurate with the gravity of the charge.
- (vii) In case the appellate authority proposes to enhance the penalty after considering the appeal preferred to it, the appellant should be informed of such intention of

the appellate authority and given an opportunity of showing cause against the proposed enhancement.

- (viii) In case the appellate authority proposes to enhance the penalty to one of major penalties, or to a minor penalty of the nature described in Rule 11(2) of the Railway Servants (D&A) Rules, 1968 and an oral inquiry had not been held earlier, an oral inquiry should be held.
- (ix) The UPSC should be consulted wherever such consultation is necessary.
- (x) At the appellate stage, consultation with the CVC is not necessary so long as the appellate authority, while modifying the penalty imposed by the Disciplinary Authority on the advice of the CVC, still remains within the parameters of the 'major' or 'minor' penalty earlier advised by the CVC.

(Department of Personnel & Administrative Reforms Confidential O.M. No.118/2/78-AVD I dated 19.02.1979 circulated with Board's Confidential letter No.76/Vig-I/CVC/2/2 dated 20.04.1979).

SUBSIDIARY INSTRUCTIONS

- (1) **Observation of the Rules** - The investigation of appeals some times discloses errors in procedure in the disposal of disciplinary cases, and it cannot be denied that in some cases the rules regarding appeals may also not be observed. Such cases are few and are generally due to mis-understanding rather than to neglect, of the provisions of the rules. At the same time it is obviously necessary that if the employee's case is to have the consideration he has the right to expect, the rules must be properly observed.
- (2) **Appellate Orders** - It is believed that in a majority of appeals received, careful consideration and full justice is done to the appellants. But the aim should be not merely to give justice but to ensure that as far as possible, appellants should feel that they have had just treatment. The rejection of an appeal with the words appeal 'dismissed' is seldom, if ever, likely to secure this effect and the power to pass an order of this kind may lead, in some cases, to the overlooking of relevant points raised by the appellant. In every case the order passed in appeal, and given to the appellant should be of such a character as to indicate that the ground of his appeal have been understood and that an independent judgement has been brought to bear on the merits of the case. If the punishing authority has failed to review the case properly it may be necessary for the Appellate authority to undertake this task.

(Board's letter No. E 41/G41/2 dated 26-7-1941)

- (3) **Consultation with superiors** - Authorities empowered to inflict certain punishments should exercise their own judgement without taking the prior

permission of their superiors. In particular, an officer taking disciplinary action should in no case consult the officer to whom an appeal against that action will lie. Such consultation is unfair to the man concerned as it deprives him of the right to have his case considered by two independent authorities and it is frequently embarrassing to the superior officers who may find, when he considers the ground of appeal that his advice was based on an imperfect appreciation of the case.

- (4) **Modification of Orders** - A number of officers in the less responsible posts feel that the reversal or the modification by an appellate authority of the orders passed in a disciplinary case tends to weaken discipline by impairing the authority of the officer who passed the original order. It is important that no such consideration should be allowed to interfere with the duty of giving full justice to appellants. The appellate officer has ordinarily been given powers to hear appeals because he has greater experience and he frequently has other advantages in having before him a fresh presentation of the appellant's case, and in some cases fresh facts. His coming to a different conclusion need not involve a reflection on the original authority's work; any impression among junior officers that their orders will be upheld even when they are erroneous would go far to encourage careless orders and thus give increased difficulty in appeals.
- (5) **Delays** - There have been complaints of delay in the disposal of appeals. If, as is the case, an employee is bound by the rules to submit his appeal within a stipulated time, the Administration on the other hand should ensure that these are dealt with within a reasonable time. It is not desirable to lay down any definite limits, within which appeals must be decided, as in some cases additional information has to be obtained in order to deal with the matter. At the same time, it should be ensured that the prompt despatch of appeal work should receive special consideration.
- (6) **Representations** - While some representations are of frivolous nature, many deal with grievances which may or may not be justified but which are felt to be genuine by the employee concerned. Contentment among large bodies of staff cannot be maintained unless they feel that such representations receive adequate consideration. In regard to inferior staff and lower subordinates, senior subordinates have been found to relieve Assistants and other officers of the considerable labour involved in dealing with these matters, but this does not relieve all gazetted officers from ensuring that representations are not neglected and that cases of real and fancied hardship are considered and that reasonable steps are taken to remove genuine grievances.

(Board's circular No. E 41/G41/2 dated 26-7-1941)

- (7) **Representations on service matters made by relatives of Railway Servants - Disposal of** - It has come to the notice of Board that relatives of a Railway servant some times make representations concerning service matters affecting the Railway servant. This is done in some cases in the hope of reviving a representation which the Railway servant had himself made and which had been

turned down. In some cases, this procedure is resorted to in order to get round the requirement that the Railway servant should submit his representation through his official superiors. The practice is obviously undesirable, and should be strongly discouraged. It has accordingly been decided that no notice should be taken of a representation on service matters submitted by relative of a Railway servant. The only exception may be cases in which because of the death or physical disability etc. of the Railway servant, it is impossible for the Railway servant himself to submit a representation.

(Board's circular No.E(D&A) 63 RG6-40 dated 5.10.1963).

1008. Need for issuing 'Reasoned and Speaking Orders' by Disciplinary/Appellate authority in Discipline and Appeal cases:

While exercising disciplinary powers, the Disciplinary and Appellate Authorities etc. perform quasi-judicial functions. Thus, the Disciplinary/Appellate Authorities should ensure that they pass self-contained "speaking and reasoned" orders. In no case, disciplinary orders should be issued in printed forms as these forms militate against the very concept of passing of "reasoned and speaking orders" in disciplinary cases.

(Board's letter No. E(D&A) 2002/RG6-27 dated 24.9.2002)

1009. Revision:

If at any time, in terms of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968, the competent Revisionary Authority decides to initiate the process for revision of the punishment imposed by the Disciplinary Authority on a Railway servant, the procedure laid down in the said Rule should be followed.

1010. Review:

The authority to review a disciplinary case, with a view to revising the punishment imposed, vests in the President. The process for conducting a Review can be initiated, in terms of Rule 25A of the Railway Servants (Disciplinary & Appeal) Rules, 1968, 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 notice.