

# HOW TO CONDUCT AN INQUIRY UNDER D&AR



**Physical Inquiry**



**Virtual Inquiry**

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# **Chapter –I**

## **A view on important points of the Railway servants (Disciplinary & Appeal) Rules, 1968.**

### **1) Preamble-**

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the President hereby makes of the rules namely “**The railway servants (Discipline & Appeal) Rules 1968**”. The rules come into force on October 1<sup>st</sup>, 1968.

Railway servants' Discipline & Appeal rules were separated from chapter 17 of Indian Railway Establishment Code Vol. I and the revised rules were issued as a “Supplement to Fortnightly Gazette No.18 dated 15.09.1968.

(Rly Bd's D.O. letter No. E (D&A) 66RG6-9dated 27.8.1968)

### **2) Introduction-**

Constitutional Provisions-Article 309 of the constitution. Under Article 311(1) no civil servant shall be removed or dismissed from service by an authority subordinate to the authority who appoints him.

Under Article 311(2) no civil servant shall be removed or dismissed from service or reduced in rank without an inquiry in which he is informed of the charges against him and given a reasonable opportunity to be heard about the charges.

### **3) Application-**

Rule 3(1) the rule shall apply to every railway servant but shall not apply to-

- a. Any member of the All India services.
- b. Any member of the Railway protection force.
- c. Any person in Casual employment.

### **4) Principles of Natural Justice-**

There are two corner stones of Natural Justice.

- a. No one should be a judge in his case.
- b. Decision after reasonable hearing or hearing the other side.

### **5) Application of Railway Services (Conduct) Rules 1966-**

The Railway Services (Conduct) Rules 1966, form the benchmark of how a Railway servant should conduct themselves in the official area.

Every Railway servant shall maintain at all-time Railway Services (Conduct) Rules 1966, mainly

- a. Rule 3(1) (i) absolutely integrity.
- b. Rule 3(1) (ii) Devotion to duty.
- c. Rule 3(1) (iii) Do nothing unbecoming of a Railway servant.

**Breach of Conduct Rules lead to disciplinary action under RS (D&A) 1968**

## 6) **The Role of Disciplinary Authority-**

A key role in disciplinary proceedings is played by the Disciplinary Authority and Inquiry Authority. They are functioning as quasi-judicial authorities.

### **The maxims**

- “No man should be a judge in his own cause” and hear the other side should be kept in mind before any decision is taken under DAR.
- The inquiry authority while conducting the inquiry has to give reasonable opportunities to the delinquent Railway servant.
- The disciplinary authority has to record his reason before arriving at the final decision for awarding any punishment, exonerate the delinquent, etc.
- It is also to be kept in mind by inquiry authorities that their conclusion is not binding on the disciplinary authority. The case can be remitted back, a fresh inquiry can be ordered, and he can even disagree with the findings of the inquiry.
- In the same way, the decision/s of the disciplinary authority is also not final. It can be modified in Appeal, Revision, and even by a court of law.
- In nutshell, all decisions under RS (D&A) rules have to be reasoned and reasonable.

## 7) **Presenting Officer-**

- The Disciplinary Authority may, by an order in writing on Standard form No. 8 nominate a Railway servant or any other Government servant to be known as “Presenting Officer {PO}” to present the case in support of the charges, before inquiry authority.
- The nomination of the Presenting Officer is not obligatory but only discretionary with the Disciplinary Authority.
- In the case where no Presenting Officer is appointed, the inquiry authority may himself examine and cross-examine the witnesses to find out the truth in the charges.
- Where the Presenting officer from CBI is considered a must, then justification should be sent to the CVC to take up the matter with CBI. (Ref. Railway Board’s letter no. 2005.VI/CVC/1/15dated 20-01-2006)

## 8) **Defense counsel {DC} / Defense helper {DH} /Assisting Railway Employee {ARE} Rule 9(13)-**

- The delinquent employee {DE} has to furnish the name of three persons, in order of preference to act as Defense counsel/Defense helper and Railway Administration should as far as possible spare them in that order.

- He cannot engage a legal practitioner as Defense counsel unless Presenting Officer appointed by the Disciplinary is a legal practitioner or the Disciplinary Authority having regard to the circumstances of the case, so permits. (Rly. Bd's No. E(D&A)95RG6-68 dated 13-08-1997)
- Full-fledged legal Practitioners such as Law Assistant attached to the law section of GM's office and Chief Commercial Manager cannot function as Defense counsel.
- Law Assistant who does not appear before the Court, the staff of Personal Branch, Staff & Welfare Inspector, Vigilance Inspector who have not handled the same case earlier are permitted to act as Defense helpers.
- A Railway servant under suspension can be permitted to act as a Defense helper. (Rly. Bd's No. E(D&A) 74 RG6-31 dated 11-11-1974)
- A Railway servant who is for the time being on deputation to an office outside the Railway, cannot be permitted to act as a Defense helper.
- A Non-Gazetted employee can act as a Defense helper to a Gazetted Officer, whereas a gazetted officer is not permitted to act as a Defense helper to a non-gazetted employee. (Rly. Bd's No. E (D&A) 95RG6-68 dated 13-08-1997)
- A non-gazetted Railway employee may take the assistance of an official of a Railway Trade Union, recognized by the Railway administration under which the railway servant is employed.
- A Railway servant cannot assist other than a Railway servant in DAR cases. (Rly. Bd's No. E(D&A)67 RG6-1 dated 11-06-1969)

**Some important points-**

- A. The Railway servant against whom disciplinary proceedings have been initiated take the assistance of any other railway servant (serving/ retired) employed in the same Railway Administration on which he is working, or from which may Railways the incident has taken place.
- B. Where the Railway servant against whom DAR case is pending he has settled at a place far away from the Railway Administration from which he had retired, then he may be allowed to select any serving or retired employee of the Railway Administration within whose jurisdiction he has settled as per Settlement section details (Rly. Bd's No. E (D&A) 90 RG 6-106 dated 08-10-1990)
- C. Consent letter of Assisting Railway servant need not be routed through his Controlling officer (Rly. Bd's No. E (D&A) 79 RG 6-38 dated 26-02-1980).

D. Number of cases at a time-

- i. Serving employees are permitted to function as Defense Helper in 3 cases at a time.
- ii. Retired employees are permitted to function as Defense Helper in 7 cases at a time.
- iii. Full-time trade Union worker can function as Defense Helper in 3 cases at a time.
- iv. Only one adjournment will be permitted on account of DC/DH/ARE's sickness in each case (Rly Bd's letter No. E (D&A) 2003 RG 6-8 Dated 27-05-2005 & E (D&A) 2002 RG6-13 dated 14-03-2003)
- v. When Defense Helper is transferred: - When a Defense Helper is transferred to another Railway Administration; the delinquent employee will have to nominate another employee as his defense helper.

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## **Chapter-II**

### **The charge sheet, Nomination of I.O. &P.O**

#### **The initial stage in DAR before inquiry-**

##### **A. Preparation, Issue of Charge Memorandum & Acknowledgement-**

Charge Memorandum (Charge Sheet) shall be prepared with maximum care and to be signed by the competent authority with a date.

The charges should be specific and supported by proper document(s) and witness (es), Charges must be specific and should be specific-

- i. The lapses or misconduct like habitual late attendance, insubordinate, failure to maintain integrity, or devotion to duty, including in an act of unbecoming of a public servant are should be spelled out.
- ii. If by the lapses attributed to him, he had contravened any rule or order or provisions in the conduct rule applicable to him, then such rule or order or provision must be mentioned in the charge after giving the factual allegation.

##### **B. Please refer to the below points-**

- i. In the charge sheet mention of IPC (Indian Penal Code) or any other law may not be made because the employee is to be tried for violation of Railway Rules and they should only be mentioned.
- ii. Annex. I – Article of charges-
  - The charges should be drawn up in clear articles of charges, separate for each alleged act of omission or commission.
  - The charge must be specific and not vague.
- iii. Annex. II – Statement of imputations in support of Article of charges-
  - The Article and the Statement of imputations in support of the charges should not be identically worded.
  - While the Article of charges should be concise, the imputations should contain details, references, etc. relating to the charges and should generally give a clear idea about the facts and circumstances relating to the alleged act.
  - Specific rules/instructions which may have been violated should be also being mentioned in the statement of imputations.
- iv. Annex. III- The list of documents in support of the charges-
  - Documents relevant for substantiating the charges need to be listed out.
  - Anonymous/pseudonymous report should not be mentioned.

- The vigilance inspector investigation report should not be included as a relied upon document.
- v. Annex. IV- List of a witness by which the Article of charges is proposed to be sustained-  
 Witnesses relevant to substantiating the charges need to be included. (Rly. Bd's letter No. E (D&A) 68RG6-37dt.23.09.1968, E (D&A)66 RG6- 7dt.30.12.1968 & E (D&A) 68RG6-26 dt.29.09.1968)
- vi. Serving charge memorandum-
  - The Charge Memorandum should be served on the charged official (CO) either in person or through Registered Post to his permanent address or last address intimated by him.
  - If returned undelivered with the observations of the Postal Authorities like Door Locked, left without notice refused to accept, etc. it can be deemed as good as served.
  - The envelope returned undelivered, should not be opened by the office & must be kept in sealed condition and preserved.
- vii. Serving of Charge Memorandum to running staff-

The Railway employees concerned with the running of trains should not be served with charge sheets when they are going to start their duty, but only when they are going off duty. (Rly. Bd's.NO.E (D&A) 67 RG8 dt.21.05.1967)

**C. Receiving defense statement/representation from charged official-**

- i. 10 days from the day of acknowledgment is given to the CO for submitting the Defense Statement/representation.
- ii. If the CO requests for inspection of Relied upon Documents, 10 days may be extended by the Disciplinary Authority to the Delinquent Railway servant depends upon the reasons cited in his request. (Rules 9(7) and Rule 27).

**D. The decision of Disciplinary Authority to hold an inquiry or not-**

- i. The Disciplinary Authority has to go through the defense statement and take a decision on the conclusion of whether to conduct an inquiry or to impose a minor penalty or to drop the charges.
- ii. His decision will change the entire proceedings
- iii. If no defense statement is received within the prescribed period/extension of time granted then he shall decide to either conduct an inquiry by himself or by any other inquiry authority appointed by him.



**E. Appointing of Inquiry officer and Presenting Officer (if any)-**

- i. Disciplinary Authority may, by an order in writing (SF7), appoint a Railway servant/officer who is sufficiently senior to that of the delinquent an employee on behalf of the Disciplinary Authority as Inquiry Officer {IO} to conduct the DAR inquiry.
- ii. In Vigilance related DAR cases and composite cases, the disciplinary authority may, by an order in writing (SF8), appoint a Railway servant as Presenting officer {PO} on behalf of the Disciplinary Authority to present the cases during DAR inquiry.

**F. Status of the Inquiry officer-**

The committee on Subordinate Legislation has observed that though they agree that it is not possible to entrust always inquiries against delinquent officers to Gazetted officers, the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into as an inquiry by a junior officer cannot command the confidence which it deserves. (Rly. Bd's No. E (D&A) 71RG 6-4 date 27-02-1971)

**G. The officer who conducted the fact-finding inquiry-**

The officer who conducted the fact-finding inquiry may also be appointed as a member of the disciplinary inquiry committee. (Rly. Bd's No. E (D&A) 59 RG 6-42 dt.27.01.1960)

**H. Disciplinary Authority not to act as an Inquiry Officer-**

The officer who ordered a departmental inquiry may not be a member of the Inquiry committee, there is, however no obligation to his conducting the inquiry himself where the circumstances may warrant such a source.

**I. The officer who is a witness-**

Any official who has to give evidence in the inquiry should not be nominated as a member of the inquiry committee or in any way associated with the disposal of proceedings of that committee.  
(Rly. Bd's No. E (D&A) 60 RG 6-32 dt. 25-01-1961)

**J. Subordinate as Inquiry Officers-**

Board of Inquiry may consist of a gazetted officer or Sr. Subordinates. However, gazetted and non gazetted officers shall not sit together on one board. The member of the Inquiry Board should not be subordinate to one another or lower in rank than the accused.  
(Rly.Bd's No. E 55RG6-1dt.18-07-1956)

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## **Chapter –III**

### **Inquiry under D&AR**

The departmental Inquiry should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into.

(Rly.Bd's No. E (D&A) 2000 RG 6-24dt. 20-02-2001)

#### **1. The details to be given to the Inquiry officer {IO} by the disciplinary Authority Rule 9(6)-**

- i. Charge Memorandum in SF5 with a copy of Articles of Charge and the statement of the imputations of misconduct.
- ii. Evidence providing the delivery of the documents.
- iii. A copy of the listed witness if any.
- iv. A copy of the appointment order of Presenting Officers, if any.
- v. One set of Relied upon Documents in original or attested. (Relied upon Documents supplied to charged official and Inquiry officer should be identical).
  - The inquiry officer shall verify the documents received from the Disciplinary Authority and confirm that all the documents required are available before conducting the DAR Inquiry.
  - Missing documents, if any, are to be collected from the disciplinary authority before the commencement of Inquiry.
  - The Inquiry officer should ensure that intimation has been sent well in time to the delinquent employee and others regarding the place, time, and date of Inquiry.
  - The accused be asked to submit a list of defense witnesses if he has not done so.
  - He should also make necessary arrangements for stenographic assistance for the time to time recording of the proceedings.

#### **2. The basic stage of DAR Inquiry-**

##### **Administration's side-**

- a) Inquiry officer.
- b) Presenting officer.
- c) Prosecution/Administrative witness and documents to prove the misconduct misbehavior of the delinquent Railway servant.

##### **Delinquent employee side-**

- i) Delinquent Railway employees.
- ii) Defence Counsel if any.
- iii) Defence witnesses and documents to prove the Innocence of delinquent railway servants.

### **3. THE DAR INQUIRY HAS TWO BASIC STAGES-**

- i. Preliminary Inquiry.
- ii. Regular Inquiry.

### **4. Homework to be done by Inquiry officer-**

- i. Verifying the documents to confirm whether they are sufficient to complete the inquiry. Otherwise, action may be taken to ask for the same from the Disciplinary Authority.
- ii. Index Relied upon Documents for better identification, communication, and Recording.
- iii. Verify the list of witnesses and conform to their proper address (es) and plan for their sequence in the Inquiry.
- iv. Arrangements at the venue, proper sitting arrangement, typing facility, etc. are to be taken care of.

## **Procedure of Inquiry**

### **(a) Preliminary Inquiry-**

- I. Preliminary Inquiry is only to create a better platform for the charged Employee, presenting officer {PO} and the Inquiry officer {IO} to go ahead with the regular inquiry systematically and smoothly. Normally no witness will be examined during the preliminary inquiry.
- II. During the preliminary inquiry if some or all charges are not admitted by the delinquent and it became necessary to proceed with inquiry, inquiry an officer should frame the issue, draw a time table in consultation with the delinquent and Presenting Officer about sitting of inquiry, days to be allotted for prosecution, witness examination, defense witness examination, etc. and should adhere to it.
- III. During the preliminary sitting, the inquiry authority shall check and ensure that-
  - a. The charge is proper embodying the correct rules mentioned therein.
  - b. The charge sheet is complete with all its enclosures.
  - c. The delinquent has been furnished the opportunity to inspect and take copies of the relied upon documents quoted in the charge sheet.
  - d. All other documents have been furnished to the inquiry officer.

### **A model question, an Inquiry Officer may ask during the Preliminary inquiry (not exhaustive), will be as under-**

- Q1. Please introduces you to a name, designation, and office in which working?
- Q2. Have you received Charge Memorandum No. \_\_\_\_\_ Dated \_\_\_\_\_ issued by the?
- Q3. Have you been issued with order No. \_\_\_\_\_ Dated \_\_\_\_\_ appointing Shri \_\_\_\_\_ as Inquiry Officer?
- Q4. Have you nominated your Defence Helper/Counselor?
- Q5. Have you taken the inspection/extract of the document listed in Annexure III?
- Q6. Have you replied to the charge memorandum?

- Q7. Have you understood the charges framed against you and if so, do you plead guilty to the same or not?
- Q8. Have you asked for any additional documents?
- Q9. Do you wish to call any defense witness in your case? If so show their relevance?
- Q10. Do you wish to say anything more in this case?

**Preliminary Inquiry concluded.**

(Signature of all attended will be obtained on completion of the day and copy of same will be given to the delinquent under acknowledgment every day)

(Signature)	(Signature)	(Signature)	(Signature)
<b>Inquiry officer</b>	<b>Charged employee</b>	<b>Defense helper</b>	<b>Presenting officer</b>

**(b) Regular Inquiry-**

A regular inquiry needs the followings stage:

- I. Proper Communication of date-time & venue.
- II. Conducting of the inquiry.
- III. Concluding the inquiry.
- IV. Charged official's brief.
- V. Presenting officer briefly.
- VI. Inquiry officer's Report with proper findings.

**Action to be taken by the Disciplinary Authority after completion of Inquiry by IO.**

- I. Agreement /Disagreement with the Disciplinary Authority.
- II. Serving a copy of the Inquiry Report to the delinquent after acceptance by DA.
- III. In vigilance related cases, serving a copy of the Inquiry report to delinquent after acceptance by vigilance /CVC.
- IV. Representation from the delinquent on the inquiry report.
- V. Speaking order of the disciplinary authority.
- VI. Penalty order/ NIP (Notice of Imposition of a Penalty)

**5. Regular Inquiry proceedings.**

The Inquiry officer should make sufficient homework before starting the regular inquiry. A list of leading questions, its sequence, and the order in which the witnesses are examined, etc. are to be planned well in advance.

**Examination of Prosecution Witness 1 (Questions are continued from preliminary Inquiry onwards)**

- Q1. Please introduce to you about the name, designation, and office in which working.
- Q2. Are you aware of the charges framed against Shri \_\_\_\_\_
- Q3. Please explain how are you connected to this?
- Q4. You may peruse Article No. \_\_\_\_\_ Please explain did you \_\_\_\_\_ etc.

### **Examination of Prosecution Witness 2, 3, etc. can be continued.**

When the charged official and his defense helper ask questions that are not relevant, not appropriate, the Inquiry officer can give his ruling stating that “charged official and his defense helper may restrict his question around the article of charge.

**Role of Witnesses in DAR inquiry-** The witnesses play a major role in the DAR inquiries to arrive at the proper conclusion.

- i. **Prosecution witness-** is one who is called upon by the administration to prove the charges on its behalf.
- ii. **Defense witness-** is one who is nominated by the delinquent official to depose and disapprove of the case of administration.
- iii. **Expert witness-** is one who has a special knowledge of a subject, such as a handwriting expert, fingerprint expert, medical practitioners, etc.
- iv. **Inquiry officer’s witness-** A person who has not been cited in the charge the memo, the inquiry officer at his discretion allows the P.O. if any to produce evidence not included in the list given to the Railway Servant. Delinquent the employee will be permitted to cross-examine him.
- v. **Hostile witness-** is a witness who is summoned by one party but does not depose in his favor. The party summoned shall declare him as hostile and instead of examining him, may cross-examine him and a certificate to this effect should be recorded by the Inquiry Officer.
- vi. **Illiterate witness-** in the case of such a witness their statement must be read out to them and a certificate to this effect should be recorded by the inquiry officer.
- vii. **Non- Railway Witness-** Where the delinquent cites non-railway men as his witness, it will be his responsibility to ensure their attendance during the inquire.
- viii. **Irrelevant Witness-** The delinquent may cite a large number of witnesses with an inclination either to cause delay or confuse the issue. He has to mention the relevance of all the witnesses cited by him. It is open to the Inquiry Officer to summon only those whom he considers relevant.
- ix. **The staff of SPE as a witness-** There is no bar to call the staff of SPE, even though they had conducted a preliminary inquiry.
- x. **Retired railway servant as Witness:** Passes may be issued to the retired railway servant as witnesses.

### **The witnesses which have already been examined etc. may be recalled for examination, cross-examination, and re-examination-**

- a. By the succeeding inquiry authority, in case of change of the inquiring authority, or
  - b. By the disciplinary authority, if he has himself not held the inquiry if he on receipt of the inquiry report considers/deems it necessary.
- xi. **Guidelines to Witnesses-** No Government servant can refuse to act as a witness in a departmental inquiry otherwise, He / She is liable for disciplinary action. Further, it does not depend upon one’s own choice whether to act as a defense witness or prosecution witness. The Inquiry Officer should try to make the witnesses feel comfortable. The witness must be polite, humble, and modest in their behavior.

- The cross-examiner will try to impeach the credit of the witness. This should not be disheartening.

**6. Disciplinary action against witness-**

Where witnesses give a different statement during the preliminary inquiry and the regular inquiry, or the court of law, they are guilty of deliberate prevarication with the object of spoiling the case of the Railway administration, and as such the disciplinary action can be taken against them. (Ref. Rly. Bd's No. E (D&A) 71 RG 6-57 date 07-02-1972). This fact should also, be brought to the notice of all witnesses say PW and DW.

**7. The role of inquiry officer-**

- The inquiry officer is not a prosecutor.
- It should not be his duty to somehow prove the charge(s).
- He has to assist the Disciplinary Authority in taking a correct and impartial decision based on the evidence on record.
- Inquiry officers must have an impartial approach.
- She/he can play a vital role in finalizing the DAR cases early or within the prescribed time limit.
- Official not having a personal interest in the case is to be appointed as an Inquiry Officer.
- A departmental inquiry is inherently different from judicial proceedings in a court of law and need not be carried out rigidly following the rules applicable to judicial proceedings.
- The inquiry officer should ensure that reasonable opportunity is given to the charged official for defending his case in the course of the inquiry.
- The Inquiry Officer should ensure that intimation has been sent well in time to the charged official, presenting officer (if any), and witness, etc. regarding the date, place, and time of inquiry.
- Once the date is fixed for hearing, it should not be postponed on flimsy grounds.
- Request for the additional documents which are not mentioned in the list of documents (Annexure-III) sent to him along with the charge sheet will be considered by the inquiry officer. (At the request of the charged official when the inquiry officer has decided to call for additional documents, the authority having custody or possession of the documents may decide, that the production of such documents would be against public interest or security of the state).
- The reason for rejecting the employee's request for producing a witness and or a document shall be recorded.
- If any person refuses to sign a statement of evidence, it should be read out to him in full and should be signed by the inquiry officer that it is a true record of the evidence given by the accused or witness.

**8. Points to be taken care of by Inquiry Officer; (Master Circular No.67)**

- A preliminary hearing should invariably be held first after giving due notice, as specified in Rule9 (ii). Formal notice has to be sent to all concerned for all the regular hearing too.

- During the preliminary hearing, the charged official should be asked by the inquiry officer whether he has received the charge sheet, understood the charges against him, and whether he accepts those charges.
  - The charge official should also be asked if he has inspected the documents listed in the charge sheet, whether he wants some additional documents and whether he wishes to produce some defense documents/witnesses.
  - If any of the defense witnesses are not found to be relevant, the Inquiry Officer may disallow their evidence and advise the charged official accordingly.
  - The relevance of any witness may be considered by the Inquiry officer from the charged official's point of view. (Ref.Rly.Bd's No. E (D&A) 70 RG 6-5dt.08.12.1970)
- b. If the C.O. requests for production of additional documents during the inquiry and if in the opinion of the inquiry officer, some or all of the documents are not relevant to the case, then the Inquiry Officer has to record in writing his reasons for refusal to requisition for production of such documents, as provided in Rule 9(15) of RS (D&A) Rules and advised the charged official about the decision.
- c. The inquiry officer has to maintain a daily order sheet which is the record of all the business transacted by him on day to day basis of the conduct of the Inquiry.
- The facts relating to notices sent, taking on record the documents, request/representations made by either party or decision of the inquiry/officer thereon and the examination/cross o examination undertaken should find a mention in the daily order sheet.
  - The daily order sheets should be dated and signed by the inquiry officer and serially-numbered.
  - The daily order sheets should indicate whether a reasonable opportunity has been given to the charged official, whether the procedure prescribed in the rule has been adhered to etc.
- d. In addition to the Daily Order Sheet, the Inquiry Officer has to maintain the record of the inquiry proceedings in detail.
- It should contain the date of the proceedings, the officials present, and the examination/cross-examination of the witnesses in form of questions and answers (reproduced in verbatim) and any decision was taken by the inquiry officer during the proceedings regarding dropping of a witness, allowing/rejecting the requests of the C.O. for production of additional documents, witnesses, etc. these should be signed by I.O., P.O., C.O., D.C., and Witness present during the hearing.
  - Copy of proceedings should be given to the delinquent employee at the end of each day's proceedings.
  - The record of proceedings can either be in Hindi or English. Principles of natural justice require that the delinquent officer must have a reasonable opportunity to defend himself.
  - The inquiry officer should explain the proceedings to the charged official in a language known to him and it should be ensured that he understands and

accepts the same before his signature is obtained. (Rly.Bd's No. E (D&A) 66 RG 6-7 date 30-12-1968)

- e. During the inquiry, the evidence on behalf of the Disciplinary Authority has to be produced first.
- It would be incorrect to examine the charged official first, as this would deprive the C.O. of the opportunity of effective defense.
  - All the documents listed in the charge memorandum have to be taken on record and marked as Exhibit No. ---- and signed by the Inquiry Officer.
  - All the witnesses listed in the charge memorandum have then to be examined one by one in the presence of the charged officials.
  - After examination of each prosecution witness (also called examination in chief) the charged official has to be allowed to cross-examine the witness.
  - After cross-examination of the prosecution witness, the inquiry officer may put such questions to the witness as he thinks fit.
  - If any of the witnesses had either given any statement during the investigation, fact-finding inquiry, etc. he should be asked during the inquiry to confirm the said statement before it is taken on record as evidence.
  - If the statement is quite comprehensive, a mere confirmation of the statement by the witness should suffice during the inquiry instead of a de novo examination of the witness.
  - The presenting officer, if any can also re-examine the prosecution witness after the cross-examination, on any point on which the witness was cross-examined but if the re-examination by the presenting officer is on a new point, then the permission of the inquiry officer has to be obtained for the same.
  - If re-examination by the presenting officer is allowed on any new matter, then an opportunity should be given for further cross-examination of the witness concerned on such new matter.
  - If any of the prosecution witnesses to be dropped due to some reason, this should be done during the proceedings in the presence of the charged official and this fact should also be recorded formally by the Inquiry Officer in the inquiry proceedings.
- (Rule 9(20) of RS (D&A) &Bd's letter no. E (D&A) 70 RG6-14dt.15.01.1971and E(D&A)80RG 6-47 dt.25.05. 1981)

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## Chapter-IV

### Do's and Dont's on Examination of witnesses

<u>Examination in Chief</u>	<u>Cross-Examination</u>	<u>Re-Examination</u>
Try to know what the witness will say	Try to elicit something, how small which may help your case.	You cannot ask even a the material question in re-examination which was left in exam-in-chief.
Ask the events in the order in which they occurred, with the accompanying conversation, if relevant.	If the above is not possible then try to get something which will weaken the case of the opponent?	You can only ask the witness to explain a certain statement, or the motive behind the same which was made in the Cross-examination.
Let the witness tell his own story in his own words.	Try to put questions to separate truth from the falsehood.	Use great discretion in asking for an explanation of what a witness has said. It may even go against your case some times.
Let him tell his own story to avoid an impression of being tutored.	Keep the case of your client in mind and the scope of the witness before you.	Where the credit of the witness has been shattered in cross-exam. you should use re-exam. to re-establish his credit
Do not allow the witness to go hostile as it may damage your case.	Remember the questions and answers are given by the witness in the examination and make the best use of the same. Put such questions which may not be prey to the cross-examination. Try discrediting the witness providing: - i) He did not see what he said saw.	
Elicit every fact completely so that the cross-examination will get no holes to pierce in.	ii) He did not hear what he said he heard.	
Do not put compound questions, one part only of which is admissible.	iii) His evidence was based on hearsay.	

Leading and Scandalous questions are prohibited.	iv) He has been giving false evidence in past also.	
Be friendly with your witness, encourage him and win his confidence. Get him adjusted to the atmosphere.	v) When the witness had given a general statement in the exam, try to get it particularized.	
Weigh a question in your mind before you put it. The object is to elicit the answer that you want	vi) Try to provide his conduct as inconsistent with the statement.	
Be very attentive at the time of cross-exam. As you may have to avail the chance of re-exam. Also be sure that no indecent, improper, or leading questions are put to your witness by the opposite party.	vii) Sometimes asking the witness to repeat what he said in the examination, may shake him.	
Do not bring your case to a weak point. Never do cross-examination your witness.	viii) Sometimes rapid fire of questions may pay the desired result. Be a good psychologist so that you may understand the witness before you.	
	ix) Do not bring your case at weak. To have a conversation from mind to mind look away from the witness before you. Do not bring your case to a weak point. To have a conversation from mind to mind do not look away from the witness.	
	x) Be not regardless of the voice of the witness. Be mild with the mild, shrewd with the crafty, confiding with the honest, rough to the ruffian, and a thunderbolt to the liars.	

	xi) Never undervalue your adversary. Do not put a question without purpose. Stop when you have got your point. Never argue with a witness. Do not question unnecessary details. Never lose temper.	
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1. Copies of oral evidence recorded during the proceedings should be given to the Charged Official in case he asks for it at the end of each day's sitting or even after Inquiry proceedings. (Bd's no. E (D&A) 65 RG 6-40dt.30-07-1965)
2. Where no Presenting Officer has been appointed, there should be no objection to the Inquiry Officer to find out the truth in the charges and such examination /cross-examination is aimed at that end only.
  - However, the Inquiry Officer should refrain from searching cross-examination as this might affect his role as an impartial authority. (Bd's no. E (D&A) 70RG6-41dt. 20.10.1971 and E(D&A)2000RG6-60dt. 09.05.2001RBE 89/2001)
3. If the report of the handwriting expert is relied upon as evidence in the inquire and if the charged official makes a specific request for summoning the handwriting expert for cross-examination, then it would be obligatory on the part of the Inquiry Officer to summon the handwriting expert for appearing in the inquiry. (Bd's letter no. E (D&A) 66RG-6-24dt.13-02-1967).
4. After the case on behalf of the Disciplinary Authority is crossed charged official should be allowed to present his defense.
  - The Charged Official if he so desires, should be allowed to examine himself on his behalf. This has to be done first before another defense witness is examined.
  - The defense documents, if any, would then be taken on record, and the defense witness, if any, would be examined / cross-examined.
  - The Inquiry Officer doesn't need to send a summons to all the defense witnesses cited by the charged official.
  - If the Inquiry Officer is of the view that the evidence purported to be given by a witness will be irrelevant to the charge against the charged official and failure to secure the attendance of the witness would not prejudice the defense, the inquiry officer may reject the request for summoning that witness duly recording the reasons therefore.
  - In the case of outside witnesses cited by the charged official, the responsibility is on him to ensure his presence during the inquiry.
  - However, all those defense witnesses who have been allowed by the inquiry officer and who have come to give the evidence, have to be examined. (Bd's no. E (D&A) 70R G 6-5dt.08.12.1970 &Rule 9(2) of RS (D&A)Rules).
  - In the end, the Inquiry Officer may generally question the charged official on the circumstances appearing against him in the evidence produced, to enable him to put forth his explanation.

- Such questioning of the charged official by the Inquiry Officer would be mandatory if the charged official has not examined himself as a witness and in the ***part of failure, Inquiry Officer to this would amount to the denial of reasonable opportunity***. (Rule 9(21)of RS(D&A) Rules).
  - New evidence cannot be brought to fill gaps. It can only clear ambiguity or supplement for/against the charge, i.e. a piece of evidence missed is missed forever. It cannot be reintroduced as fresh evidence.
5. After the production of evidence is completed the Inquiry Officer may allow the Presenting Officer and the charged official to file written briefs as a final presentation of the irrespective cases if any if they so desire. {{Rule 9(22)}.
    - This again is not mandatory in all cases but if it is allowed, the presenting Officer's brief should be obtained first and a copy is given to the charged official to enable him to present the defense brief.
    - However, if the inquiry is held ex-part, there is no need to allow the charged official to file a written brief. (Bd's no. E (D&A) 69RG6-20 dt.18.06.1969 and E(D&A) 86 RG 6-42 dt.09.05.1986 RBE88/86).
  6. If the charged official does not appear before the Inquiry Officer, the inquiry may be held ex-part.
    - However, a copy of the record of the day to day proceedings of the inquiry and notice for the hearing should be sent to the charged official regularly so that he is aware of what transpired during the proceeding and this also enables him to join the proceedings at any time and any stage, if he so desired.
    - This procedure should be compiled with invariably and Inquiry Officer should ensure that full opportunity is provided to the charged official to defend himself. (Bd's No. E (D&A) 90 RG 6-34dt. 18.04.1990)
  7. The minimum time to be given to charged officials for various purposes like replying to the charge sheet, examining documents, etc. as specified in various sub-rules of Rule 9 should be adhered to strictly.  
**(HEARE WE MAY GIVE TIME LIMIT PRESCRIBED FOR THE SAME)**
  8. A model time-schedule of 150 days has been laid down for finalization of a disciplinary case, which also specifies the time within which the different stages in the disciplinary proceedings should be completed. With the information of procedure of furnishing a copy of the inquiry report to the charged official allowing him to represent against the same before a final decision is taken by Disciplinary Authority, an additional time of about two months has been added (205 days) to expeditiously complete the procedure. (Bd's letter no. E (D&A) 86 RG 6-41 date 09.02.1990)
  9. While conducting the Inquiry, the Inquiry Officer should ensure that the principles of natural justice are not violated and there is no denial of a reasonable opportunity to the charged official in defending himself. (Bd's letter no. E-55RG 6-20dt.04.02.1956)

10. If the Inquiry Officer ceases to function as the Inquiring authority in case after hearing and recording whole or part of the evidence and a new Inquiry Officer is appointed in the case, then the succeeding Inquiry Officer may act on the evidence already recorded by the predecessor, in full or part and also call for further examination as considered necessary. The successor doesn't need to hold the inquiry de-novo. (Rule 9(24) of RS (D&A) Rules).
11. The inquiry report should be prepared following Rule 9 (25).
  - It should contain a detailed analysis of the evidence taken on record during the inquiry with actual references to the depositions of the witnesses and the charged official and also documentary evidence.
  - The findings in respect of each article of charge should be clear and categorical.
  - If a charge is held as partly proved, the findings should clearly state the extent to which they said charge is established with cogent reason, therefore.
  - It should be ensured that the inquiry report is based on a detailed analysis of the evidence and findings regarding the charge(s) are unambiguous.
12. The Inquiry Officers should normally complete the inquiry within six months from the date of his appointment as such and submit his report.
  - In the preliminary inquiry, he lays down a definite time bond program for the inspection of documents, etc.
  - The regular hearings once started should be conducted on a day-to-day basis.
  - Adjournment should not be granted on the frivolous ground. (Bd's letter no. E (D&A) 85 RG6-21dt.30.05.1985).
13. The inquiry report should then be sent to the charged official along with the reasons for disagreement, if any with the inquiry officer regarding any or all of the charges, asking for his representation against the findings of the inquiry officer and reasons of disagreement if any.
  - This should be done even in the case of an ex-part inquiry.
  - The report should be given to the charged official even if he is held not guilty. (Rule10 of RS (D&AR) and Bd's no. E (D&A) 87 RG6-151dt.04.04.1996 RBE 33/1996)
14. Rule 14(ii) should not be invoked in case of unauthorized absence. In such cases, an inquiry should not be dispensed with but should be held, even ex-part if necessary. (Bd's letter no. E(D&A) 90 RG 6-34 dt.18.04.1990)

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## **Chapter –V**

### **Common proceeding & Ex-parte Inquiry**

#### **1. Common proceedings (Under rule 13)-**

- A. Where more than one person is involved in the same case, common proceedings may be held.
- B. It may even be held wherefrom among many charges against employees, only a few charges are common and others different.
- C. The procedure for common proceedings is not automatic.
- D. It requires an express decision which can be taken only by the authority that is competent to dismiss from service all the employees involved in the case i.e. the **highest appointing authority** of all the employees involved.
- E. The above authority will also order-
  - i. It will only issue the charge sheet or/and
  - ii. It will also hold an inquiry and consider the inquiry report or/and
  - iii. It will also impose certain punishment on the persons involved, if so, what punishments it shall be empowered to impose. However, such authority cannot be empowered to order removal, dismissal, and compulsory retirement if it is subordinate to the appointing authority; and
  - iv. Whether the procedure laid down in rule 9 and 10 or 11 shall be followed in the proceedings (e.g. for a major or a minor penalty)

#### **2. Duties of Disciplinary Authority nominated for common proceedings-**

- A. This authority has the specified function only to do as authorized by the authority nominated him as disciplinary authority including the imposition of penalties as authorized to him and after the job as specified has been done this authority will intimate the appropriate disciplinary authority of the railway servant, of the action taken.
- B. If the punishment warranted is removal/dismissal/compulsory retirement, it shall forward the case with the inquiry report to the appointing authority of the railway servant; in any case, the full action taken in each case shall also be reported to the authority who nominated such disciplinary authority.

#### **3. Ex-part inquiry Rule 9(23)-**

- A. If the charged official does not appear the inquiry officer, the inquiry may be held ex-part.
- B. However, a copy of the record of the day to day proceedings of the inquiry and notices for the hearings should be sent to the charged official regularly so that he is aware of what has transpired during the proceedings and this also enables him to join the proceedings at any stage if he so desires.
- C. This procedure should comply with invariable and Inquiry Officer should ensure that full opportunity is provided to the charged official to defend himself. (Bd's letter no. E(D&A) 90 RG 6-34dt.18.04.1990)

- D. For holding an Ex-pat inquiry the article of charges must be properly served on the Railway employee either in person, or as per registered post, or by pasting at the workplace, as the case be. If the employee does not give the defense or after being given the defense, does not turn up or having turned up & does not sit in the inquiry, then ex-part inquiry can be held.
- E. If the inquiry has been held ex-part, there is no need to allow the charged official to file a written brief.

**4. The sequence of DAR inquiry-**

As per Rule 9 (17) (18) (19) (20) and (21) of Railway Servant (Discipline and Appeal) Rules 1968-

- i. The witness on behalf of the prosecution shall be examined first, Cross-examined re-examined if necessary, and recalled if necessary.
  - ii. After all the prosecution witnesses whom they want to present have been examined as (1) above, the delinquent will be asked to state his defense.
  - iii. Refer below points
    - a. Then Railway servant will be asked if he wants to become a witness in his case.
    - b. If the railway servant wants to examine himself, he will be examined and cross-examined.
  - iv. Thereafter the defense witness will be examined and cross-examined, re-examined.
  - v. In the end, if the delinquent had not examined himself as at (3) above, then the inquiry officer must ask him generally questions on circumstances appearing against him. This sequence is necessary because
    - a. If the delinquent is asked to state his defense earlier than the prosecution may take its advantage and demolish it through its witness, and
    - b. If the delinquent is examined after all defense witnesses, he will have an advantage of knowing what his witness has deposed and thus try to cover up their lacuna in his statement, this will not be desirable.
    - c. In general, a delinquent Railway servant gets 3 chances expressly to speak out.
- When he is called for a preliminary hearing under Rule 9 (11), he may admit his guilt or deny it. In case of admission, the inquiry may not be processed further.
  - Under Rule 9 (19) when the disciplinary authority has closed its case and before the railway servant produces a defense on his behalf, he shall be required to state his defense orally or in writing as he may prefer. In case he chooses to give oral evidence it shall be recorded and he will be signing it.
  - Vide Rule 9 (21) when the Railway servant has closed his case, eg. All his witnesses have been cross-examined and re-examined, etc. inquiry officer shall give one more opportunity to explain his innocence.

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# Chapter- VI

## Preparation of Inquiry Report

### 1. Points to be kept in mind while preparing the Inquiry Report-

- The Inquiry officer is exercising the quasi-judicial function. His orders must show on the face of it the reasons for the conclusion.
- A domestic inquiry is not a criminal trial.
- The slandered of proof applicable to criminal trials need not be applied.
- Each finding must be a reasoned one.
- There should be an application of mind and a correlation between the evidence and the conclusion reached.
- The finding must be confined to the Article of Charges mentioned in the Charge sheet issued to the employee, i.e. without linking his active working in the office, cash awards received in the previous year or punishment imposed on him earlier, etc.
- The inquiry officer must not consult or take instructions from any person.
- He must arrive at his finding based on his judgment.
- The inquiry officer shall maintain a daily order sheet containing the record of daily happening and steps taken during the proceedings.
- **Proceedings should be precisely and carefully worded to convey the correct meaning.**
- **The findings on each charge or article proved and reason for finding shall be mentioned clearly.**
- **The findings or conclusion should not be vague.**
- His proper evaluation will help the Disciplinary Authority to take a fair decision. Since the final powers are with Disciplinary Authority.
- He may agree or disagree with the findings of the Inquiry Officer. In case of disagreement, a Memorandum of Disagreement will have to be issued by the Disciplinary Authority and placed as an enclosure to the inquiry report.

### 2. The appeal against Inquiry Officer on the ground of Bias-

Whenever an application is made by the Railway servant against, whom disciplinary proceedings are initiated against the inquiry officer, on the ground of bias, the proceedings should stay and the application of the delinquent along with the other relevant material, forwarded to the appropriate **Revisionary Authority** for considering the application and passing appropriate order thereon expeditiously. (Bd's letter No. E (D&A) 70RG 6-14(1) dt.19.06.1974)

### 3. Closing the Inquiry proceedings-

- After the proceedings are over, the Inquiring Authority may hear the Presenting Officer and the Delinquent Railway servant if they want to say anything (if they so desire). These statements are recorded in the proceedings{Ref. Rule 9(20) & (21)}
- Written Brief by Presenting Officer and Charged Officials.



- In the last sitting/hearing, after the Presenting Officer and the Delinquent Official express that there is nothing to hear, then the Inquiry Officer permits both the Presenting Officer and Delinquent Employee to file the written briefs of their respective case if they so desire.
- Then the proceedings can be formally concluded, Ref. Rule 9(22)}.
- A copy of the written brief from the Presenting Officer shall be given to the Delinquent under acknowledgment.

**4. Preparation of Inquiry report-**

After the closure of the final sitting of the Inquiry proceedings, and after receiving the brief from P.O and C.O. a report shall be prepared by the Inquiry authority and it shall contain the following-

- a. The article of charge and the statement of the imputation of misconduct or misbehavior as mentioned in the charge memorandum.
- b. The defense of the charged Railway servant in respect of each article of charge.
- c. Assessment of the evidence in respect of each article of charge, and
- d. The findings on each article of charge and the reason therefore shall be very clear as the case may be, i.e. proved and hence guilty or not proved and hence not guilty. {Rule 9(25)}
- e. Partly proved charges-It may be possible that the charge consists of two parts which may be independent, though arising out of the same incident. In such a case it is not illegal to hold the charge as partly proved.
- f. Recordation of lenient view by inquiry officer Sometimes the Railway servant apologies during the inquiry or for some extenuating factors, the inquiry authority may recommend a lenient view (though he should not do so), it is for the Disciplinary Authority only to give any weight to it or not. An apology can be no ground at this stage for dropping the charge sheet.
- g. Inquiry officer recommending penalty: The inquiry officer/ authority should only prove or disprove the charges and not to evaluate the penalty.
- h. Submission of Inquiry Report: - While submitting the inquiry report the following documents shall be enclosed for the perusal of Disciplinary Authority:-
  - i. Inquiry Report duly signed in all the pages,
  - ii. Proceedings of the Inquiry,
  - iii. Presenting officer's brief (if any),
  - iv. Charged official's brief,
  - v. Daily order sheet,
  - vi. Correspondence file and
  - vii. Relied upon documents/ exhibits used in the inquiry.

**5. Action on Inquiry report (RULE - 10)-**

- a. When the Disciplinary authority agrees with the findings of the Inquiring authority the inquiry report is to be sent to the delinquent employee for obtaining his representation if any within 15 days.
- b. When Disciplinary authority does not agree with the findings of the inquiring authority, he must pass clear order indicating reasons in detail for not agreeing (reasons for disagreement).
- c. The reasons must be cogent, coherent, and convincing.

6. **Fresh Inquiry-** A fresh inquiry may be ordered by the DA only where there is a material flaw in the procedure adopted which has resulted in a miscarriage of justice and denial of Natural justice.
7. **Further Inquiry-** Where there is no grave procedural lapse and only such lapse is there which can be rectified by a *further inquiry*, the disciplinary authority may remit the case for *further inquiry*.
8. **Disciplinary Authority itself recalling the witnesses-** If the disciplinary authority recalls any witness for further examination. It is desirable that the delinquent employee along with his Defence Helper if any should also be present during such examination. The Disciplinary Authority may require the presence of the Presenting Officer also.
9. **Forwarding inquiry report to the Delinquent-**
  - a. The Disciplinary Authority shall forward or cause to be forwarded a copy of the inquiry report, together with its tentative reasons for disagreement, if any, to the delinquent, who shall be required to submit if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of the fact whether the report is favorable or not to the Railway servant Rule 10(1).
  - b. In Vigilance cases, a copy of the inquiry report, together with its tentative reasons for disagreement, if any, to the delinquent will be given only after obtaining the 2nd stage advice of CVC {Para 1203.8 of Vigilance Manual}.
10. **Disagreement with inquiry officer-** The Disciplinary Authority has full power to agree or not with the inquiry officer but where he disagrees, it must record in writing for disagreement and then only draw his findings which may differ with the inquiry officer. In such a case, he must also be kept in mind that the new findings must be on the evidence on record and for which reasonable opportunity has been given.
  - a. **If charges are not proved:** - If the consideration of the Inquiry report shows that no charges as leveled against the delinquent have been proved, Disciplinary Authority is satisfied with the conclusion of the inquiry officer, he shall pass an order to that effect and communicate the same to the delinquent duly exonerating him.
  - b. **If charges are proved:** - If all or any charges are proved satisfying the imposition of a penalty, the Disciplinary Authority will take further action and if necessary may recall and examine, cross-examine and re-examine any witness.

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## **Chapter –VII**

### **Speaking order& issuing of NIP**

#### **1. Speaking Order-**

- A. The Disciplinary Authority imposing the penalty must apply his / her mind to the facts, circumstances, and records of the case and then record its findings on each imputation of misconduct or misbehavior.
  - B. The Disciplinary Authority should give brief reasons for the findings to show that it has applied its mind to the case.
  - C. The reasons recorded by the Disciplinary Authority shall be helpful to the affected employee to prefer an appeal.
  - D. When the explanation of the delinquent has not been considered, the reason for rejecting must be recorded.
  - E. The authority must be very careful while passing the penalty order.
  - F. The terms such as a reduction in stage, scale, grade, pay, post, seniority, etc. are to be used carefully and clearly.
- I. Mention about payment of compassionate allowance in the case of removal /dismissal-**
- (a) The decision for grant of compassionate allowance or gratuity or both shall be taken at the time of passing orders of removal/dissmissal keeping in view the guidelines given in Para 310 of the Manual of Railway Pension Rules,1950.
  - (b) If no mention about the compassionate allowance, etc. is made by the Competent Authority while passing orders of removal/ dismissal, the concerned Head of office shall resubmit the case files along with relevant information /guidelines to the concerned competent authority and obtain a decision for or against the sanction of compassionate allowance or gratuity or both.
  - (c) If the decision is to grant compassionate allowance etc., necessary action to implement the same shall be taken by the Head of Office, based on the decision of the appellate authority on the penalty orders passed by the Disciplinary authority.
  - (d) If no appeal is preferred within the target date, a sanction order shall be issued immediately thereafter.
  - (e) If the appeal is preferred within the target date and a decision has been taken for or against the sanction of compassionate allowance etc. and the same is not turned down by the appellate authority, such a decision shall be treated as final and no representation in this respect shall be entertained at a later date.

- (f) The decision to grant compassionate allowance, etc. shall be communicated through a separate order. This decision shall not form part of the order under which the penalty of removal or dismissal is imposed.

Bd's letter No. F(E) III/2003/PN1/5dt.09.05.2005}

## **II. Imposing Minor penalty on Major penalty charge sheet cases Rule 9(9)(a)-**

- (a) After considering the written statement of defense on the major penalty charge sheet if the Disciplinary authority believes that a major penalty is not necessary, it may drop the major proceedings already initiated by it for the imposition of a major penalty, without prejudice to the right to impose any minor penalties not attracting the provisions of sub-rule(2) of Rule 11.
- (b) Where the Disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties not attracting the provisions of sub-rule(2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed.

## **2. Notice on Imposition of a Penalty (NIP)-**

- A. Penalty Order shall be prepared carefully.
- B. It shall be ensured that the authority signed the order is competent to issue such a penalty.
- C. Notice on Imposition of a Penalty (NIP) should be signed by the Disciplinary authority himself. (Except in the case of Railway Board and President).
- D. Ineffective Penalties such as imposing withholding increment while the employee is at a maximum of the pay band or level, withholding of Pass/PTO when not available at credit, etc. should be avoided.
- E. When recovery of pecuniary loss is ordered, the imposition of penalties such as Compulsory Retirement, Removal, and Dismissal cannot be imposed.
- F. When punishment is with cumulative effect, the period, the loss of pay, etc. shall be specified. In the absence of the term 'seniority'/'pay', the benefit shall be given to the delinquent employee.
- G. Post Retirement Passes not to be withheld as a penalty under DAR.
- H. In the penalty advice, no employee can be reduced in rank below his initial appointment pay band/grade pay/Level.
- I. Imposing of more than one penalty in one order such as reversion to lower Grade and withholding of increments etc. cannot be done.
- J. Reverting an employee to a lower Pay band/level fixing him at a stage lower one from which he was promoted or which he would have normally drawn will a double penalty hence not to be ordered. Reduction to the lower stage is a penalty under (v) of rule 6 and Reduction to lower pay band /level is a penalty under (vi) of Rule 6.
- K. Dismissal, Removal, etc. not to be given with retrospective effect.
- L. After retirement, the punishment of cut in pension only can be implemented that too by the president. (Rule 9 of the Railway Service pension Rules1993)

- M. Where Withholding of increments affecting the retirements benefit, or of recurring nature, even in minor penalty cases are imposed, the procedure similar to a major penalty is to be followed duly issuing Standard form no.11 (b).
- N. While issuing orders such as Compulsory Retirement, Removal, and Dismissal, the authority issuing such orders should not be lower than the Appointing Authority.
- O. In Removal and Dismissal cases, the decision of Disciplinary Authority regarding the payment of Compassionate Allowance is to be recorded in the file and communicated to the employee separately.
- P. The difference between (1)“ Reduction by two stages for one month” and (2) Reduction by one stage for two months” is to be understood in a proper term. *(i.e. first is a major penalty and second is a minor penalty).*

### **3. Past bad record-**

The Disciplinary Authority may take past bad record of service of the delinquent into account while determining the penalty to be imposed provided this record is made a subject matter of a specific charge memorandum itself.

(Rly Bd's no. E (D&A) 68 RG6-37 dt.23.09.1998)

### **4. Quantum of penalty-**

- A. The punishment imposed should be neither too harsh nor too lenient.
- B. It must be proper and adequate.
- C. It has to be either deterrent or reformative.
- D. In short, the penalty must be commensurate with the gravity of charge/s.
- E. Stoppage of Train services by the staff should be viewed as a crime committed against the nation and action as per the Railway Act, 1989 should be taken.

### **5. Penalty for collision-**

A person found guilty of any act or omission which resulted ordinarily in a collision of Railway Trains one of the penalties specified in clause (viii) and (ix) shall ordinarily be imposed. Where such a penalty is not imposed, the reason thereof shall be recorded in writing.

(Rly. Bd's no. E (D&A) 79RG6-11 dt.03.05.1979)

### **6. Penalty for fraudulent claims of TA/OTA/DA-**

A person claiming false TA/OTA/DA should be given suitably deterrent punishment as such a case falls under the category of dishonest practices.

(Rly.Bd's no. E (D&A) 89RG6-20dt.24.04.1989)

### **7. Penalty for misuse of Pass and PTOs-**

All proved cases of misuse of Pass and PTOs should be viewed very seriously and suitable disciplinary action to be taken.

### **8. A penalty in case of theft etc.-**

Staff who are found to have associated themselves with criminal activities, like theft and pilferage should be dealt with severely and no sympathy should be shown to them. Drastic punishment is imposed on staff involved in thefts/pilferage of Railway stores.

(Rly Bd's no. E (D&A) 77RG6-51dt.31.12.1977).

**9. Furnishing of false information or producing false certificates-**

Government servants, who were not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had false information or produced a false certificate to secure appointment; he/she should not be retained in service. If he is a probationer or a temporary Government servant, he should be terminated, it has become a permanent Government servant an inquiry may be held and if the charges are proved, he should be removed or dismissed. In no other circumstances should any other penalty impose? Such discharge, termination, removal, or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government servant.

(Rly Bd's letter no. E (D&A) 95 RG4-3dt.20.07.1993).

**10. Conducting of Departmental inquiry in Hindi-**

When the accused railway servant does not understand English, it is obligatory to supply the statement of allegation in Hindi, conduct a departmental inquiry in that language and also supply the proceedings of the departmental inquiry in Hindi.

(Rly Bd's letter no. E (D&A) 66 RG6-7dt.30.12.1968).

**11. Status of Disciplinary case in the event of the death of the charged official-**

Where the government servant dies during the pendency of the DAR proceedings i.e. without the charges being proved against him, the disciplinary proceedings should be closed immediately on the death of the charged official.

(Rly Bd's no. E (D&A) 99 RG6-26dt.19.06.2000).

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# **Annexure I**

## **Penalties: - Rule 6 of (D&A) Rule 1968**

### **Minor penalties**

- A. Censure
- B. Withholding of his promotion for a specified period.
- C. Recovery from his pay of the whole or part of pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders.
- D. Please refer to the below points-
  - a. Withholding of the privilege Passes or Privilege Ticket Order or both.
  - b. Reduction to lower stage by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- E. Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments.

### **Major Penalties:**

- A. {Save as otherwise provided for in clause (iii) b} Reduction to a lower stage 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.
- B. Reduction to a lower time scale of pay, grade, level, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Railway servant during such specified period to the time scale of pay, grade, level, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period-
  - (a) The period of reduction to the time-scale of pay, grade, level, post, or service shall operate to postpone future increments of pay and if so to what extent. and
  - (b) The Railway servant shall regain his original seniority in the higher time scale of pay, grade, level, post, or service.
- C. Compulsory retirement.
- D. Removal from service.
- E. Dismissal from service.

## Annexure-II

### Standard forms used in Disciplinary proceedings

No.	Description
1	Order of Suspension under Rule 5(1)
2	Order of Deemed Suspension under Rule 5(2)
3	Certificate to be furnished by Suspended official about non-employment
4	Order of Revocation of Suspension under Rule 5(5)(c)
5	Charge Memorandum for Major penalty under Rule 9
6	Refusing permission to inspect Relied upon Documents
7	Appointment of Inquiry/inquiry board
8	Appointment Presenting Officer
9	NOT PRINTED
10	Disciplinary action in common proceedings
10a	Appointment of inquiry in common proceedings
10b	Appointment of Presenting officer in common proceedings
11	Charge Memorandum for minor penalties
11b	Minor penalties to hold the inquiry under rule 11(1)(b)/11(2)
11c	Minor penalties, where major penalties charge memorandum was issued
12	Memorandum where the action is proposed under Rule 14(i)
13	The sanction under Rule 2308R II (Rule 9 MRPR) (for action against the retired employee)
14	Charge sheet for proceedings under Rule 2308R II (to the retired employee)

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