

CHAPTER VIII

RELEVANT ASPECTS OF RAILWAY SERVANTS (DISCIPLINE & APPEAL) RULES, 1968 FOR VIGILANCE WORK

801. Application of Discipline & Appeal Rules:

- 801.1 As defined in Rule 3 of Railway Servants (Discipline & Appeal) Rules, 1968, these rules are applicable to all railway servants except:
- (a) any member of the All India Services;
 - (b) any member of the Railway Protection Forces;
 - (c) any person in casual employment; and
 - (d) any other person as defined in Rule 3(1) (d) of Railway Servants (Discipline & Appeal) Rules, 1968.
- 801.2 Notwithstanding anything noted above, the President may, by order, exclude any class of railway servants from the operation of all or any of these rules.

802. Appointing Authority:

- 802.1 “Appointing Authority” in relation to a railway servant is the highest authority as defined in Rule 2 (1) (a) of the Railway Servants (Discipline & Appeal) Rules, 1968.

Note – The most important point is that, the appointing authority is the highest of the four alternatives given in Rule 2(1)(a) of the Railway Servant (D&A) Rules, 1968. If the authority, which actually appointed him is higher than the authority who is now competent to appoint him, then the authority who actually appointed him is the “Appointing Authority” in his case. Similarly, if the authority competent to appoint him at the time of passing the orders is higher than the authority which actually appointed him then the former would be “Appointing Authority” in his case. The gist of the instructions contained in Board’s letter No. E(D&A)/2002/RG-6-36 dated 25.11.2002 may also be referred to.

- 802.2 General instructions as laid down in the Establishment Codes of Railways should be observed while issuing appointment order by the competent authority. In no case should the appointment orders be issued by an officer higher than the appointing authority.
- 802.3 Railway administration should notify a ‘Schedule of Power’ which should clearly specify the authorities, authorised to make appointments in respect of each grade / category of staff.

(Board’s letter No. E(D&A)2002/RG-6-36 dated 02/09/2003)

Clarification : Appointing authority in the event of missing records- Wherever no records of appointment letters are available to indicate the actual Appointing Authority in the case of non-gazetted staff, the General Manager should be treated as the Appointing Authority.

{Board's circular No. E(D&A) 63/RG 6-23 dated 21-2-64}

803. Disciplinary Authority:

“Disciplinary Authority” is defined in Rule 2(1)(c) of Railway Servants (Discipline & Appeal) Rules, 1968.

Note. – The “Disciplinary Authority” is to be determined with reference to the post held by the accused at the time when the disciplinary proceedings for imposition of any of the penalties, defined in Rule 6 of the Railway Servants (Disciplinary & Appeal) Rules, 1968 – are to be initiated as also nature of penalty to be imposed and not in relation to the post held by him at the time when the misconduct occurred. The President may impose any of the penalties specified in Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968.

804. Railway Servant:

“Railway Servant” is defined in Clause 43 of Rule 103 of Indian Railway Establishment Code, Volume I - Fifth Edition, 1985 (Second Reprint Edition, 2003).

805. Inquiry Authority:

“Inquiring Authority” is the authority appointed by the Disciplinary Authority to inquire into the charges against a railway servant in terms of Rule 9 (2) of Railway Servants (Discipline & Appeal) Rules, 1968.

806. Protection of rights and privileges conferred by any law or agreement:

No provision of Railway Servants (Discipline & Appeal) Rules, 1968 shall operate to deprive any railway servant of any right or privilege to which he is entitled :-

- (a) by or under any law for the time being in force;
- (b) by the terms of any agreement subsisting between such person and the President at the commencement of those rules.

PENALTIES

807. Penalties under Discipline & Appeal Rules:

Penalties given in Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968, read with its proviso and explanations, that can be imposed on a railway servant are given below for ready reference.

MINOR PENALTIES

- (i) Censure;
- (ii) Withholding of promotion for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused by the railway servant to the Government or Railway Administration by negligence or breach of orders;
- (iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;
- (iii-b) Reduction to lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting railway servant's pension.
- (iv) Withholding of increments of pay for a specified period with further direction as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of railway servant's pay;

The penalties mentioned in (ii), (iii), (iii-b) & (iv) will be considered as stiff/severe minor penalties.

MAJOR PENALTIES

- (v) Save as provided in Clause (iii-b), reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of railway servant's pay;
- (vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and the seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) Removal from service; and
- (ix) Dismissal from service.

The penalties mentioned against (vii), (viii) & (ix) will be considered as stiff major penalties and will be imposed only by the appointing authority or higher authority.

Explanations :

- (1) **Administrative action not amounting to penalties-** Some actions listed in Explanation to Rule 6 of Railway Servants (Discipline and Appeal) Rules, 1968 not amounting to penalties may be referred to.

- (2) In terms of sub rule (2) of Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968, minor penalty of withholding of increment (s) with cumulative effect, or any of the minor penalties affecting the pension of the employee, should not be imposed unless an inquiry is held in the manner laid down in sub-rules (6) to (25) of Rule 9.

808. Procedure for imposition of minor penalties:

The procedure laid down in Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968 would be observed while dealing with cases of minor penalties.

SUBSIDIARY INSTRUCTIONS

- 1. Time limit for submission of explanation etc.** - Where the disciplinary proceedings are initiated under Rule 9 (7) of Railway Servants (Discipline & Appeal) Rules, 1968, the accused railway servant (in cases where photocopies of the documents relied upon have been delivered to the accused railway servant alongwith the charge-sheet) shall be required to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.

Note :- If copies of documents have not been delivered to the Railway servant along with the articles of charges and if he desires to inspect the same for the preparation of his defence, he may do so, within 10 days from the date of receipt of the articles of charges by him and complete inspection within ten days thereafter and shall state whether he desires to be heard in person.

{Rule 9(7) of the Railway Servants (D&A) Rules, 1968}

- 2. Authority competent to sign the charge-sheet** - The Memo for initiation of disciplinary proceedings (for imposition of minor and/or major penalty) should be issued under the signature of a disciplinary authority as defined in Rule 2(1) (c) read with Rule 8 (2) and Rule 26-A of the Railway Servants (Discipline & Appeal) Rules, 1968.
- 3. Imposition of ‘Minor’ penalty where charge-sheet for imposition of ‘Major’ penalty is issued** - Provision contained in Rule 9 (9) (a) (iv) of the Railway Servants (Discipline & Appeal) Rules, 1968 would be observed in such cases.
- 4. Authority competent to issue charge-sheet** - The authorities competent to institute disciplinary proceedings against different categories of railway servants are given in Schedules I, II and III of the Railway Servants (Discipline & Appeal) Rules, 1968. For determining the authority competent to initiate disciplinary proceedings, provision of Rule 2 (1) (c) read with Rule 8 (2) and Rule 26-A of the Railway Servants (Disciplinary and Appeal) Rules, 1968 be observed.

5. **Routing of charge sheet through PHOD** - Charge sheet is after all the end product of a vigilance investigation when after a careful examination and critical evaluation of all the facts, a conclusion is drawn about the requisite action to be taken against any particular officer. Invariably, this exercise is done with full involvement of all the concerned officers like SDGM, PHODs, GMs, as the case may be, in the Railway and with due consideration and deliberation at the level of Board and CVC. Thus, thereafter the charge sheet is a statement of facts of the case put in a proper format. There is, therefore, no necessity for routing the draft charge sheet once again through PHODs as it causes avoidable delays.

In vigilance cases, after receipt of the defence reply, the personnel department should route the charge-sheet through the SDGM who will put up to the GM with Vigilance comments. In case, the DA(GM) wants to take the opinion of PHOD, he may seek his views but as a matter of practice, the charge sheet should not be routed through the PHODs. Likewise, it is not necessary to serve the charge-sheet through the PHODs.

(Board's letter No.97/V-I/DAR/1/3 dated 24.12.97)

6. **Common proceedings** - Where two or more Railway servants are concerned in any case, a common proceedings is preferable as it would result in quicker disposal of the case and avoid the possibility of a charge failing by each accused throwing the blame on the other, besides precluding the possibility of conflicting findings being given by different Inquiry Officers.

809. Withholding of increments:

In ordering the withholding of increment (s) as a result of disciplinary proceedings, the authority passing the order shall state the period for which the increment (s) is/are to be withheld and whether or not it shall have the effect of postponing future increments.

SUBSIDIARY INSTRUCTIONS

Withholding of increments with the effect of postponing future increments - The disciplinary authority, while awarding the penalty of withholding of increments with the effect of postponing the future increments of his pay, should keep in view the implications about the financial loss to the accused Railway servant.

{Board's letter No. E(D&A)64RG-17 dated 20-5-64}

810. Withholding of Privilege Passes and PTOs:

In ordering withholding of Passes and PTOs the authority passing the order shall bear in mind that with a view to making such a punishment effective, the penalty of withholding Passes and PTOs may be imposed in terms of sets viz., one set or two sets in a calendar year instead of for a specific period.

811. Penalty of recovery from pay of loss caused to Government in addition to another penalty:

In cases of the type where loss of Station Earnings is caused as a result of negligence and carelessness on the part of the Station Master, it would be open to the competent authority to inflict in addition to the penalty of recovery from pay of the loss caused to Government by negligence or breach of orders, any one of penalties specified in clauses (i), (ii), (iii-a), (iii-b), (iv), (v) and (vi) of Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 by way of one and the same order and in pursuance of one and the same proceedings. This does not amount to a double penalty.

{Board's letter No. E (D&A) 62 REG-26 dated 17-5-1962}

MAJOR PENALTIES

812. Framing of charge and calling for written statement of defence:

The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of imputations of misconduct or misbehaviour on which they are based shall be communicated in writing, in the prescribed form, to the railway servant, and he shall be required to submit within 10 days to such authority a written statement of defence; and if he requires to inspect any documents, within 10 days after completion of the inspection of documents and also to state whether he desires to be heard in person.

SUBSIDIARY INSTRUCTIONS

1. **Collection of records** - The authority framing the charges for imposing major penalty should take steps to collect all records relevant for the purposes of inquiry even at the time of framing the charges and keep them in its custody so that access thereto may be given readily if such a request is made by the defendant official.

{Board's letter No. E(D&A)62RG6-8 dated 27-7-1963}

2. **Time limit for completion of inspection of documents and submission of written statement of defence** - The dates by which the defendant official should, if he so desires, complete the inspection of documents, and submit his written statement of defence, should be specified in the memorandum. The time to be allowed for each of these items would be governed by the provisions contained in Rule 9(7) of the Railway Servants (Discipline & Appeal) Rules, 1968.
3. **Case not to be remitted to a lower disciplinary authority in case proceedings are instituted by a higher disciplinary authority** - Where proceedings are instituted by a "higher disciplinary authority", further processing of the case shall continue to be done by that authority till final orders in the proceedings instituted by it are passed or the case is remitted by it to the next higher competent disciplinary authority with its recommendation on the ground that it is not

competent to impose a penalty which it, after considering the inquiry proceedings, feels should be imposed.

Under no circumstances, the case, where disciplinary proceeding have been instituted by a higher disciplinary authority should be remitted to the lower disciplinary authority for further processing and/or passing of any order even on the grounds that on merits of the case, it is sufficient to impose a minor penalty and such lower authority is competent to impose that penalty. In such cases the appeal against the punishment order of the “higher disciplinary authority” shall lie to the authority prescribed in the Schedules of disciplinary powers appended to the Railway Servants (Discipline & Appeal) Rules, 1968.

Note:- If in a case, instituted by a lower disciplinary authority, a higher disciplinary authority steps in and passes any intermediary order on such disciplinary proceedings, further processing of the case shall be pursued by that higher authority till the conclusion of the proceedings in the same manner as if the proceedings had been instituted by it.

{Board’s letter No.E(D&A)/62/RG 6-8 dated 27-7-1963}

4. **Permission to be granted to the Railway servant / trade union official assisting the accused official** - The Railway servant/trade union official permitted to assist the accused official should be permitted to examine, cross-examine and re-examine witnesses and make submissions before the Inquiry Officer on behalf of the accused official.

813. Procedure for imposition of major penalties:

Penalties specified in clauses (v) to (ix) of Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968 shall be imposed only after an oral inquiry has been held in the manner prescribed in Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968.

Clarification

- (1) **Clarification of the words “Administrative Ground” occurring in Explanation No. (iv) under Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968** - Reversion may take place for reasons of extraneous circumstances like revision of cadres, transfers of more senior men from other units, revision of seniority lists, abolition of posts etc. It is these extraneous circumstances that broadly constitute the “Administrative grounds” on which reversion may take place otherwise than by way of imposition of the penalty of reduction in rank.

{Board’s letter No.E(D&A) 62RG6-24 dated 26-6-1962}

814. Administrative action:

- (a) **Warning - Power to Administer** - Administration of 'Warning' is not a recognised penalty under the Discipline and Appeal Rules. It is an administrative action by which a superior authority expresses his criticism and disapproval of the work/conduct of the person warned and is designed to point out the defects noted with a view to enabling that person to make an effort to remedy them. The warning may be administered verbally or in writing (depending on the circumstances of each case), as the competent authority may decide.

It would follow that any superior authority has the power to administer a warning to an official subordinate to it. It is, however, desirable that the authority administering the warning is not normally one lower than that which initiates the Confidential Report on the official so warned.

- (b) **Recorded Warning - Procedure for Administration** - In a case where the competent authority decides to administer a written warning and a copy thereof is proposed to be placed on the person's Confidential Report, it is only fair that the person concerned is given a chance to explain the reasons, if any, which led him to do the acts of omission or commission disapproved of. Further action to administer the warning may be taken only after the reply of the railway servant concerned is considered by the competent authority but not found acceptable. The railway servant concerned has also a right to represent against an order of recorded warning.

Board's letters No. 2004/V-1/DAR/1/3 dated 16.8.2004 and No. 2005/V-1/DAR/1/3 dated 6-10-2005)

- (c) **Warning after Disciplinary Proceedings** - Where disciplinary proceedings have been initiated, "Warning" should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attaches to the Railway servant, at least the penalty of "censure" should be imposed.

{Board's letter No.E (D&A) 92 RG6-149 (A) dated 21-1-1993}

- (d) **Other warnings** - Warnings are also administered as a result of preliminary investigation/enquiries into allegations of irregularities initiated with a view to determine whether regular disciplinary proceedings should be started against any person or persons. If the disciplinary authority is satisfied that the enquiry revealed no cause for instituting regular disciplinary proceedings, 'Warning' may be administered to the accused, in consultation with the Central Vigilance Commission in the case of gazetted officers and in consultation with the CVO of the unit in the case of non-gazetted officials.

815. Instructions for placing of warnings/displeasure etc. in the CR/Personal file:

The following instructions should be borne in mind and followed while recording or placing warnings on the CR/Personal file.

- (a) **Warning** - A warning may be either oral or written; where warning is oral there is no need of mentioning it in the Confidential Report Files etc., of the official. A written warning may be either recorded or unrecorded in the Confidential Report File. Warning is recorded in the CR file only when the competent disciplinary authority specifically decides it to be so for good and sufficient reasons but before a recorded warning is administered, it is necessary that the official concerned had been given an opportunity to explain the lapses for which the warning is administered. If, however, the warning is intended to be unrecorded, though written, the communication should not obviously, be mentioned by the reporting officer in the CR files unless such a mention is really necessary for a truly objective assessment of the official's work.
- (b) **Conveying displeasure** - This, like warning, is an action of a corrective nature to be resorted to when the lapse on the part of the official is such that it may be considered necessary to convey to the official the sense of displeasure over it but is not serious enough for administering a warning. Such displeasure is actually communicated in the form of a letter and a copy of it may, if so decided, be placed on the Character Roll of the official. Therefore, on the question whether displeasure should be recorded or not, the criterion can be the same as that for recorded warning.
- (c) **Bringing lapses and short-comings to the notice of the official, admonishing, cautioning, counselling, etc.** - The above mentioned actions also have no penal element in that they are intended to assist the official concerned to correct his faults and deficiencies. These are, therefore, not to be recorded in the confidential report of the official. There should scarcely be any occasion for the reporting officer also to refer to these in the CRs, unless the reporting officer considers it absolutely necessary for a truly objective assessment. However, if any of the above actions has to be mentioned in the character roll of the officer, it should be done after issuance of a show cause notice; otherwise there is no necessity of issuing show cause notice. The employee would be entitled to represent against such administrative action. The format for issuing memorandum of admonishing/counselling/ cautioning/ warning (as the case may be) is circulated to the Railways vide Board's letter No.2004/V-1/DAR/1/3 dated 16.8.2004.

{Board's letter No. E (D&A) 77RG-20 dated 10-5-77, 2004/V-1/ DAR/1/3 dated 16.8.2004 and 2005/V-1/DAR/1/3 dated 6-10-2005)}

Note:- Regarding issuing of a warning/recorded warning after the conclusion of disciplinary proceedings, provisions contained in paras 814 (c) and 815 (a) of this Manual may be kept in view by the competent disciplinary authority. Instructions issued by the Ministry of Railways (Railway Board) vide their letters No. E (D&A) 92 RG6 - 149 (A) dated 21-01-1993 and No. E (D&A) 92 RG6 - 149 (B) dated 21-01-1993 may be referred to.

816. Appointment of Board of Inquiry or Inquiry Officer:

Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968, a Board of Inquiry or an Inquiry Officer.

SUBSIDIARY INSTRUCTIONS

1. Authority competent to conduct Departmental Inquiry:

- (a) With a view to avoid the possibility of the Enquiry Officer being influenced by the findings of the superior authority, departmental enquiries for disciplinary action should not, except in cases arising out of the fact-finding enquiries like accident enquiries, enquiries consequent to audit reports, reports from the SPE/CBI and enquiries made by Vigilance Organisation, be entrusted to an officer lower in status than that of the officer who conducted the fact-finding enquiry.

{Board's letter No. E(D&A) 62 RG6-19 dated 10-4-1962 and E(D&A) 60 RG 6-31 dated 15.6.1970}

- (b) **Appointment of witnesses as IO/Association with disposal of enquiry proceedings** - An officer who has to give evidence at a departmental enquiry should not be nominated as a member of the enquiry committee or associated with the disposal of the proceedings of that committee.

{Board's letter No. 65-Vig.II/93 dated 18-8-1965}

2. Status of enquiry officer:

- (a) As long as there is no bias attaching to the enquiry officer approved by the Disciplinary Authority, the rank and status of the enquiry officer vis-a-vis the Disciplinary Authority will not count in the eyes of the law. There is no objection to the nomination of an officer of the same or lower status as enquiry officer whose function is exclusively to conduct the enquiry. The appointment of the Enquiry Officer has however to be made with reference to the status of the charged official.

(Board's letter No. E(D&A) 78 RG6-75 dated 31-7-79)

- (b) The status of CDI of the CVC vis-à-vis the charged official is immaterial because he belongs to an independent organisation outside the department of the charged official.

(Board's letter No. E(D&A) 2000 RG6-24 dated 20.2.2001)

3. Conduct of oral inquiries:

In all cases pertaining to Gazetted Officers in respect of whom CVC is required to be consulted or in any other case in which disciplinary proceedings for imposing a major penalty have been initiated on the advice of the CVC, the inquiry will be entrusted to the Commissioners of Departmental Inquiries (CDI) nominated by the Central Vigilance Commission. In cases where Non-Gazetted Officers are involved alongwith Gazetted Officer (s), the oral inquiries will be entrusted to the same CDI who has been nominated by the Central Vigilance Commission to hold inquiry in respect of the co-accused Gazetted Officer excepting only those cases where the Central Vigilance Commission have specifically permitted for appointment of another Inquiry Officer.

4. Preparation of Panel for RIOs:

The panel for Railway Inquiry Officers (RIOs) is prepared by the Railway Board on the basis of the recommendations received from the Zonal Railways and other Railway Units from amongst the SAG and Selection Grade Officers who have clean vigilance record. To apprise these officers of the procedures for holding inquiry, training is imparted to them.

5. Empanelment of retired Railway officers of various grades for their subsequent appointment as Inquiry Officers in DAR cases, arising out of vigilance investigations:

In the interest of expeditious finalisation of the departmental inquiries, arising out of vigilance investigations, retired Railway officers upto Group 'B' gazetted are empanelled for their subsequent appointment as Inquiry Officers for conducting departmental inquiries involving gazetted railway officers or a combination of gazetted and non-gazetted railway officials. Their services with respect to such appointments are governed by the terms and conditions laid down vide Boards' letters No.94/V-1/CVC/1/1 dated 28/12/1994, No.98/V-1/Retd/RIO/NGO/3 dated 29/07/1998 and No. 2002/V-1/DAR/2/1 dated 18.6.2002, as modified from time to time.

6. Rate of Honorarium to be paid to various types of IOs and their supporting staff and the POs in CVC's /non-CVC cases:

Serving railway officers as well as retired railway officers may be appointed as Inquiry Officers in Disciplinary & Appeal cases against Railway officers/staff, arising as a result of Vigilance investigations. The rate of honoraria to be paid to them will be as per extant instructions issued from time to time.

817. Permission to inspect official records:

The provisions contained in Rule 9(7) and 9 (8) of the Railway Servants (Discipline & Appeal) Rules, 1968, shall be observed in this respect.

818. Inquiry Procedure:

- 818.1 In a case where the Disciplinary Authority, after considering the written statement of defence of the accused Railway servant, decides to proceed with the inquiry, provisions contained in Rule 9 (9) to 9 (25) of the Railway Servants (Discipline and Appeal) Rules, 1968 shall be observed for further processing of the disciplinary case.
- 818.2 Important points which are to be observed in disciplinary proceedings by the inquiry committee/inquiry officer are given in Chapter IX of this Manual.

SUBSIDIARY INSTRUCTIONS

- (1) **Stage at which the IO should be appointed** – The Inquiring Authority should be appointed only after the receipt of defence statement or after time allowed for such submission has lapsed. Appointment of Inquiring Authority before the receipt of defence statement or time allowed for the submission of such defence statement is an irregularity and may vitiate the proceedings. The accused officer can allege that the Disciplinary Authority had prejudged the issue.
- (2) **Warning against false evidence** – At the start of the proceedings, all the witnesses should be reminded that they render themselves liable to severe disciplinary action if they give false evidence.
- (3) **Nomination of “Defence Helper”** – “Law Assistants” who are entitled to act as legal practitioners are debarred from acting as defence helper. If any Law Assistant does not appear or plead before any Court/Tribunal on behalf of the Railway Administration, but only assists the Railway Advocate at the time of hearing, he may act as Defence Helper.

(Board’s letter No. E(D&A) 59RG7-10 dated 26-11-1959 and E(D&A) 89 RG6-132 dated 10.1.90)

- (4) **Principles of natural justice to be followed in departmental enquiries** – A departmental enquiry need not be carried out strictly in accordance with the rules applicable to judicial proceedings but the principles of natural justice should be followed. An extract from a Supreme Court judgement wherein the term “principles of natural justice” has been broadly defined is given below :-

(Board’s letter No. E (D & A) 62 RG6 – 37 dated 2-8-1962)

Extract from the judgement of the Supreme Court in Civil Appeal No. 18 of 1957:

“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 witnesses examined by the party, and that no materials should be relied on against him without his being given an opportunity of explaining them.”

(Board’s letter No. E(D&A) 55RG6-2 dated 20-7-1959)

Some more examples on reasonable opportunity and natural justice are given below:-

(a) Example of natural justice

Natural justice does not supplement any law or rule. It is only supplementary. Secondly, rules of natural justice are generally referred to by or on behalf of defence. They should in all fairness apply to both the parties.

(b) Natural justice does not mean fundamental rights

The rules of natural justice cannot be elevated to the position of fundamental rights. Their aim is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas governed by any law validly made. This is the view taken by the Supreme Court in the case of Union of India vs J. N. Sinha and others (AIR 1971 SC 40). Since the disciplinary rules contain clear provisions about the conduct of Inquiries at various stages, the rules of natural justice cannot be invoked for going beyond or round the scope of the rules at any stage. In the case of A. K. Das vs. Sr. Superintendent of Post Offices (AIR 1969, A & N 99) it has been held that if the procedure laid down in the CCS (CCA) rules is complied with, there can be no complaint of violation of natural justice.

(c) Principals of Natural justice

(i) Natural justice is not defined in any rules but the concept is fairly crystalised through judicial pronouncements and covers three important principles:

- (a) right of either of the party to be heard;
- (b) no person can be judge in his own cause; and
- (c) justice should not only be done but should be seen to be done

In other words, where there are no specific provisions in the rules and procedures, either party has a right to “fair hearing”, “unbiased judgement” and “clear speaking order”.

- (ii) The Madras High Court in *Gabriel vs. State of Madras* has succinctly set out the requirements of an oral 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 conclusion must be rested on the evidence, it goes without saying that it must not be based on the 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.”

[(1959) 2 M.L.J. 15]

(d) Scope of argument by the IO during the Enquiry Proceedings

There has been an argument whether IO should interrupt during the hearing or even argue while the proceedings are on and whether this constitutes violation of natural justice. It is not correct to conclude that every intervention or argument or even a hostile remark of an IO is indicative of bias. As Supreme Court has construed as indicating prejudice, “I am afraid most judges will fail to pass the exacting test”. In the course of an argument, a judge sometimes expresses his opinion, tentatively formed, sometimes even strongly worded, but that does not always mean that the case has been prejudiced. An argument in a court can never be effective if the judges do not sometimes point out what appears to be an underlying fallacy in the apparent plausibility thereof; and every lawyer or litigant who forms an apprehension on that score cannot be said to reasonably doing so (*Viswanathan vs. Abdul Vazid* AIR 1936 SCI).

(e) Impartiality of the E.O.

In *Darbari Ram Sharma vs. State of Uttar Pradesh*, a Sub-Inspector of Police had sent a notice to the Government under Section 80 of the Civil Procedure Code, alleging that he had not been properly treated by the Superintendent of Police on a particular date during the enquiry and that the behaviour of the officer present amounted to defamation. Charges were framed subsequently against the Sub-Inspector for sending the notice and the

Superintendent of Police himself investigated the charges and tried the case. The Allahabad High Court held that it was against the principles of natural justice that the Superintendent of police should have tried the case himself and investigated the charges. The order passed by him was set aside.

(AIR 1959 SC 1376)

(f) IO cannot add to evidence

In *Ausutosh Das vs. State of West Bengal*, it was held that in a departmental enquiry, the Inquiring Authority cannot rely on his own evidence. This is contrary to the rules of natural justice as Inquiring Authority cannot both be a judge and a witness.

(AIR 1956 Cal 278)

(g) Rules of natural justice require

- (i) that a party should have the opportunity of adducing all relevant evidence on which he relies;
- (ii) that the evidence of the opponent should be taken in his presence;
- (iii) that he should be given the opportunity of cross-examining the witnesses examined by that party; and
- (iv) that no material should be relied against him without his being given an opportunity of explaining them.

(*Union of India vs. T.R. Verma* AIR 1957 SC 882)

(5) Examination of the accused officer

- (a) The accused Government servant has also the right to examine himself as a witness. If he does not avail himself of this provision, a duty is cast on the Inquiring Authority to question him generally. Failure to observe this provision shall vitiate the enquiry. It is not necessary for the Inquiring Authority to question the accused officer on every single incriminating piece of evidence placed on record during the enquiry. The accused has had adequate knowledge of the facts against him from the depositions of the witnesses and through the arguments for defence. He also puts in a written brief dealing with his case. It would be sufficient for the Inquiring Authority generally to question him on the circumstances appearing against him, particularly on any point, which in view of the Inquiring Authority, requires clarification.

- (b) While deposing as a witness in his defence or answering the questions of Inquiring Authority [under Rule 9 (21) of the Railway Servants (Discipline & Appeal) Rules, 1968], the accused is not allowed to consult his Assisting Officer.
- (6) **Relevancy of character in Departmental Proceedings** – Character of the accused is normally not relevant during the disciplinary enquiry, unless the same is the subject matter of enquiry, and the prosecution should not comment on the same. But, however if the accused brings in his “good character” during the enquiry, the prosecution cannot be prevented from commenting on the same, or adducing material which may be complimentary to him.
- (7) **Relieving of a Railway servant for assisting the accused Railway servant** – A Railway servant shall be relieved to assist another Railway servant at an enquiry only on receipt of a letter of consent from him agreeing to assist another employee in his defence and if it is possible to spare him from his departmental duties for the required period.
- (8) **Treating of additional persons as accused during the course of an enquiry** – If during the course of an enquiry, it is found that prima facie evidence exists against any other persons not already treated as accused, it is preferable to hold another enquiry on them at a later stage, so as not to delay matters, but if it is considered more convenient, the Board of Inquiry or the Inquiry Officer should immediately report the matter to the competent authority for necessary orders.

Note:- The clarifications on leave facilities, Passes, TA to the accused Railway servant and their defence counsel for inspection of documents and attendance before the inquiring authority are contained in Annexure VIII/1.

(9) Collection of evidence

- (a) An enquiry in which the delinquent officer is examined at the very commencement of it and thereafter several times as and when the evidence of witnesses is recorded, cannot be held to be a fair enquiry.
- (b) Relying on the evidence of witness who was not examined during the oral enquiry on the ground that his relations with the accused were cordial and hence his statement was not made “Out of Prejudice”, is wholly wrong in principles.
- (c) Disciplinary authority basing his decision inter-alia on the evidence of a witness not examined during oral enquiry amounts clearly to denial to the accused of reasonable opportunity of defence.

(Ramshakal Yadav vs. Chief Security Officer, R.P.F., Bombay, AIR 1967 M.P. 91).

(10) Ex-parte proceedings

- (a) If the Government servant to whom a copy of the articles of charges 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, the Inquiring Authority may hold the enquiry ex-parte. The notices of all hearings should be served on the accused or communicated to him unless the first notice says that the enquiry will continue from day-to-day. In ex-parte proceedings, the entire gamut of the enquiry has to be gone through. The notices to witnesses should be sent, the documentary evidence should be produced and marked, the Presenting Officer should examine the Prosecution Witnesses and Inquiring Authority may put such questions to the witnesses as he thinks fit. The Inquiring Authority should record the reasons why he is proceeding ex-parte and what steps he had taken to ask the accused officer to take part in the enquiry. In such a case the details of what has transpired in his absence, including depositions, may be furnished to the accused officer. During the course of enquiry, the accused is free to put in an appearance and participate in the enquiry. If the accused appears in the enquiry when some business has already been transacted, it is not necessary to transact the same business again unless the accused officer is able to give justification to the satisfaction of the Inquiring Authority for not participating in the enquiry earlier.
- (b) If the accused Government Servant has refused to take part in the enquiry unless he has inspected all the documents, the enquiry should not proceed ex-parte. The Supreme Court in *Trilok Nath vs. Union of India* has held that insistence on inspection of relevant documents before taking part in the oral enquiry does not amount to refusal to participate in the enquiry. If, however, the accused does not take part in the enquiry because the Inquiring Authority has not called for all the additional documents asked for by the accused, the Inquiring Authority may proceed ex-parte, after recording the reasons for not calling those documents.

(CA No. 322 of 1957)

- (c) If a Government Servant under suspension is short of funds on account of non-payment of subsistence allowance and if he cannot attend the enquiry, ex-parte proceedings are vitiated.

(*Ghanshyam Das Shrivastava vs. State of M.P.*, AIR 1973 SC 1183)

(11) Dealing with case arising out of Rule 14 (i)

The word 'consider' in Rule 14 of the Railway Servants (Disciplinary & Appeal) Rules, 1968, notwithstanding anything contained in Rule 9 to 13 means :-

- (i) Where any penalty is imposed on a railway servant on the ground of conduct which led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit, connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature/extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority recording the final orders that may be passed. Such an enquiry would, however, be a summary enquiry to be held by the disciplinary authority. The provisions of Rule 14 merely import a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard. This is in keeping with the scope of natural justice and fair play.

(Divisional Personnel Officer, Southern Railway vs. T.R. Challappan AIR 1975 SC 2216)

(12) Interference by Courts

- (a) Courts do not generally question the quantum of punishment so long as the rules of natural justice have been observed and reasonable opportunity given to the charged official.
- (b) Court can question decisions of domestic tribunals only on certain specific grounds, namely, where -
 - (i) bias or bad faith is present;
 - (ii) principles of natural justice / reasonable opportunity are violated;
 - (iii) jurisdiction under rules regulating duties and procedure of tribunals is exceeded.

(Nani Gopal Mukherjee vs. State of West Bengal, AIR 1966 Cal 42)

(13) Supply of copies of statement of witnesses during preliminary inquiry

- (a) The accused government servant is entitled to receive copies of the statement made by witnesses during preliminary enquiry provided:-
 - (i) such witnesses are examined at the oral enquiry, and
 - (ii) the Government Servant specifically asks for them.

- (b) The Government Servant is not entitled to demand copies of statements of every witness examined at the preliminary enquiry, no matter whether he is or is not examined subsequently at the departmental enquiry.

(Prabhakar Narayan Menjoge vs. State of Madhya Pradesh, AIR 1967 Madhya Pradesh 215)

(14) Applicability of Indian Evidence Act and Cr.P.C.

The provisions of the Indian Evidence Act and the Criminal Procedure Code are not applicable in departmental enquiries, but since the provisions of these enactments are based on the principles of natural justice, they have to be followed in the conduct of departmental proceedings though not as meticulously as in the Courts of Law. The Inquiring Authority is free to depart from them but it must conform to the principles of natural justice, the guiding factor being that the accused officer should have a reasonable opportunity of defending himself. As an Inquiring Authority, he is not subject to the orders or instructions of his superiors in the administrative hierarchy in which he is placed. As a quasi-judicial authority, the Inquiry Authority is amenable to the writs of certiorari and prohibition. A person aggrieved by the findings of the Inquiring Authority can also go to the Supreme Court by Special Leave to appeal under Article 136 of the Constitution.

(15) Inspection of documents

- (a) In the case of K.N. Gupta vs. Union of India, the petitioner contended that he had a right to be supplied with copies of various documents which he had asked for and the failure to furnish him with copies of such documents constituted a denial of reasonable opportunity to the petitioner to defend himself. The High Court said :

“The petitioner was given permission to inspect the documents and to take extracts from them. If the petitioner wanted to take copies of any of the documents made available to him for inspection, there was nothing to prevent him from doing so. It is not the case of the petitioner, that he wanted to take copies of those documents but was permitted to take only extracts. It will be too much of a technicality to contend that it will not be sufficient if the petitioner is permitted to inspect the documents and take copies of those documents but the department itself must take copies and furnish copies to the petitioner. The argument that the petitioner has the absolute right to be furnished with copies of the documents by the department and it is not enough if he is permitted to peruse or inspect the documents and allowed to take copies of those documents, is not supported by any authority”.

- (b) There may be certain documents which are held up in Courts of Law, which may be reluctant to part with them even temporarily. In such cases, the CBI should be requested to obtain the photostat copies. If the accused insists on seeing the originals, arrangements may be made by the CBI with the court to allow the inspection of documents in the court premises. The Presenting Officer should be directed to make the necessary arrangements in this regard.

819. **Procedure to be followed after the inquiry is completed by the Railway Inquiry Officers:**

The following procedure shall be adopted in such cases :

- (i) The Railway Inquiry Officer will send 5 copies of Inquiry Report to the “Authority” who ordered the inquiry or to his Secretariat.
- (ii) The “Authority” will send 4 copies to SDGM/CVO of the Railway / Production Unit for obtaining 2nd stage advice of the CVC. He should not send any copy to the charged official for obtaining his representation at this stage.
- (iii) SDGM / CVO will forward the report in 3 copies to the Board (Vigilance) with his comments. He may retain one copy of the report with him.
- (iv) Board (Vigilance) after examination of the report will forward 2 copies of the report to CVC with its comments.
- (v) CVC will scrutinize the report and return one copy of the IO’s report to Board along with their second stage advice.
- (vi) CVC’s 2nd stage advice will be sent to SDGM for onward transmission to the “authority” mentioned at item (i) above. The “authority” after considering Inquiry Officer’s report and CVC’s 2nd stage advice as also other relevant facts meriting consideration will send to charged official a copy of report of Inquiry Officer for making his representation or submission if any against the Inquiry Report/findings. In case the “authority” wishes to disagree with findings in the Inquiry report, which should be based essentially on the 2nd stage advice of CVC, he will also simultaneously call for representation of the charged official on points of disagreement which will form an addendum to the Inquiry Report. The disagreement memo will spell out the grounds for not agreeing with the findings of IO. While doing so, the “authority” need not convey his view in any form, even if, they are not in agreement either with the IO’s report or with the 2nd stage advice of CVC, to the charged official, but instead he should reserve his judgement till such time the representation of the charged official is received. Thereafter, the “authority” will take appropriate action for imposition of penalty or otherwise taking into consideration the Inquiry Officer’s report, the charged officer’s representation, CVC’s 2nd stage advice as also other relevant facts meriting consideration. In case the action proposed by the “authority” is at variance with CVC’s second stage advice, views recorded by it should be

considered as a “provisional decision”, and further action taken in terms of Board’s letter No. 88/V-I/CVC/1/1 dated 5.4.1988.

(Authority: Railway Board’s letters No. 88/V-I/CVC/1/2(Pt) dated 13.09.1994, No.98/V-1/CVC/1/5 dated 05/08/1998).

(vii) **Appropriate stage for passing speaking orders by Disciplinary Authority in Vigilance cases involving CVC’s advice** – In view of the reasons mentioned in Board’s letter No. 2004/V-1/VP/1/9 dated 6.1.2005, the Disciplinary Authority should pass the Speaking Order based on the 2nd stage advice of CVC only.

(viii) **Role of Disciplinary Authority in decision taking on CVC’s advice** – Disciplinary Authority at the time of issue of final orders imposing a penalty on the charged official and/or at the time of deposing affidavits in the courts, should in no case imply that any decision has been taken under the influence of the CVC, as the Commission is only an Advisory Body and it is for the Disciplinary Authority to apply its mind subsequent to obtaining the Commission’s advice and take reasoned decisions on each occasion.

(Board’s letter No. 2003/V-1/CVC/1/19 dated 19-4-2004)

(ix) **Consultation with CVC - making available a copy of the CVC’s advice to the concerned employee** – The advice tendered by the CVC is just that, it is for the DA to apply his mind independently on the facts of the case and come to a conclusion on the nature of proceedings under the relevant rules of the Organisation and later the decision on the inquiry report and the quantum of punishment. The role of the CVC is to ensure that disciplinary cases having vigilance overtones are dealt with properly in the overall interest of integrity and probity in public service. To this extent, the disciplinary action against the charged officers, is not expected to be influenced by the advice from the CVC. Where, however, the disciplinary authority relies on the advice and communication from the CVC, these cases should really be exceptional, it is only fair and just that the charged officer should have access to this advice in order to defend himself properly. The overriding concern of the CVC, is with regard to satisfying the principles of natural justice. The railway will have to take necessary action keeping in view the spirit behind this principle. **It will be open to them to take a view on supplying copies of the CVC’s advice on a case to case basis, ensuring always that principles of natural justice are not violated.** Should this be contested by the CO, it will be for the Railways to satisfy any court that the charged officer has not been adversely affected by their decision to withhold copies of documents including CVC’s advice.

(Authority: Railway Board’s letter No.2001/V-1/CVC/1/2 dated 12/07/2004)

820. Disciplinary Authority's finding on the Inquiry Report and imposition of penalty:

The provisions contained in Rules 10(1) to 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968, amended vide Notification No. E(D&A) 87 RG6-151 dated 8.8.2002 should be observed while bringing out the findings on the Report. The disciplinary authority must send a copy of inquiry report of Inquiry Officer or himself if he had himself held the inquiry together with his own tentative reasons for disagreement, if any, with findings of the Inquiry Officer, asking the railway servant to submit his written representation to the disciplinary authority within 15 days. The disciplinary authority shall consider the representation, if any, submitted by the Railway servant and record its findings regarding penalty to be imposed on the Railway servant. No further opportunity of making representation before imposing the penalty is required to be given to the Railway servant.

While passing the final orders the following instructions may also be kept in view.

SUBSIDIARY INSTRUCTIONS

- (1) If a Railway servant is reduced as a measure of penalty to a lower stage in his time scale, the Disciplinary Authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration it shall operate to postpone further increment and if so to what extent.

It should be ensured that every order passed by a competent authority imposing on the railway servant the penalty of reduction to a lower stage in a time scale invariably specifies that stage in terms of rupees to which the railway servant is reduced as in the following form :

The..... had decided that Shri..... should be reduced to a pay of Rs..... for a period of with effect from

[Board's letter No. F(E) 60/FRI / 2 dated 22.8.1968]

- (2) If a railway servant is reduced as a measure of penalty to a lower service, grade or post or a lower time scale, the Disciplinary Authority ordering the reduction may or may not specify the period for which the reduction shall be effective; but where the period is specified, the authority shall also state whether, on restoration, the period or reduction shall operate to postpone future increment and, if so, to what extent.
- (3) **Supply of duplicate copies of proceedings and findings of Departmental Enquiry Committee** – In cases where the Railway Administration concerned is satisfied that there has been a genuine loss or misplacement of the copy of the proceedings and findings of the Departmental Enquiry Committee supplied earlier to the accused Railway servant, requests for the supply of duplicate copies thereof received from him should be acceded to.

(Board's letter No. E(D&A) 62 RG 6-20 dated 10-4-1962)

- (4) **Orders imposing the penalties of dismissal, removal or compulsory retirement** – Orders imposing the penalties of dismissal, removal or compulsory retirement or reduction should invariably indicate the specific charges that stand substantiated, based on which any of these penalties is imposed.

(Board's letter No. E(D&A) 63RG6-26(c), dated 28-8-1963 and 30-9-1963).

- (5) **Keeping of the copies or Orders of Punishment in the Confidential Rolls of the accused Railway servants** – If as a result of the disciplinary proceedings any of the prescribed punishment is imposed on a Railway servant, a record of the same should invariably be kept in his confidential report. Further, if on the conclusion of the disciplinary proceedings it is decided not to impose any of the prescribed punishments but to administer only a 'warning' or 'reprimand' etc. a mention of such warning etc. should also be made in the confidential report.

(Min. of Home Affairs O.M. No. 39/12/59-Estt dated 23.4.1960).

- (7) **Notice from the accused Railway servant to file a writ petition or a suit in the Court of Law during Disciplinary Proceedings** – No departmental proceedings need be held up at any stage merely because a writ petition or suit has been threatened or filed. Proceedings should be stayed only if the Court itself has specifically ordered that they should be stayed. Such a stay order is usually received direct from the Court.

- (8) **Fixation of seniority of Railway servant reduced to a lower post/grade/service and subsequently repromoted to higher post** – The penalty of reduction to a lower service, grade or post or to a lower time scale should invariably be imposed for a specified period unless it is considered necessary that the period of reduction should be for an indefinite period. Where the order imposing such penalty does not specify the period of reduction and this coupled with an order declaring the Railway servant permanently unfit for promotion, the question of repromotion will, obviously, not arise. In other cases where the period of reduction is not specified, the Railway servant should be deemed to be reduced for an indefinite period, i.e. till such date as, on the basis of his performance subsequent to the order of reduction, he may be considered fit for promotion. On re-promotion the seniority of such a Railway servant should be determined from the date of re-promotion. In all such cases, the person loses his original seniority in the higher service, grade or post in entirety. On re-promotion, the seniority of such a Railway servant should be determined by the date of re-promotion without regard to the service rendered by him in such service, grade or post prior to his reduction.

(Board's letter No. E(D&A)62RG6-46, dated 30th July, 1964 and 26th October, 1964).

- (9) In cases where the penalty of reduction to a lower service, grade or post of lower time scale is for a specified period, on expiry of the specified period, the employee concerned should be re-promoted automatically to the post from which he was reduced. The seniority in the original service, grade or post or time scale should be fixed in such cases, as follows :-
- (a) In cases where the reduction is not to operate to postpone future increments, the seniority of the Railway servant should be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his reduction.
 - (b) Where the reduction is to operate to postpone future increments, the seniority of the Railway servant would be fixed by giving credit for the period of services, rendered by him in the higher service, grade or post or higher time scale prior to his reduction.
 - (c) The authority imposing the penalty of reduction to a lower grade or post etc., on a railway servant for a specified period has to pass direction regarding the effect of the penalty on the seniority and pay in the higher grade or post, on restoration of the Railway servant to that higher grade or post after expiry of the penalty. The directions on seniority and pay are two separate ones and have to be passed independent of each other. Where the authority imposing the penalty has not passed any specific directions regarding seniority or pay or both, of the Railway servant in the higher grade or post, it should be held that the penalty will have no effect on seniority or increments or both, as the case may be, in the higher grade or post on restoration of the railway servant to that higher grade or post as laid down in Board's letter No.E(D&A)73 RG 6-5 dated 22.2.1974. Authorities should not use the terms 'cumulative or recurring' effect in the orders imposing the penalty of reduction to lower grade or post for a specified period as these terms are liable to mis-interpretation by the authorities responsible for implementing these penalties. If the authority uses the term 'cumulative or recurring effect' while passing orders, the case should be resubmitted to the said authority advising him to pass fresh orders strictly in accordance with the provisions of Rule 6 (vi), as brought out in Board's letter No.E(D&A) 2001 RG 6-5 dated 28.11.2002.
- (10) An order imposing the penalty or reduction to a lower service, or post or to a lower time-scale should, inter alia, invariably specify:
- (i) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period; and
 - (ii) where the period of reduction is specified, whether on re-promotion the Railway 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.

If the order of reduction is intended for an indefinite period, the order should be framed on the following lines;

“A is reduced to the lower post / grade/ service of X until he is found fit by the competent authority to be restored to the higher post / grade / service of Y.”

In cases where it is intended that the fitness of the Railway servant for re-promotion or restoration to his original position will be considered only after a specified period, the order should be made on the following lines :-

“A is reduced to the lower post / grade / service of X until he is found fit after a period of years from the date of this order, to be restored to the higher post of Y.”

- (11) These instructions take effect from 30th July, 1964. Cases dealt with previously in accordance with the practice in vogue on Railway need not be re-opened.

Note: In cases where the penalty of reduction to a lower service, grade or post or lower time-scale is for a specified period, on expiry of the specified period, the employee concerned should be re-promoted automatically to the post from which he was reduced and the employee who has started officiating vice the reduced employee should be reverted irrespective of the length of service in that grade. This is necessary as the reduced employee had by virtue of his original seniority of selection, originally been promoted to the higher grade earlier than the one who was promoted to officiate vice him on reduction. If however, an additional post exists, the employee who was promoted to officiate vice the reduced employee can also continue. If, at a later date, the question of reversion or promotion to a still higher post arises, the seniority of the two employees based on the length of service is that grade should be taken into consideration for deciding as to which of them should be reverted or promoted.

- (12) Posts vacated by a Railway servant dismissed, removed or compulsorily retired from service shall not be filled substantively until the appeal and review have been disposed of which should ordinarily not exceed one year.

821. Non-CVC vigilance cases pertaining to Group ‘C’ and Group ‘D’ employees – consultation with Vigilance:

- 821.1 If in a case Vigilance has recommended imposition of a major penalty and the Disciplinary Authority proposes to exonerate or impose a minor penalty, the Disciplinary Authority would first record his provisional order and then consult Vigilance Organisation once. Likewise, where a major penalty has been imposed by the Disciplinary Authority in agreement with the recommendation of the Vigilance but the appellate/revisory authority proposes to exonerate or impose a minor penalty, the

appellate/revisionary authority would first record provisional decision and consult the Vigilance Organisation once. After such consultation, the disciplinary/appellate/revisionary authority, as the case may be, is free to take final decision in the matter.

- 821.2 The procedure brought about above will also be followed in those cases also where the vigilance has recommended imposition of a “Stiff Major Penalty” namely compulsory retirement/removal/dismissal from service, but the Disciplinary Authority/Appellate/Revisionary Authority, as the case may be, wishes to disagree and proposes to impose any of the other major penalties.

(Board’s letter No. E(D&A) 2000 RG 6-30 dated 16.5.2001 and 23.9.2002)

822. Communication of orders:

Orders made by the disciplinary authority which would also contain its findings on each article of charge, shall be communicated to the Railway Servant who shall also be supplied with a copy of the advice, if any, given by the Union Public Service Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

(Rule 12 of RS(D&A) Rules, amended vide notification No.E(D&A)87 RG 6-151 dated 8.8.2002).

823. Common Proceedings:

Whenever two or more Railway Servants are concerned in any case, the competent authority may make an order that disciplinary action against all of them may be taken in a common proceedings. The provision contained in Rule 13 of Railway Servants (Discipline and Appeal) Rule, 1968 would be observed in this regard.

- Note:-
- (1) A joint enquiry is invariably held to ensure quicker disposal and to avoid the possibility of a charge failing by each accused throwing the blame on the other. It also precludes the possibilities of conflicting findings being given by different Inquiry Officers.
 - (2) The basic idea in a common proceedings is to judge the misconduct of each of the accused and give them the punishment with uniform scale.
 - (3) In common proceedings, neither the accused can give evidence against each other nor the prosecution can summon any of them as prosecution witness (except when a pardon has been lawfully granted). The idea is that one employee should not be in a position to blame another and get away. Any of the accused can however choose to act as his own defence witness.
 - (4) The primary requirement in ordering a common proceedings are :-

- (i) The President or any other authority competent to impose the penalty of dismissal from service on all such accused Railway servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings. If the authorities competent to dismiss the accused Railway servants are different, such an order will be given by the highest of such authorities with the consent of the others (such authorities).
 - (ii) Any such order shall specify:
 - (a) The authority which may function as the Disciplinary Authority in these common proceedings.
 - (b) The penalties specified under Rule 6 which can be imposed by the Disciplinary Authority provided that this authority will not impose any of the penalties specified in clauses (vii) to (ix) of that rule if this authority is subordinate to the Appointing Authority in case of any of the accused.
 - (c) Whether the procedure laid down in Rule 9, 10 and 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 shall be followed in the proceedings.
- (5) Common proceedings are not permissible in following cases :
- (a) Where the two accused servants are both Railway and Central/State Government employees.
 - (b) Where one of the accused is in service and the other has retired.
- However, if one of the accused retired on superannuation during the pendency of common proceedings, the proceedings may be completed. Similarly, if one of the co-accused is dismissed or removed from service on account of some other case, it will be desirable not to drop or formally withdraw the proceedings against him as the likelihood of dismissal order being set aside cannot be ruled out whereby the officer concerned would be back in service. It will however not be desirable to continue the proceedings ex-parte against such an officer and these may be temporarily, suspended. In the event of the order of dismissal getting quashed, the proceedings could be revived again without a fresh formal charge-sheet.
- (6) The differences between the common and simultaneous proceedings are :-
- (a) All the co-accused are to be present in the common proceedings, whereas only one of the concerned co-accused may be present in a simultaneous proceedings at a time.

- (b) The charge-sheets are signed by the same Disciplinary Authority (nominated as such) in case of common proceedings whereas in a simultaneous proceeding, the relevant Disciplinary Authorities sign the charge-sheets and after close of the proceedings, the enquiry report is sent to the relevant Disciplinary Authorities.
- (c) In a simultaneous proceeding (by the same Investigating Officer) each of the co-accused can be called to depose in the enquiry proceedings of the other accused.

824. Special procedures in certain cases:

The procedure contained in Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 would be observed in certain special cases.

Note :- Applicability of Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 – Guidelines thereof :

- (1) Rules 9 to 13 of the Railway Servants (Discipline and Appeal) Rules, 1968 prescribe the procedure for imposition of penalties (major as well as minor). Rule 14 lays down the conditions whereby the normal procedure of holding an elaborate enquiry can be dispensed with under special circumstances, and the disciplinary authority can pass suitable orders. Rule 14 has been framed on the basis of the provisos to Article 311 (2) of the Constitution of India.
- (2) Rule 14 (ii), corresponding to proviso (b) of Article 311 (2) specially empowers the disciplinary authority to dispense with the elaborate procedure of inquiry. This is a very wide power given to the disciplinary authority. As some cases resulted in court proceedings, there has been hesitation on the part of disciplinary authority for invoking this provision even in deserving cases. Broad guidelines for application of Rule 14 (ii) based on the judgement of various High Courts and Supreme Court are given below.
- (3) Rule 14 (ii) can be invoked “where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided for in the Railway Servants (D&A) Rules, 1968. The first requisite, as such is that the disciplinary authority should be satisfied regarding the impracticability of holding an inquiry. Accordingly, it is essential that the reasons recorded by the Disciplinary authority for dispensing with the inquiry are supported by objective facts and / or independent material. Merely recording that if normal procedure is followed it is likely that evidence on account of fear of threat / harassment etc. would not be adequate for dispensing with the inquiry.
- (4) Steps will have to be taken to ensure that enough evidence is collected by the investigating agency to enable disciplinary authority to decide whether rule 14(ii) could be applied to cases in which a passenger is benefited by the misconduct of the employee and as such may not depose against the delinquent officer, efforts

should be made to get the statement from these person(s). If the persons hesitate to give a positive statement then a statement to this effect that they are not interested to pursue the matter or be available for evidence should be obtained. Even if this is not forthcoming, the names and addresses of the persons who were requested to give statement but who refused to do so should be recorded then and there by the Investigating Officer concerned with an independent witness of these facts, if practicable, so that the statement of these officers taken cumulatively will facilitate the disciplinary authority in coming to the judgement on the course of the action to be taken on the investigation report.

- (5) The second requisite of this rule is that the disciplinary authority has to record in writing the reasons duly supported by objective facts and / or independent material. This order will have to be carefully recorded because this could be subjected to a review by the Appellate Authority as well as a judicial review. This order should give the reasons which made the disciplinary authority to come to the conclusion that it will not be reasonably practicable to follow the procedure prescribed in the rules. It should be self-evident from the order.
- (6) There seems to be some apprehension that though elaborate enquiry procedure can be dispensed with, a briefer enquiry has to be conducted by the disciplinary authority. The apprehension seems to have arisen out of the judgement of the Supreme Court delivered in the case of T.R. Challapan (AIR 1970/SC 2216) where the Supreme Court had held that “even though a delinquent employee has been held guilty and convicted by a criminal court yet show-cause notice should be given to the employee concerned as to the nature of quantum of punishment to be imposed.....”.

In this case, the penalty was imposed on a railway servant on the ground of conduct which led to his conviction on a criminal charge and the Supreme Court held that an enquiry, though not elaborate, should be held so that the aggrieved railway servant might have an opportunity to represent against the penalty imposed under Rule 14(i). This is not prima facie applicable to cases falling under Rule 14(ii) where the disciplinary authority passes an order recording the reasons which have rendered impracticable the holding of an enquiry. If the disciplinary authority comes to this conclusion, what is left is to consider the circumstances of the case and make such order thereon as it deems fit.

(Board's Letters No. 78/Vig.I/DBR/1/3 dated 24.1.79 and No. E(D&A) 92 RG6 – 48 dated 06-04-1992).

Note:- Court Rulings in connection with dealing of cases arising out of Rule 14 (i) may be seen at item No. 11 of Subsidiary Instructions below Rule 818 of this Chapter.

825(1) Model time schedule for disciplinary cases initiated by the executive:

A “model” time schedule of 202 days for finalisation of disciplinary proceedings was laid down vide Board’s letter No. E(D&A) 69 RG6-17 dated 8.1.1971. This period was subsequently reduced to 150 days in terms of Railway Board’s letter No. E(D&A) 86 RG6-41 dated 3.4.86 following deletion of the provisions relating to issue of show cause notice etc. However, in terms of instructions circulated under Board’s letter No. E(D&A) 87/RG6-151 dated 10.11.89, a copy of Inquiry Officer’s report is required to be given to the charged official to enable him to represent against the findings of the Inquiry Officer, before a decision is taken on the penalty to be imposed. This additional process will increase the time taken for finalisation of the disciplinary proceedings by at least 2 months.

In addition, there are a large number of cases in which action is taken under Rule 9 of Railway Services (Pension) Rules, 1993, under Presidential powers, with a view to making a cut in the pensionary benefits of a retired railway servant. These cases have to be referred to the UPSC for their advice. The Commission, on an average takes five to six months from the date of receipt of the case in their office till date of communication of the advice notwithstanding the fact that the Commission have agreed to expedite matters to the extent possible.

While laying down the “model” time schedule, it was never the intention of the Board to make it mandatory as it may not be possible to follow it in each and every case, as each disciplinary case has its own characteristics. The emphasis has always been on the fact that where the Railway Administration does not find it practicable to adhere to this target rigidly, steps should be taken to minimize, as far as possible, the additional time likely to be taken over and above the target period.

(Board’s letters No. 90 RG6-18 dated 9.2.90 and No. E(D&A) 95/RG6-15 dated 24.4.95)

825(2) Model time schedule for disciplinary cases initiated as result of vigilance investigations and in consultation with the Central Vigilance Commission:

Despite a “model” time schedule laid down by the Establishment Directorate for dealing with disciplinary cases, referred to in para 825(1) above, it was found that the disciplinary cases initiated as a result of investigations by vigilance were taking, on an average four and half years, to get finalised. Thus, Board felt that while inordinate delay in the finalisation of disciplinary cases caused uncalled for harassment to honest and upright officers, the dishonest officers continued to remain unpunished for longer periods despite having committed serious irregularities with ulterior motives.

With a view to improve the system, a committee of senior officers drawn from Establishment, Vigilance and the Central Vigilance Commission was constituted by the Board who were entrusted with the job of identifying the reasons for delay in

finalisation of the cases and to suggest remedial measures to cut down delays in the finalisation of disciplinary cases. This committee deliberated upon the various issues at great length and after considering all the practical problems faced by the administration at various stages in processing the disciplinary cases recommended a time schedule for finalisation of major penalty DAR cases initiated on vigilance advice. The “model” time schedule recommended by the Committee and accepted by the Board is given below:-

*1.	Issue of chargesheet after receipt of CVC’s 1 st stage advice by the Railway	30 days
2.	Service of chargesheet	10 days
3.	Inspection of RUDs	30 days
4.	Submission of written statement of defence, list of defence witnesses & list of defence documents	20 days
5.	Decision to hold the enquiry after receipt of the defence	30 days
6.	Nomination of IO/PO in consultation with CVC/Railway Board	45 days
7.	Appointment of IO/PO	20 days
**8.	Completion of enquiry and submission of report	120-180 days
9.	Obtaining CVC’s 2 nd stage advice after receipt of enquiry report	45 days
***10.	Decision of DA and imposition of punishment	3-60 days ----- 380-470 days -----

* Add another 45 days for issue of chargesheet wherever President/Railway Board is the Disciplinary Authority

** Upper time limit is for cases involving more than one charged official

*** Upper time limit is for cases to be considered by more than one DA. Add another 270 days for decision by President in consultation with UPSC.

A major penalty D&AR case initiated on vigilance advice should normally be finalised in 12-15 months by the Railways. However, where the charge sheet is issued by the Board and final decision is to be taken by the President in consultation with the UPSC, the time taken may be 25 ½ months.

It may be reiterated that the above “model” time schedule is not mandatory as it may not be possible to follow it in each and every case as each disciplinary case has its own characteristics.

However, the emphasis should be to finalise the D&AR cases in the shortest possible time frame, as laid down in the Railway Servants (Discipline and Appeal) Rules, 1968. Quarterly reviews of the disciplinary cases may be conducted regularly both by the executive and vigilance. Remedial steps should be taken wherever inordinate delays are noticed.

(Board’s letter No. 94/V-I/DAR/2/1 dated 10-05-1994)

826. Cognizance of hearsay evidence:

Hearsay evidence is not altogether barred in departmental enquiries. The relevant extracts of the case law - Supreme Court in *the State of Haryana and another vs Rattan Singh* (SLR 1977 P 750) are reproduced below :-

“Shri Rattan Singh was a conductor of the Haryana Roadways. The bus in which he was performing duty was stopped by the flying squad which detected that 11 passengers travelling in the bus did not have tickets though they claimed that they had paid the fares. Following a departmental inquiry his services were terminated. However, this order was quashed by the Civil Court accepting his plea that statements of none of the 11 passengers examined was taken by the domestic inquiry. This view was upheld by the High Court. The Supreme Court, however, pointed out that the courts below misdirected themselves in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. They also pointed out that “in a domestic inquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility”. Of course, “departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act”. The Court went on to observe that the Inspector Incharge of the flying squad had deposed before the tribunal that the passengers who informed him that they had paid the fare, refused to give written statements. The Supreme Court felt that this was some evidence relevant to the charge and when this was the case, it was not for the courts to go into the questions whether the evidence was adequate. The instructions that the flying squad should record the statements of passengers were instructions of prudence, not rules that bind or in

violation. In this case, the Inspector had tried to get the statements, but they declined and their psychology in such circumstances was understandable”.

827. (a) Provision regarding Railway servants lent to other Ministry or Department of the Central Government, State Governments, etc.:

(b) Provision regarding officers borrowed from Central or State Governments, etc.:

827.1 Railway servants on foreign service or whose services are placed temporarily at the disposal of any other department of the Central Government or a State Government or a local or other authority, in terms of Rule 15 of Railway Servants (D&A) Rules, 1968, will be governed by the RS (D&A) Rules, 1968 for taking disciplinary action. Similarly, when services of a Government servant from any other Ministry or Department of the Central Government other than the Ministry of Railways or a State Government etc. are borrowed for appointment to a service or post under the Ministry of Railways as per Rule 16 of RS (D&A) Rules, 1968, action will be taken in accordance with the rules by which such Government servant or person is governed. In both situations, ‘the borrowing authority’ shall also have powers for placing such Government/Railway servant under suspension or for conducting disciplinary proceedings against him.

827.2 It is procedurally wrong for an authority to initiate and finalise disciplinary proceedings against an employee who is not under his administrative control. Disciplinary action need not necessarily be for the misconduct committed during the period of deputation but even for the misconduct committed prior to deputation. However, Rules 15 and 16 of RS (D&A) Rules place the following restrictions in case of taking action against deputationist, which should be observed:-

(a) The borrowing authority must immediately intimate the lending authority of the circumstances leading to order of suspension and disciplinary proceedings.

(b) In case of minor penalty, it may be imposed by the borrowing authority after consulting the lending authority.

(c) In case of difference of opinion, the services of the deputationist shall be replaced.

(d) If a major penalty is proposed to be imposed, then also the services of deputationist shall be replaced and records of proceedings shall be transmitted to the lending authority.

828. Appeals, Revision and Review:

(a) Appeals - The provisions contained in Rules 17 to 24 of Railway Servants (Discipline and Appeal) Rules, 1968 would be followed while dealing with appeals from the delinquent officials.

- (b) Revision - The provisions contained in Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 would be followed while dealing with disciplinary cases where the decision of the Disciplinary/Appellate Authority is proposed to be revised.
- (c) Review - The provisions contained in Rule 25-A of the Railway Servants (Discipline & Appeal) Rules, 1968 would be observed while reviewing any D&AR case.

If there is a major deviation from CVC advice at Appeal/Revision Stage, intimation is required to be given to CVC. Instructions in this regard issued by CVC have been incorporated in Para 209.9 of this manual.

829. Railway Servants convicted on criminal charge - Action thereon:

The disciplinary authority may, if it comes to the conclusion that an order, with a view to imposing a penalty on a Railway Servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such 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. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.

{Board's letter No. E (D&A) 79 RG6-4 dated 4.3.1976}

830. Penalty for gambling:

The conviction for gambling offenses, especially for the first time, leading to the imposition of a fine by the Court, cannot be deemed to render the further retention prima facie undesirable and that only minor penalties should be adequate in such cases.

{Board's letter No. E (D&A) 63RG6-49 dated 11.11.1963}

831. Conviction under Customs Act:

The conviction under the Customs Act resulting in the imposition of personal penalty of fine by the Collector of Central Excise of Customs cannot be considered as a conviction on a 'criminal charge' as visualised in Article 311 (2) of the Constitution and Rule 14 (i) of the Railway Servants (Disciplinary & Appeal) Rules 1968, the procedure prescribed in D&A Rules cannot therefore, be bypassed if it is intended to take departmental action against the Railway servant in the circumstances leading to such conviction. There is, however, no objection to taking disciplinary action against him after following the full procedure prescribed for imposition of penalties under the Disciplinary and Appeal Rules, if considered necessary.

{Board's letter No. E (D&A). 63 RG6-41 dated 16.10.1963}.

832. Termination of Disciplinary Proceedings:

Disciplinary proceedings should not be stayed except under the orders of a Court of competent jurisdiction or under the written orders of the disciplinary authority.

833. Standard of proof required in a Disciplinary Enquiry:

- (a) The standard of proof required in departmental proceedings is that a “preponderance of probability” - and not proof beyond reasonable doubt. As such, High Courts / Administrative Tribunals are precluded from reviewing such evidence or findings based thereon. If an enquiry has been properly held, the question of adequacy of reliability of evidence cannot be canvassed before courts.
- (b) Although suspicion can never take the place of proof, an inference which a reasonable person would draw from the proved facts of a case, would be unexceptionable.

(Union of India vs. Sardar Bahadur 1972 SLR 355 {SC})

834. Role of Presenting Officers / Assisting Officers:

- (a) In cases which are investigated by the Central Bureau of Investigation, they offer the services of their officers to present the case on behalf of the Disciplinary Authority. While such an officer is drawn from the Central Bureau of Investigation, as a Presenting Officer, he acts on behalf of the Disciplinary Authority, who may, when necessary instruct him regarding presentation of the case. However, quite often some of the Disciplinary Authorities act on the impression that the Presenting Officers represent the Central Bureau of Investigation and they are not instructed properly or shown all the documents of the case which are in the possession of Disciplinary Authority but were not taken over by the Investigating Officer during investigation. The Presenting Officer also looks for instructions from their Superintendents of Police and do not take progress of the case from the Inquiring Authority. Whereas the relations between the Presenting Officer and the Disciplinary Authority should be one of the client and counsel, in actual practice they do not work out in this manner often. There is, therefore, a great need for proper dialogue between the Presenting Officer and the Vigilance Officer of the Department.
- (b) The proceedings before the Inquiring Authority are of a confidential nature and no publicity should be given to them by the parties or their agents. The Presenting Officer and the Assisting Officer are meant to assisting the Inquiring Authority in coming to the truth of the matter and they should not adopt the posture of prosecutor and defence counsel, which is adopted by such functionaries in the courts.

835. Defence Counsel in absence of the accused:

If in any particular hearing, the accused is unable to come for any reasons, his defence counsel can proceed with the case if he has authorization to this effect from the accused officer.

836. Amendment of the charge sheet:

836.1 During the course of a disciplinary enquiry, there is no objection to the charge sheet being amended by the Disciplinary Authority, but the accused Government servant should be given a reasonable opportunity to submit his defence including the production of new evidence or to recall a witness already examined, in respect of the amended charge.

836.2 If the amendment to the charge sheet is of a major nature, it will be advisable to cancel the first chargesheet clearly indicating in the order cancelling of the original chargesheet with the intention of issuing a new chargesheet thereby starting the proceedings *de novo*. It may be clarified here that the order cancelling the original charge-sheet or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing chargesheet afresh appropriate to the nature of the charges. If adequate reasons for cancelling / withdrawal of the original chargesheet are not indicated, issue of another chargesheet on the same facts after withdrawing the first one will be considered entirely without authority.

{Board's letter No. E (D&A) 93RG6 - 83 dated 1.12.1993}

837. Documents which can be safely denied:

The following are some of documents access to which may reasonably be denied :-

- (i) **Reports of investigation** :- The reports of the CBI or the reports of the fact-finding inquiry on the basis of which charge sheet is issued. These reports are intended only for the Disciplinary Authority and even the Inquiring Authority does not see them.
- (ii) **File dealing with disciplinary case against Government Servant** :- The file in which the reports of preliminary inquiry / investigation is dealt with and which contains the various notes leading to the issue of chargesheet is a confidential file and may be denied.
- (iii) **Advice of the Ministry of Law** :- The advice of the Ministry of Law is confidential and is meant to assist the Disciplinary Authority.

838. Production of priced publications as additional documents:

If the additional document asked for by the accused officer is a priced publication, such as proceedings of Parliament or State Legislature, it is not the duty of Inquiring Authority or the Presenting Officer to have the same produced for inspection. The accused may produce it as a defence exhibit. If, however, he is not able to get the copy, the Inquiring Authority or the prosecution may assist him to the extent possible in securing such priced publication but no duty is cast on them to get the publication.

839. Reducing delays in Departmental Inquiries:

The instructions for streamlining of conduct of Disciplinary proceedings to reduce in delay, circulated under Board's letters No. E(D&A)2004/RG-14 dated 02/07/2004, 2004/V-1/DAR/1/1 dated 19/07/2004 and 2003/V-1/CVC/1/5 Pt.A dated 19/07/2004 should be observed.

840. Disagreement with the Inquiry Officer:

- (a) Where the Disciplinary Authority agrees with the Inquiring Officer's findings, after a copy of the report is given to the charged official, it should record forthwith its reasoned speaking orders of punishment to be awarded to the charged official.
- (b) Where, however, the Disciplinary Authority does not agree with the Inquiry Officer, reasons why the findings in the Inquiry Report cannot be accepted should be communicated to the delinquent official alongwith a copy of the Inquiry Officer's report advising him to submit his representation, if any, within 15 days from the date of communication forwarding the Inquiry Officer's report. On receipt of reply from the charged official to such a communication or after expiry of the notice period, the Disciplinary Authority should record its reasoned speaking orders on the disciplinary proceedings.

(Rule 10 of RS(D&A) Rules, amended vide notification No.E(D&A)87 RG 6-151 dated 8.8.2002).

It is very important to properly frame the memorandum of disagreement where it should be clearly indicated that Disciplinary Authority has taken a tentative decision to disagree with the findings of the Inquiry Officer in respect of article of charge (s) not held proved/partly proved. A sample of memorandum of disagreement is circulated to the Railways for guidance vide Board's letter No.2004/V-1/DAR/1/4 dated 13.9.2004.

Miscellaneous provisions regarding grant of leave, TA, Passes etc., to ‘accused Railway servants’ and ‘Assisting Railway servants’

1. Facilities of Leave, Passes, etc. to accused Railway servants and their assisting person for attendance before the Inquiring Authority

1.1 The accused Railway servant should be given special passes for journeys undertaken in this connection. If he is under suspension, he is eligible for TA as for journey on tour in terms of Rule 1672-R-II (1987 Edition). On reinstatement, the period of suspension including that spent for attending the inquiry, is regularised as duty, non-duty or leave by the competent authority under Rule 1345-R-II (1987 Edition). If he is not under suspension, he may also be given TA as on tour on the analogy of Rule 1672-R-II (1987 Ed.). The period spent in attending the inquiry should be treated as duty or leave, according as he is on duty or on leave at that time, on the analogy of instructions contained in Board’s letter No. F (E) 59/AL-28/14 dated 18th March, 1960.

1.2 The Assisting Railway servant is eligible to the grant of TA as on tour under Rule 1667-R-II vide Board’s letter No. F (E) 60/AL-28/27 dated 15 June, 1961. He is also eligible for the grant of reasonable special leave and special pass vide Board’s letter No. E 41 RG 6-2 dated 4th February, 1941 and item 3 of the statement forwarded with Board’s letter No. E 51 RG 6-20 dated 8th April, 1953.

1.3 The Assisting Trade Union Official (non-railway servant) is eligible to the grant of TA under Rule 1696-R-II (1987 Edition) vide para 8 of Board’s letter No. F (E) 60/AL-28/27 dated 15th June, 1961. He is not eligible to the grant of passes vide item 3 of the statement forwarded with Board’s letter No. E 51 RG 6-20 dated 8th April, 1953.

(Railway Board’s letter No. E (D&A) 64 RG 6-22 dated 23rd July, 1966).

2. Facilities of leave, passes, TA etc. to accused Railway servants and their assisting persons for inspection of official documents

2.1 The accused railway servant is eligible for free Railway passes in this connection. He is also eligible to the grant of TA as for journey on tour, without any allowance for halts. If he is not under suspension, time taken in journey and in inspection of relevant official records, should be treated as duty or leave at that time as per Board’s letter No. F (E) 59/AL-28/14 dated 18th March, 1960. If he is under suspension on reinstatement, the period should be treated as duty, non-duty or leave, in accordance with the orders passed by the competent authority under Rule 1345-R-II (1987 Edition).

Annexure-VIII/1 (contd.)

- 2.2 The Assisting Railway Servants may be given special passes. In addition, they may also be given special casual leave upto a maximum of three days in one disciplinary case at the discretion of the competent authority. No TA or DA would be admissible.
- 2.3 The Assisting Trade Union Official (non-railway servant) is not eligible to the grant of facilities like grant of Passes and TA etc.

(Railway Board's letter Nos. E (D&A) 64RG6-22 dated 2nd February, 1967 and 23rd July, 1966).