Central Service Laws
AND
Departmental Rules
in 2 Vols.
(Comprising about 101 Acts, Rules and Regulations with Short Notes)

By
CHAKRAVERTY & BHATNAGAR

IMPORTANT FEATURES:

1. Fundamental Rules (F. R.)
2. Subsidiary Rules thereunder (S. R.)
4. Travelling Allowances Rules.
5. Conveyance Advance Rules.
13. Civil Pension (Commutation) Rules.
14. All India Services (C.C.A.) Rules.
15. All India Services (Discipline and Appeal) Rules.
17. Dock Workers.
23. Supreme Court Rules.

Nice Printing & Fine Get-up

1974 Edition Rs. 35.00 each vol.
SERVICE LAWS IN INDIA
(AS VIEWED BY THE SUPREME COURT)

IN PRIVATE SECTORS & GOVERNMENT SECTORS

1973

Vol. II—Chap. XVII to end

PUBLISHERS
Ashoka Law House  |  Orient Law House
OPP. HIGH COURT.  |  514, TRIVENI ROAD,
ALLAHABAD-1.      |  ALLAHABAD-3.
CONTENTS

CHAPTER XVII

Resignation

1. Contract of service how terminable ... 1
2. When resignation is effective ... 1

CHAPTER XVIII

Efficiency Bar

1. Enquiry against employee—If reports prior to crossing of efficiency bar can be looked into ... 11
2. Stoppage of efficiency bar and recovery of loss—Disciplinary proceedings started but dropped subsequently—Efficiency bar if automatically crossed ... 11

CHAPTER XIX

Conduct and Misconduct

1. Misconduct: Ordinary law of master and servant ... 14
2. Central Civil Services (Conduct) Rules, 1964— ... 15—34
   (a) Rule 1.
   (b) Rule 2
   (c) Rule 3
   (d) Rule 4: Employment of near relatives.
   (e) Rule 5: Taking part in politics and elections.
   (f) Rule 6: Joining of associations.
   (g) Rule 7: Demonstrations and strikes:
       (i) Government Employee and fundamental rights.
       (ii) Validity of Rule.
   (h) Rule 8: Connection with Radio or Press.
   (i) Rule 9: Criticism of Government.
   (j) Rule 10: Evidence before committee or any other authority.
   (k) Rule 11: Unauthorised communication of information.
   (l) Rule 12: Subscriptions.
   (m) Rule 13: Gifts.
   (n) Rule 14: Public demonstrations in honour of Government servants.
   (o) Rule 15: Private trade or employment.
   (p) Rule 16: Investment, lending and borrowing.
   (q) Rule 17: Insolvency and habitual indebtedness.
(r) Rule 18: Moveable, immovable and valuable property.
(s) Rule 19: Vindication of acts and character of Government servants.
(t) Rule 20: Canvassing of non-official or other influence.
(u) Rule 21: Bigamous marriages.
(v) Rule 22: Consumption of intoxicating drinks and drugs.
(w) Rule 23: Interpretations.
(x) Rule 24: Delegation of power.
(y) Rule 25: Repeal and savings.

CHAPTER XX

Prevention of Corruption

1. General

2. Law relating to Prevention of Corruption deals with "public servant" only:

(a) Test of a public servant.
(b) Chairman of the Managing Committee of a Municipality.
(c) Minister in the State.
(d) Commissioner appointed without jurisdiction is not public servant.
(e) Chartered Accountant directed to investigate affairs of Insurance Company is not a public servant.

3. Law relating to Prevention of Corruption as contained in the provisions of the Penal Code:

(a) Section 161, I. P. C.—
   (i) Public servant need not be specified public servant.
   (ii) Gratification: Meaning of.
   (iii) Ingredients of offence under section 161, I. P. C.
   (iv) Relevant considerations.
   (v) Evidence of proof.
   (vi) Laying of traps.

CHAPTER XXI

Pension

1. Pension—Meaning of...

2. Pension under the Pensions Act (XXIII of 1871)—Scope of...

3. Pension and Grants

4. Whether arrear of pension can be claimed—Period of limitation for...

5. Right to receive pension flows by virtue of the rules and not from the order granting pension...

6. Whether the pension is property...

7. Reduction in pension...
8. Recovery from pension loss suffered by Government
9. Whether order of granting pension to State servant could be altered by succeeding Government
10. Whether President can fix a different rate of exchange than right to take pension at official rate of exchange
11. Pension to Chief Justices appointed after the enforcement of High Court Judges (Conditions of Service) Act, 28 of 1954
12. Question of pension in sterling

CHAPTER XXII

Probation

1. Probationer—who is
2. Probationer by implication
3. Allowing the probationers to continue in their posts after the probationary period
4. Reasonable salary to workmen who are probationers
5. Tahsildar as a probationer charged excess travelling allowance and could not pass departmental examination
6. Whether a probationer can be discharged during the period of probation
7. Appointment as a probationer—Employee not confirmed but continuing in service after the expiry of the probationary period
8. Termination of service in accordance with the conditions of probationery service and not as a measure of punishment—If Article 311 can be invoked

CHAPTER XXIII

Departmental Enquiry

1. Whether fresh departmental enquiry can be held on same facts
2. Enquiry officer to hold enquiry on considerations of natural justice and fairplay
3. Enquiry by the High Court whether the order of dismissal of public servant was based on without evidence—Mala fide exercise of powers
4. Findings of facts recorded by enquiry officer in case of departmental enquiry, if not binding on the Government
5. Departmental action against the police officer without substantial compliance with the provisions of the rule is invalid
6. Whether institution of enquiry by the State Government against the member of Secretary of State's Service known as the Indian Police serving under the Bihar Government after Independence is invalid
PART II
Private Employees
CHAPTER I
1. General Law of Master and Servant

CHAPTER II
Relationship of Master and Servant
1. General
2. Master and Servant: Scope and test to determine
3. Independent contractor and servant
4. Agent and Employee: Difference

CHAPTER III
Duration of Contract of Service
1. Duration of Contract of Service

CHAPTER IV
Termination of Service
1. Termination of Service
2. Dismissal of
3. Grounds of dismissal

CHAPTER V
Remedies for Wrongful Dismissal
1. General
2. Remedies for wrongful dismissal and the Specific Relief Act
3. Measure of damages: Servants duty to minimise damages

PART III
Industrial Workers
CHAPTER I
General
1. General:
   (a) Classification of workmen.
   (b) Disputes over standing Orders
2. Industry—Meaning:
   (a) Attributes necessary to make an undertaking fall under section 2 (j).
   (b) Municipalities.
   (c) Hospitals.
   (d) Agricultural operation.
(c) Educational institutions.
(f) Ahmedabad Textile Research Association.

3. Workmen—Meaning:
   (a) Gardner.
   (b) Person doing clerical job.
   (c) Accountant.
   (d) Supervisory staff when deemed to be workman.

4. Industrial dispute:
   (a) When dispute becomes industrial disputes
   (b) Industrial dispute when can be raised—Essentials
   (c) Whether the union sponsoring dispute must be the
       Union of Workmen an establishment in which workmen
       concerned is employed.

CHAPTER II

Disciplinary Action

1. Principles of natural justice ...
227
1-A. Reasonable opportunity ...
230
1-B. Who should be the Enquiry Officer ...
231
2. Enquiry against industrial worker and enquiry against public
   servant—Difference ...
231
3. Grounds for starting disciplinary action ...
231
4. Charge-sheet ...
233
5. Correct procedure if charge-sheet not served by post ...
234
6. Domestic enquiry: Manner ...
235
7. Procedure under standing Order must be followed even if
   worker withdraws from enquiry ...
236
8. Test for proper enquiry ...
236
9. A workman has no right to be represented by a representative
   of the Union ...
236
9-A. Whether Evidence Act has application to enquiries conducted
      by domestic tribunal ...
237
10. Right of Enquiry Officer to refuse to examine a witness or to
    allow a question ...
237
11. Oral examination of witnesses—Natural justice ...
237
12. Examination of witness and workmen in absence of each
    other—Effect ...
239
13. Enquiry by employer—Bona fides or mala fides ...
240
13-A. Findings when perverse ...
241
14. Victimisation ...
241
15. Enquiry Officer should record his findings and give brief
    reasons ...
241
Defective enquiry—Employer should leave evidence and Tribunal should reach its conclusion
Taking into consideration past record: Effect
Enquiry if to be stayed pending decision of criminal court against employee
Whether enquiry can be held against an employee after his acquittal in criminal case
Findings of Enquiry Officer—Interference by Labour Court

CHAPTER III

Punishments

1. Kinds of punishments
2. Warning of censure
3. Withholding of increments
4. Fine
5. Reduction in rank
6. Suspension—
   (a) Suspension—Effect.
   (b) Suspension pending enquiry.
   (c) Suspension with retrospective operation.
   (d) Wages for period of suspension.
7. Discharge—
   (a) Discharge—Meaning and applicability.
   (b) Payment of one month’s wages in lieu of notice—Duty of employee.
8. Dismissal—
   (a) Dismissal without enquiry.
   (b) Power of tribunal to interfere with order of dismissal.
   (c) Matters to be considered in testing the justification for punishment.
   (d) Dismissal illegal—Reinstatement claim cannot be disallowed on the ground that another workman has been employed in place of dismissed workman.
   (e) Taking part in illegal strike need not result in dismissal.
   (f) Pen-down strike—Reinstatement cannot be disallowed on hypothetical consideration.
9. Grounds of dismissal—
   (a) Wilful insubordination or disobedience (misconduct).
   (b) Strikes—
      (i) Strike when justified.
      (ii) Mere participation in illegal strike—Whether justify dismissal.
(iii) Illegal strike—justification.
(iv) Pen-down strike—Participation in such strike—Effect.
(v) Strike and Lock-out—Relationship.
(vi) Strike and Lock-out—justification.
(vii) A strike when criminal trespass.
(viii) Duration of strike.
(ix) Strike held illegal if can be justified.
(c) Criminal connection—Whether a person detained under Prevention Detention Act can be dismissed merely on ground of detention.

10. Dismissal and discharge during dispute—

(a) General
(b) Nature and Scope of Tribunal's jurisdiction
(c) Tribunal cannot substitute another punishment—No enquiry—Management can still adduce evidence before tribunal.
(d) Tribunal not an enquiring body—Tribunal only to be satisfied that management's action is bona fide and that a prima facie case has been made out.
(e) Employer seeking permission to dismiss employee for misconduct as per clause 18 (b)(viii) of Standing Order—Subsequent application by employer to discharge employee under clause 17 (a)—Tribunal's order not appealable.
(f) Violation of principles of natural justice by management—Duty of Tribunal.
(g) Application by employer for approval of dismissal of employee survives decision of main industrial dispute

CHAPTER IV

Retrenchment and Lay-off

1. What is lay-off
2. Compensation for lay-off
3. What is retrenchment?
4. Retrenchment, when justified and when not justified
5. Rule of retrenchment
6. Mala fide retrenchment
7. Retrenchment compensation is different from gratuity
8. Object of retrenchment compensation
9. Right of employee to get retrenchment compensation only if the employer can pay
10. Non-compliance with Section 25-F (b) of Industrial Dispute Act—Effect
11. Section 25-F (c), Industrial Disputes Act is not a condition precedent ... 300
12. Statutory provisions for compensation in case of lay-off and retrenchment ... 301

DEPARTMENTAL RULES

1. The All India Services Act, 1951 ... 313
2. The All India Services (Conditions of Service—Residuary Matters) Rules, 1960 ... 315
3. All India Service (Leave) Rules, 1955 ... 317
4. The Public Servants (Inquiries) Act, 1850 ... 329
5. The All India Services (Conduct Rules, 1968) ... 333
6. The All India Services (Discipline and Appeal) Rules, 1969 ... 343
7. The All India Services (Special Disability Leave) Regulations, 1957 ... 362
8. The Central Civil Services (Conduct) Rules, 1964 ... 364
9. The Central Civil Services (Classification Control and Appeal) Rules, 1965 ... 452
10. The Central Civil Services (Transferred Employees) Rules 1956 ... 533
11. The Central Civil Services (Safeguarding of National Security) Rules, 1953 ... 535
12. The Central Civil Services (Temporary Service) Rules, 1965 ... 537
# TABLE OF CASES

## A

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Volume(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. C. Benjamin v. Union of India</td>
<td>228 (vol.I)</td>
</tr>
<tr>
<td>A. C. Co. v. Their Workmen</td>
<td>228, (vol.II)</td>
</tr>
<tr>
<td>A. I. B. E. Association, v. N. I. Tribunal</td>
<td>59 (vol.I)</td>
</tr>
<tr>
<td>A. N. D'Silva v. Union of India</td>
<td>105, 177, 193, 270, 275 295, (vol.I)</td>
</tr>
<tr>
<td>A. P. Sharma v. Union of India</td>
<td>138 (vol.I)</td>
</tr>
<tr>
<td>A. V. S. Narasimha Rao v. The State of Andhra Pradesh</td>
<td>120 (vol.I)</td>
</tr>
<tr>
<td>Accountant-General, Bihar v. N. Bakshi</td>
<td>133, 162, 411 (vol.I)</td>
</tr>
<tr>
<td>Accountant-General, Madhya Pradesh Gwalior v. Beni Prasad Bhatnagar</td>
<td>111, (vol.II)</td>
</tr>
<tr>
<td>Agnani v. Badri Das</td>
<td>19, 176, 259 (vol.II)</td>
</tr>
<tr>
<td>Akhtar Alam v. State of Bihar</td>
<td>37, 38, 47 (vol.II)</td>
</tr>
<tr>
<td>All India Bank Employees Association v. National Industrial Tribunal</td>
<td>22, (vol.II)</td>
</tr>
<tr>
<td>All India Reserve Bank Employees Association v. Reserve Bank of India</td>
<td>217, (vol.II)</td>
</tr>
<tr>
<td>All India Station Masters and Assistant Station Masters Association v. General Manager, Central Railway</td>
<td>20, 29, 30, 180, 182, (vol.I)</td>
</tr>
<tr>
<td>Amalendu Ghosh v. District Traffic Superintendent, North Eastern Railway, Katihar</td>
<td>198, (vol.I)</td>
</tr>
<tr>
<td>Anand Prakash Saxena v. Union of India</td>
<td>154, 171, 525, 558, (vol.I)</td>
</tr>
<tr>
<td>Ananda Bazar Patrika (P.) Ltd v. Their Employees</td>
<td>230, 237, 240, 241, (vol.II)</td>
</tr>
<tr>
<td>Andhra Scientific Co., Ltd. v. Sheshagari Rao</td>
<td>(vol.II)</td>
</tr>
<tr>
<td>Anglo-American Direct Tea Trading Co., Ltd. v. Workmen of Nahortotia Tea</td>
<td>260, (vol.II)</td>
</tr>
<tr>
<td>Asgarali Nazarali Singaporewala v. State of Bombay</td>
<td>60, (vol.II)</td>
</tr>
<tr>
<td>Assam Oil Company v. Its Workmen</td>
<td>254, 255, 258, 261, (vol.II)</td>
</tr>
<tr>
<td>Associated Cement Companies Ltd. v. Their Workmen</td>
<td>228, 231, 235, 232, (vol.II)</td>
</tr>
<tr>
<td>Atherton West &amp; Co. Ltd. v. Suti Mill Mazdoor Union</td>
<td>270, 271, (vol.II)</td>
</tr>
<tr>
<td>Automobile Products of India Ltd. v. Rukmajai Bala</td>
<td>271, 272, (vol.II)</td>
</tr>
<tr>
<td>Avtar Singh v. Inspector-General of Police, Punjab</td>
<td>391, (vol.I)</td>
</tr>
</tbody>
</table>

## B

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Volume(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. B. Municipality v. Its Workmen</td>
<td>205, (vol.II)</td>
</tr>
<tr>
<td>B. C. Das v. State of Assam</td>
<td>74, (vol.I)</td>
</tr>
<tr>
<td>B. K. Dalmia v. Delhi Administration</td>
<td>39, (vol.II)</td>
</tr>
<tr>
<td>B. P. Kapoor v. Union of India</td>
<td>138, (vol.I)</td>
</tr>
<tr>
<td>B. S. Vadera v. Union of India</td>
<td>130, 184, (vol.I)</td>
</tr>
<tr>
<td>Bachan Singh v. Union of India</td>
<td>564, (vol.I)</td>
</tr>
</tbody>
</table>
Banaras Ice Factory Ltd v. Its Workmen, 255, (vol. II)
Banaras Light Electric & Power Co., Ltd. (M/s.) v. The Labour Court II, Lucknow, 246, (vol. II)
Bangalore Woollen & Cotton Mills v. Its Workmen, 276, (vol. II)
Bangalore Woollen, Cotton and Silk Mills Co., Ltd. v. Dasappa, 240, (vol. II)
Baroda Borough Municipality v. Its Workmen, 194, 196, (vol. II)
Behram Khurshid v. Bombay State, 48, (vol. I)
Bengal Bhatdee Coal Co., Ltd. v. Ram Prabesh Singh, 241, (vol. II)
Bhagwan Sahai v. State of Punjab, 54, 59, (vol. II)
Bhagwant Singh v. Union of India, 95, (vol. II)
Bhaiyya Lal v. State of Maharashtra, 68, (vol. II)
Bharat Sugar Mills Ltd. v. Jai Singh 279, 280, 282, (vol. II)
Bidi Supply Co. v. Union of India, 40, (vol. I)
Bidya Bhushan Mahaputra v. State of Orissa, 46, (vol. I)
Bishan Sarup Gupta v. Union of India, 591, (vol. I)
Biswabhusan Naik v. The State of Orissa, 58, 60, 66, (vol. II)
Biswanath Khemka v. The King Emperor, 103, 104, (vol. I)
Board of Education v. Rice, 251, 385, (vol. I)
Bombay Union of Journalists v. The "Hindu" Bombay, 224, 225, (vol. II)
Bool Chand v. Kurukshetra University, 309, 312, (vol. I)
Brooke Bond India (Private) Ltd. v. S. Subba Raman, 240 (vol. I) 236, 237, (vol. II)
Buckingham and Carnetic Co. Ltd v. Workers of the Company 253, 259, 260, 265, (vol. II)
Burn & Co., Ltd. (M/s) v. Their Workmen, 234, 250, 263, 264, (vol. II)

C

C. Channabasaviah v. State of Mysore, 560, (vol. I)
C. Prasad v. Patna High Court and others, 363, (vol. I)
C. A. Rajendra v. Union of India, 110, (vol. I)
C. L. Subramaniam v. The Collector of Customs Cochin, 238, (vol. I)
C. P. Transport Services Ltd. v. R. G. Patwardhan, 221, (vol. II)
C. S. D. Swami v. State of Punjab, 50, 54, 57, 60, (vol. II)
Calcutta Dock Labour Board v. Jaffar Imam, 268, (vol. II)
Calcutta Jute Manufacturing Co. v. C.J. Workers, Union 147, 262, (vol. II)
Caltex (India) Ltd. v. Their Workmen, 276, (vol. II)
Central Bank of India Ltd., New Delhi v. Prakash Chand Jain, 279, (vol. II)
Central India Coalfield Ltd. v. Ram Bilas Shobhnath, 233, 263, (vol. II)
Chandramalai Estate, Ernakulam v. Its Workmen, 264, (vol. II)
Chandulal Gordhandas Patel v. The State of Gujarat, 45, (vol. II)
Channabasappa Basappa Happali v. State of Mysore, 256, (vol. I)
Chartered Bank, Bombay v. The Chartered Bank Employees' Union, 240, 241, 253, 259, 260, (vol. II)
Chiranjit Lal v. Union of India, 42, (vol. I) 166, 168, (vol. II)
Chitra Ghosh (Km.) v. Union of India, 115, (vol. I)
Chitrakha v. State of Mysore, 28, (vol. I)
Collector of Central Excise and Land Customs v. Sanawar Mal Purohit, 283, (vol. I)
Corporation of the City of Nagpur v. Its Employees, 194, 196, 206 (vol. II)
Cricket Club of India Ltd. v. The Bombay Labour Union, 197, 198, (vol. II)
Cunningham v. Fonblanque, 147 (vol. II)

D

D. Macropolloy & Co. v. Their Employees Union, 294, 297, (vol. II)
D. C. Works Ltd. v. State of Saurashtra, 197, 168, (vol II)
D. N. Banerji v. P. R. Mukherjee, 194, 196, 203, 207, (vol. II)
D. R. Nim v. Union of India, 157, 175, (vol. I)
Dalip Singh v. State of Punjab, 454, 486, (vol. I)
Dalmia Cements v. Workmen, 134, (vol. I)
Dalpat Singh v. State of Rajasthan, 41, 52, (vol. II)
Damodar Valley Corporation v. Provat Roy, 419, (vol. I)
Debesh Chandra Das v. Union of India, 521, (vol. I)
Delhi Administration v. Chaman Singh, 119, (vol. II)
Delhi Administration v. S. N. Khosla, 61, 55, (vol. II)
Delhi Cloth & General Mills Co., Ltd. v. Ludh Budh Singh, 277, 284, (vol. II)
Delhi Cloth & General Mills Co., Ltd. v. The Workmen, 233, (vol. II)
Delhi Cloth and General Mills Co. Ltd. Thejvir Singh, 285, (vol. II)
Delhi Cotton & General Mills Co., v. Ganesh Dutta 278, (vol. II)
Delhi Transport Undertaking v. Balbir Saran Goel, 438, 446, (vol. I)
Deoki Nandan Prasad v. State of Bihar, 95, 96, (vol. II)
Dhaneshwar Narain Saxena v. Delhi Administration 52, 54, (vol. II)
Dhanwant Rai Baiwant Rai v. State of Maharashtra, 48, 49, 50, (vol. II)
Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 165, 213, 214, (vol. II)
Dhirendranath Das v. State of Orissa, 54, 152, (vol. I)
Din Dayal Sharma v. State of U. P., 59, 61, 63, 80, (vol. II)
Divisional Personnel Officer, Southern Railway v. S. Raghavendra Chari 321, 511, (vol. I)
Dunlope Rubber Co. v. Workmen, 240, (vol. I)—237, (vol. II)
Dwarka Chand's case, 304, (vol. I)

E

Employees of Firestone Tyre and Rubber Co., (Pvt.) Ltd. v. The Workmen, 138, (vol. I)
Equitable Coal Co., Ltd. v. Algu Singh, 273, (vol. II)
Eshugbavi Eleko v. Officer Administering Govt. of Nigeria, 49, (vol. I)
Executive Committee of U. P. State Warehousing Corporation v. Chandra Kiran Tyagi, 283, (vol. I)
Expresso Newspapers Ltd. v. Labour Court, Madras, 108, (vol. II)
Express Newspapers (Pvt.) Ltd., Madurai v. Presiding Officer L.C., Madurai, 113, 255 (vol. II)

F

Feroz Din v. State of West Bengal, 265, (vol. II)
Fordhan v. Clagget 86, (vol. II)
Fugatai Mahir Chand Ajwani v. Union of India, 360, (vol. I)

G

C. Mackenzie & Co., Ltd. (M/S) v. Its Workmen, 232. (vol. II)
G. A. Monterio v. State of Ajmer, 37, 46, (vol. II)
G. D. Kelkar v. Union of India, 115, (vol. I)
G. S. Ramaswamy v. Inspector General of Police, Mysore State, 515, 562, 584, (vol. I)
Ganga Ram v. Union of India, 22, 568, (vol. I)
General Manager, Eastern Railway v. Jiwala Prasad Singh, 218 (vol. I)
General Manager, North Eastern Railway v. Sachindranath Sen, 143 (vol. I)
Gold v. Stuart, 126, (vol. I)
Gopal Krishna Potany v. Union of India, 440, (vol. I)
Government of India, Ministry of Home Affairs v. Taraknth Ghose, 537, 553, (vol. I)
Govind Dattaroy v. Chief Controller Imports and Exports, 28, (vol. I)
Govind Menon v. Union of India, 3, (vol. I), 14, (vol. II)
Guest Keen Williams, (Private) Ltd. v. P. J. Sterling, 185, 192, (vol. I)
Gullapalli Nageswarrao v. A. P. State Road Transport Corporation, 219, 221, (vol. I)
Gurcharan Das v. State of Punjab, 588, (vol. I)
Gurdev Singh Sidhu v. State of Punjab, and another, 486, (vol. I)
Gymkhana Club Union v. Management, 196, 197, 198, 199, 200, 204, (vol. II)

H

H. Lyngdoh v. Cromlyn Lyngdoh Judge, 493, (vol. I)
H. N. Rishbud v. State of Delhi, 58, 59, 62, 63, 64, (vol. II)
Hamadard Dawakhana (Waq.) v. Its Workmen, 241, (vol. II)
Harinagar Cane Farm v. State of Bihar, 194, 211, (vol. II)
Hariprasad Shivashankar Shukla v. A. D. Divedkar, 293, 294, (vol. II)
Harkrishan Singh (Dr.) v. State of Punjab, 578, (vol. I)
Harmer v. Corneblu, 174, (vol. II)
Haryana State Electricity Board v. State of Punjab, 392, (vol. I)
Hathisingh Manufacturing Co., Ltd. Ahmedabad (M/s) v. Union of India, 299, (vol. II)
High Commissioner for India v. I.M. Lall, 89, 129, 189, 194, 193, 205, 227, 297, 396, (vol. I) 123, 163, (vol. II)
High Court of Calcutta v. Amal Kumar Roy, 43, 103, 166, 168, 506, 509, 513, 557, (vol. I)
Hotel Ambassador v. Its Workmen, 294, (vol. II)
Howrah Municipality v. Mansa Das Dey, 258, (vol. II)
Hukumchand Malhotra v. Union of India, 205, 278, 296, (vol. I)

I

I. M. H. Press, Delhi v. Addl. Industrial Tribunal, Delhi, 262, 264, (vol. II)
Imperial Tobacco Co. of India v. Its Workmen, 265, (vol. I), 236, (vol. II)
Indian General Navigation and Railway Co., Ltd. v. Its Employees, 240, 261, 266, (vol. II)
India Marine Service (P.) Ltd. v. Their Workmen, 243, 256, 265, (vol. II)
Indian Hume Pipe Co., Ltd. v. The Workmen, 297, (vol. II)
Indian Iron and Steel Co., Ltd. (M/s) v. Their Workmen, 216, 257, 290, (vol. II)
Indu Bhusan Chatterjee v. State of West Bengal, 66, (vol. II)

J

J. D. Kapadia v. Union of India, 99, 100, 103, (vol. II)
J. K. Cotton, Spinning and Weaving Mills Co., Ltd. v. Its Workmen, 245, (vol. II)
J. K. Cotton Spinning and Weaving Mills Co., Ltd., (M/s) v. The Labour Appellate Tribunal of India, 215, (vol. II)
J. K. Iron & Steel Co. v. Its Workmen, 296, 297, (vol. II)
Jagdish Mitter v. Union of India, 65, 329, 331, 459, (vol. I)
Jai Narain Misra (Dr.) v. State of Bihar, 169, 555, 576, 577, (vol. I)
Jai Ram v. Union of India, 53, 456, 488, 494, (vol. I), 1, (vol. II)
Jaisinghani v. Union of India, 32, 115, (vol. I)
Jang Bahadur Singh v. Bajnath Tewari, 303, (vol. I)
Jarvis v. May Davies & Co., 178, (vol. II)
Jasbir Singh Bedi v. Union of India and others, 350, (vol. I)
Jaswant Singh v. State of Punjab, 60, 67, (vol. II)
Jayanti Lal Amrit Lal Shodhan v. F. N. Rana, 73, 302, 303, (vol. I)
Jotiram Laxman Surange v. State of Maharashtra, 60, (vol. II)

K
K. Gopaul v. Union of India 426, 519, (vol. I)
K. B. Subbaiyya v. State of Bihar, 56, (vol. II)
K. C. Deo Bhanj (Raja Bahadur) v. Raghunath Misra, 166, (vol. II)
K. M. Bakshi v. Union of India, 166, 168, 180, (vol. I)
K. N. Baruah v. Budle Beta, 288, (vol. II)
K. S. Srinivasan v. Union of India, 325, 350, 352, (vol. I)
K. V. Rajalakshmiah Setty v State of Mysore, 167, (vol. I)
Kailash Chandra v. Union of India, 402, 455, (vol. I)
Kanak Chandra Bairagi v. Suptd. of Police, Sibagar, 116, 117, (vol. II)
Kapur Singh v. Union of India, 44, 152, 188, 291, 390, 407, (vol. I)
Kathi Ranning Rawat v. State of Saurashtra, 42, (vol. I)
Kays Constructions Co., (Private) Ltd. v. Its Workmen, 221, (vol. II)
Kesram Cotton Mills Ltd. (M/s) v. Gangadhar, 241, 243, (vol. I), 235, 238, 252, 253, (vol. II)
Khardah & Co., Ltd. (M/s) v. Their Workmen, 210, 243, (vol. I)—231, 237, 242, 243, 246, (vol. II)

Khem Chand v. Union of India, 59, 63, 76, 80, 139, 190, 194, 196, 198, 204, 205, 229, 232, 271, 276, 279, 290, 391, 397, 426, 541, (vol. I)
Kishori Mohan Lal Bakshy v. Union of India, 28, 47, (vol. I)
Krishna Chandra v. Central Tractor Organization, 15, 34, 182, (vol. I)
Krisan Kumar v. Union of India, 53, (vol. II)
Kshirode Behari Chakravarty v. Union of India, 296 (vol. I)
Kundan Sugar Mills (M/s) v. Ziya Uddin, 177 (vol. I)
Kunj Behari Lal v. Union of India, 21 (vol. I)

L
L. D. Healy v. State of U. P., 60 (vol. II)
Lachman Das v. State of Punjab, 466 (vol. I)
Lachmandas Kewalram v. State of Bombay, 42 (vol. I)
Lachmi and others v. Military Secretary to the Government of Bihar, 419 (vol. I)
Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup, 251, 265, 272 (vol. II)
Lakshminarayan Ram Gopal & Son Ltd. v. Govt. of Hyderabad, 166, 168, 169 (vol. II)
Lalit Mohan Deb v. Union of India, 134, 563, 564 (vol. I)
Laxmi Devi Sugar Mills Ltd. v. Nand Kishore, 234, 262 (vol. II)
Lazarus Estates Ltd. v. Beasley, 223 (vol. I)
Lekhraj v. Deputy Custodian, Bombay, 310 (vol. I)
Lekhraj Khurana v. Union of India, 358 (vol. I)
Lekhraj Sathramdas v. N. M. Shah, 310 (vol. I)
Life Insurance Corporation v. S. K. Mukerjee, 163, 183, 358 (vol. I)
Livingstone v. Rawyards Coal Co., 178 (vol. II)
Local Government Board v. Arlidge, 252 (vol. I)
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Volume and Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lunipur Colliery v. Bhuban Singh,</td>
<td>251 (vol. II)</td>
</tr>
<tr>
<td>Management of Safdarjang Hospital, New Delhi v. Kuldip Singh Sethi,</td>
<td>198, 201, 209, 225 (vol. I)</td>
</tr>
<tr>
<td>Management of the Federation of Indian Chamber of Commerce and Industry v. Their Workmen,</td>
<td>196, 202 (vol. II)</td>
</tr>
<tr>
<td>Management of Vishun Sugar Mills v. Workmen, 167 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Manak Lal v. Dr. Prem Chand, 267 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Martin Burn Ltd. v. R. N. Banerjee, 279 (vol. II)</td>
<td></td>
</tr>
<tr>
<td>Mata Joly v. Bihari, 7 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Mathura Das Kangi v. L.D. Tribunal, 166 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Mcenglass Tea Estate v. The Workmen, 231, 235 (vol. II)</td>
<td></td>
</tr>
<tr>
<td>Menon v. Union of India, 163 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Mervyn Contindo v. Collector of Customs, Bombay, 22, 27, 29, 34, 565, 566, 574 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Mohan Singh Chowdhary v. Divisional Personnel Officer, N. Rly. Ferozpur, 116, 117 (vol. II)</td>
<td></td>
</tr>
<tr>
<td>Montreal Street Rly. Co. v. Normandia, 104 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Moti Das v. S. P. Sahai, 41 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Moti Ram Deka v. General Manager, N. E. F. Railway, Maligaon, Pandu, 72, 96, 98, 131, 132, 133, 134, 140, 143, 144, 158, 426, 430, 433, 483, 486 (vol. I)</td>
<td></td>
</tr>
<tr>
<td>Mubarak Ali v. State, 64 (vol. II)</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** The table includes cases from various volumes and pages, indicating a comprehensive list of legal cases.
Munni Lal v. Delhi Administration, 63, 65, (vol. II)
Murgan Mills Ltd. v. Industrial Tribunal Madras, 260, (vol. II)

N
N. R. Co-operative Societies v. Industrial Tribunal, 265, (vol. I)
Nagy v. Venne, 178, (vol. II)
Nani Gopal Mitra v. State of Bihar, 57, 60, (vol. II)
Naresh Chandra Shah v. Union Territory of Tripura, 518, (vol. I)
National Iron & Steel Co., Ltd. v. State of West Bengal, 255, (vol. II)
(The) National Union of Commercial Employees v. M. P. Meher, Industrial Tribunal, Bombay 194, (vol. II)
New India Motors Private Ltd. v. Morris, 221, (vol. II)
New Prakash Transport Co., Ltd. v. New Swarna Transport Co., Ltd., 6, 208, 209, 211, 250, 252, (vol. I)
Newspapers Ltd. v. State Industrial Tribunal, U. P., 222, (vol. II)
Nohiña Ram v. Director General of Health Services, Govt. of India, 176, 566, (vol. I)—163, (vol. II)
Norkevers v. Domicester Amalgamated Collieries, 513, (vol. I)
North West Frontier Province v. Suraj Narayan Anand, 90, 124, (vol. I)

Nripendra Nath Bagchi v. Chief Secretary, Govt. of West Bengal, 263, (vol. I)

O

P
P. Sirajuddin v. State of Madras, 51, (vol. II)
P. B. Roy v. Union of India, 157, (vol. I)
P. C. Wadhwa v. Union of India, 291, 294, (vol. I)
P. R. Chowdhary v. State of U. P., 46, (vol. II)
P. R. Nayak v. Union of India, 553, 554, (vol. I)
Padam Singh Fina v. Union of India, 176, (vol. I)
Paresh Chandra Nindi v. Controller of Stores, North Eastern Frontier, Rly., 586, (vol. I)
TABLE OF CASES

R

R. v. Postmaster General, 411, (vol. I)
R. B. Diwan v. Industrial Tribunal 182, (vol. I)
R. G. Jacob v. Republic of India, 45, (vol. II)
R. L. Butail v. Union of India, 572, 555, 556, (vol. I)
R. N. Nanjundappa v. Thinnolalah, 588, (vol. I)
R. T. Rangachari v. Secretary of State, 84, 129, 495, (vol. I)
R. Venkata Rao v. Secretary of State, 360, 431, (vol. I)
Rabindra Bose v. Union of India, 579, (vol. I)
Raghvendra Rao v. Deputy Commissioner South Kanara, 507, 588, (vol. I)
Railway Board v. A. Pitchirman, 398, (vol. I)
Railway Board v. Niranjan Singh, 272, 294, (vol. I)
Raj Kumar v. Union of India, 69, 131, 163, (vol. I)
Raja Harish Chandra Rai Singh v. The Deputy Land Acquisition Officer, 549, (vol. I)–7, (vol. II)
Rajendram v. Union of India, 121, (vol. I)
Rajkrishna v. Vinod Kanungo, 21, (vol. II)
Raj Kumar v. Union of India, 1, 4, (vol. II)

Q


P

Pawari Tea Estate v. Barkateki, 242, (vol. II)
Pearce v. Foster 174, (vol. II)
Peninsular and Oriental Steam Navigation Co., 10, (vol. I)
Performing Right Society Ltd. v. Mitchel and Booker (Palais De Dause) Ltd., 214, (vol. II)
Pett v. Grayhound Racing Association Ltd., 239, (vol. I)
Porteous v. Chotem, 178, (vol. II)
Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court, 106, 123, 133, 162, 163, 234, 310, 384, 385, (vol. I)
Praga Tools Corporation v. G. V. Imanual and others, 419, (vol. I)
Prem Nath v. State of Rajasthan, 155, (vol. I)
Province of Bombay v. Kurshandas Advani, 6, 215, 269, (vol. I)
Province of Punjab v. Tara Chand, 91, (vol. I)
Provincial Transport Services v. State Industrial Court, 277, (vol. II)
Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation, 262, (vol. II)
Punjab National Bank Ltd. v. Their Workmen, 249, 256, 264, 265, 273, 277, 279, (vol. II)
Pyare Lal Adbhashwar Lal v. C. I. T. 166, (vol. II)
Pyare Lal v. State of Punjab, 84, (vol. II)
Registrar of Titles v. Spencer, 178, (vol. II)
Reilly v. The King, 126, 513, (vol. I)
Rex v. Electricity Commissioners, 214, (vol. I)
Rohtak and Hisar District Electric Supply Co., Ltd. v. State of U. P., 184, 186, (vol. II)

S

S. Dutt (Dr.) v. University of Delhi, 179, (vol. II)
S. Gangoli v. The State of U. P., 47, (vol. II)
S. Govinda Menon, v. Union, of India, 540, (vol. I)
S. Kapur Singh v. Union of India, 262, (vol. I)
S. Ram v. Punjab National Bank, 169, (vol. II)
S. Sukhban Singh v. State of Punjab, 222, 342, (vol. I), 107, 111, (vol. II)
S. A. Venkataratnam v. The State, 67, (vol. II)
S. G. Jaisinghani v. Union of India, 576, (vol. I)
S. K. Ghosh v. Union of India, 560, 578, (vol. I)
S K. Mukherjee v. Chemical and Allied Products Export Promotion Council, 414, (vol. I)
S. L. Agarwal (Dr.) v. General Manager, Hindustan Steel Ltd., 416, (vol. I)
S. P. Bhel v. Union of India, 360, (vol. I)
S. S. Srivastava v. General Manager, N. E. Railway, Gorakhpur, 170, (vol. I)
Sailendra Nath Bose v. State of Bihar, 47, 50, 61, 62, 63, 64, 66, (vol. II)
Sajjan Singh v. State of Punjab, 46, 56, 58, (vol. II)
Sajjan Singh v. State of Rajasthan, 184, (vol. I)
Sardari Lal v. Union of India, 70, 300, 302, 448, (vol. I)
Sasamusa Sugar Works (Private) Ltd. v. Shobrati Khan, 251, 259, 280, 287, (vol. II)
Satish Chandra Anand v. Union of India, 60, 64, 133, 154, 187, 337, 426, 430, (vol. I)
(The) Secretary, Madras Gymkhana Club Employee's Union v. Management of the Gymkhana Club, 193, 194, (vol. II)
Secretary of State for India-in-Council v. A. Cockcroft, 11, (vol. I)
Secretary of State for India-in-Council v. Shree Gobinda Chaudhry, 11, (vol. I)
Shalimar Works Ltd. v. Their Workmen, 261, (vol. II)
Sham Sundar v. Union of India, 20, 182, (vol. I)
Shamji v. State of M. P., 64, (vol. I)
Shashi Chaudhary Dr. (Mrs.) v. State of Jammu and Kashmir, 448, (vol. I)
Shenton v. Smith, 126, (vol. I)
Shitla Sahay v. N. E. Railway, Gorakhpur, 506, (vol. I)
Shiva Raj Singh v. Delhi Administration, 66, (vol. II)
Shivabhanjan Durga Prasad v. Secretary of State for India, 10, (vol. I)
Shivacharan v. State of Mysore, 467, (vol. I)
Shree Kantiah Ramayya Munipalli v. State of Bombay, 60, (vol. II)
Shridharan Motor Service, Attur. v. Industrial Tribunal, Madras, 264, (vol. II)
Shri Ram Swarath Sinha v. Belsund Sugar Co., 280, (vol. II)
Shyam Behari Tewari v. Union of India, 142, (vol. I)
Sita Ram v. State, 311, (vol. I)
Smith v. G. M. C., 165, (vol. II)
Som Nath (Major) v. Union of India, 54, (vol. II)
South Indian Bank v. A. R. Chacko, 216, (vol. II)
Srinivasan v. Union of India, 164, (vol. I)
Stagecraft v. Minister of National Insurance, 166, (vol. II)
Standard Vacuum Refining Co. v. Its Workmen, 184, (vol. II)
State Bank of India v. R. K. Jain, 281, 283, (vol. II)
State of A. P. v. Venkataayya, 164, (vol. I)
State of Ajmer (Now Rajasthan) v. Shivjital, 41, 52, 55, (vol. II)
State of Assam v. Biraja Mohan Deb and others, 345, (vol. I)
State of Assam v. Daksha Prasad Deka, 503, (vol. I)
State of Assam v. Kanak Chandra, 355, 357, (vol. I)
State of Assam v. Kureswar Saikia, and others, 371, (vol. I)
State of Assam v. Mahendra Kumar Das, 284, (vol. I)
State of Assam v. Padma Ram Borah, 503, 544, (vol. I)
State of Assam v. Premdhar Barua, 488, (vol. I)
State of Assa' n v. Ranga Mohd., 367, 373, 375, (vol. I)
State of Bihar v. Abdul Mijid, 92, 95, 96, 97, 99, 102, 163, 165, 166, (vol. I)
State of Bihar v. Gopal Kishore Prasad, 331, 336, (vol. I)
State of Bihar v. Shiva Bhikashuk Mishra, 523, (vol. I)
State of Bihar v. Union of India, 418, (vol. I)
State of Bosunay v. F. A. Abraham, 345, 349, 507, 511, 516, (vol. I)
State of Bombay v. F. N. Balsara, 42, (vol. I)
State of Gujarat v. R. C. Terederai, 289, (vol. I)
State of M. P. v. G. C. Madawar, 166, (vol. I)
State of M. P. v. Harihar Gopal, 438, 446, (vol. I)
State of M. P. v. Mubarak Ali, 62, 63, 64, (vol. II)
State of Madhya Pradesh v. Ramoji Rao Shinde, 96, (vol. II)
State of Madras v. A. Valdyanatha Iyer, 47, 48, (vol. II)
State of Madras v. G. Sundaram, 218, 387, 393, (vol. I)
State of Madras v. K. M. Raja gopalan, 93, 407, 513, (vol. I)
State of Mysore v. K. N. Chandrashekar, 559, (vol. I)
State of Mysore v. M. H. Bellary, 163, 170, 176, 361, 561, (vol. I)
State of Mysore v. P. N. Najundiah, 170, 562, 563, (vol. I)
State of Mysore v. Padmanabhatta charya, 151, 192, (vol. I)
State of Mysore v. S. R. Jayaram, 36, 121, 584, 585, (vol. I)
State of Mysore v. Shiyabasappa, Shivappa Makapur, 241, 242, 243, 244, 251, 252, 253, (vol. I) 237, 239, (vol. II)
State of Nagaland v. G. Vasa natha, 436, (vol. I)
State of Orissa v. Dr. (Miss) Bina pani Dei, 183, 215, 313, 464, 468, 496, (vol. I)
State of Orissa v. Murlidhar Jena, 237, (vol. II)
State of Orissa v. Sudhanu Sekhar Misra and others, 373, 376, (vol. I)
State of Punjab v. Amar Singh Harika, 289, 296, 448, 551, 552, (vol. I) 1, 3, 9, 10, (vol. II)
State of Punjab v. Dharam Singh, 344, (vol. I)
State of Punjab v. Shadi Lal, 61, (vol. II)
State of Punjab v. Shri Kishan Das, 506, (vol. I)
State of Rajasthan v. Mst. Vidya- wati, 9, 12, 13, (vol. I)
State of Rajasthan v. Ram Sasan, 393, (vol. I)
State of Rajasthan v. Shri Fateh Chand, 438, 446, (vol. I)
State of Rajasthan v. Sriji Pat Jain, 456, 458, (vol. I)
State of Tripura v. Province of East Bengal, 7, (vol. I)
State of Uttar Pradesh v. A. N. Singh, 358, (vol. I)
State of Uttar Pradesh v. Ajodhya Prasad, 361, (vol. I)
State of U. P. v. Bhagwant Kishore Joshi, 62, (vol. II)

State of Uttar Pradesh v. Madan Mohan, 459, (vol. I)
State of Uttar Pradesh v. Manbodhan Lal Srivastava, 103, 105, 294, (vol. I)
State of Uttar Pradesh v. Om Prakash Gupta, 189, 202, 254, (vol. I)
State of West Bengal v. Anwar Ali Sarkar, 42, (vol. I)
Straw Board Mfg. Co. v. Govind, 252, (vol. II)
Subodh Ranjan Ghosh v. Sindhri Fertilizers and Chemicals Ltd., 419, (vol. I)
Sukhban v. State of U. P., 162, (vol. I)
Sukhban Singh v. State of Punjab, 526, 528, (vol. I)
Superintendent, Central Prison Fatehpur v. Dr. Ram Manohar Lohia, 58, 148, (vol. I)—25, (vol. II)
Sur Enamel & Stamping Works Ltd. v. The Workmen, 230, 236, (vol. II)
Surajpal Singh v. State of U. P., 61, (vol. II)
Sureshchandra Chakravarty v. State of West Bengal, 208, 230, (vol. I)
Suresh Koshy George v. University of Kerala, 188, 271, (vol. I)
Swadeshi Industries Ltd. v. Its Workmen, 263, (vol. II)
Swadeshirmam Ltd. v. Their Workmen, 296, 297, (vol. II)

T
T. G. M. Pillai (Dr.) v. The Indian Institute of Technology, 355, (vol. I)
T. Deradasan v. Union of India, 113, (vol. I)
T. G. Shivacharakana Singh v. State of Mysore, 54, (vol. I)
T. S. Makand v. State of Gujrat, 484, (vol. I)
Tamlin v. Hennaford, 419, (vol. I)
Tata Iron and Steel Co., Ltd. v. S. N. Modak, 288, (vol. II)
Terrel v. Secretary of State for the Colonies, 126, 314, (vol. I)
Thakur v. State of Saurashtra 484, (vol. I)
Triloki Nath v. Union of India, 211, (vol. I)
Triibhuwan Nath (Dr.) v. State, 232, (vol. I)

U
U. R. Bhatt v. Union of India, 5, 64, 103, 105, 188, 198, 228, 244, 291, 296, (vol. I)
U. S. Menon v. State of Rajasthan, 47, 152, 156, 166, 182, (vol. I)
Uma Prasad v. Secretary of State, 11, (vol. I)
Union of India v. Bhagwant Singh, 95, (vol. II)
Union of India v. K. Rajappa Menon, 277, 282, (vol. I)
Union of India v. P. K. More, 16, (vol. I)

Union of India v. R. S. Dhaba, 70, 321, 345, 347, 511, (vol. I)
Union of India v. Jeewan Ram, 397, (vol. I)
Union of India v. Jyoti Prakash Mittar, 364, (vol. I)
Union of India v. Prem Prakash Midha, 355, 445, (vol. I)
Union of India v. Vasant Jayaram Karnik, 568, 586, (vol. I)
Union of Journalists, Bombay v. State of Bombay, 301, (vol. II)
Union Territory of Tripura v. Gopal Chandra Dutt & Chaudhary, 210, 327, 443, (vol. I)—231, (vol. II)
University of Delhi v. Ram Nath, 194, 212, (vol. II)

V
V. K. Javali (Dr.) v. State of Mysore, 275, (vol. I), 27, (vol. II)
V. S. Hariharan In re : 414, (vol. I)
V. S. Menon v. Union of India, 458, (vol. I)
Vadera v. Union of India, 163, (vol. I)
Vairavelu v. Special Deputy Collector, 466, (vol. I)
Venkata Rao v. The Secretary of State, 83, 361, (vol. I)
Venkataraman v. Union of India, 164, (vol. I)
Victor Cil Co., Ltd. v. Amarnath Das, 109, (vol. II)
Vishwanathan v. Abdul Wajid, 285, 269, (vol. I)
Western India Watch Co., Ltd. v. The Western India Watch Co., Workers' Union, 223, (vol. II)
Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate, 221, 223, 224, (vol. II)
Workmen of Indian Express Newspaper (Private) Ltd. v. The Management of Indian Express Newspaper (Private) Ltd., 222, (vol.) II
Workmen of Lantabari Tea Estate v. L.T. Estate, 231, (vol. II)
Workmen of M/s. Firestone Tyre and Rubber Co. of India (P.) Ltd. v. The Management, 285, (vol. II)
Workmen of Motipur Sugar Factory (P.) Ltd. v. Motipur Sugar Factory (P.) Ltd., 243, 256, 250, 283, (vol. II)
CHAPTER XVII
RESIGNATION

SYNOPSIS
1. Contract of service how terminable.  2. When resignation is effective.

1. Contract of service how terminable

A contract of service is continuing in its nature, and its continuance and the obligations under it can be terminable in certain defined modes. Mere resignation obviously is not enough unless it be assented or unless it complies with those terms which the law implies or the prior agreement of the parties may permit.

The resignation is accepted, the relationship ends, and the employee cannot change his mind subsequently.

Thus the employee has the right to resile from the offer or expression of intention to resign before it is accepted.

The Supreme Court has observed in Jai Ram v. Union of India, AIR 1954 SC 584 as follows:

"It may be conceded that it is open to a servant who has expressed a desire to retire from service, and applied to his superior officer to give him the required requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so, so long as he continues in service and not after it has terminated."

2. When resignation is effective.

An order passed by the Government becomes effective when it is communicated to the Government servant. In the case of The State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313; (1966) 2 SCJ 777; (1966) 2 LLJ 188 Chief Justice Gajendra Gadkar has held that the order of dismissal passed against Amar Singh on 3-6-1949 became effective only on 28-5-1951 when it was communicated to him and he came to know about the same.

However, in the case of a resignation Hon’ble Shah J. of the Supreme Court of India in Raj Kumar v. Union of India, AIR 1969 SC 180; (1969) 18 FLR 125 has taken the view that the resignation becomes effective once the Government has accepted the same. However, the party can withdraw the resignation prior to acceptance of the same. In that case the appellant who belonged to the Indian Administrative Service addressed a letter to the Chief Minister, Rajasthan, setting out several grievances and finally stated—"In conclusion I would only request that the Government may do me the kindness of accepting my resignation from the service which I am submitting separately as I am convinced that it would be impossible to continue in such an atmosphere without being humiliated from time to time". He also addressed a letter to the Chief Secretary to the Government of Rajasthan submitting his resignation "from the Indian Administrative Service for early acceptance", and requested that it may be forwarded to the Government of India with the remarks of the State Government. The State Government recommended that the resignation be accepted. The
Government of India accepted the resignation of the appellant and requested the Chief Secretary to the Government of Rajasthan "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf."

After some time the appellant changed his mind and by a letter the appellant requested the Chief Secretary to the Government of Rajasthan to recommend "acceptance of the withdrawal" of his resignation from the Indian Administrative Service. He also addressed the separate letter to the Secretary to the Government of India, Ministry of Home Affairs, intimating that he was withdrawing his resignation from the Indian Administrative Service. An order accepting the resignation of the appellant from the Indian Administrative Service was issued and the appellant was directed to hand over the charge to the Additional Collector, Kota. The appellant then moved a petition in the High Court of Punjab at Delhi for the issue of a writ of certiorari calling for the record of the case and quashing the order passed by the Government of India accepting the resignation of the appellant, and also quashing the order issued by the State of Rajasthan directing him to hand over charge. The High Court rejected the petition holding that the resignation became effective on the date on which it was accepted by the Government of India, and a subsequent withdrawal of the resignation was ineffective, even if acceptance of the resignation was not intimated to the appellant.

When the matter came before the Supreme Court, the counsel for the appellant contended that the appellant could, so long as acceptance of the resignation was not communicated to him, withdraw the resignation submitted by him. Counsel invited the attention of the Supreme Court to a circular memorandum issued on May 6, 1958, under the signature of the Deputy Secretary to the Government of India, Ministry of Home Affairs, setting out the procedure to be followed in dealing with resignation from service. Clauses (c) and (d) of the circular stated:

"(c) The competent authority should be decided that date with effect from which the resignation should become effective. In cases covered by (b) (i) above, the date would be that with effect from which alternative arrangements can be made for filling the post. Where an officer is on leave, the competent authority should decide whether he will accept the resignation with immediate effect or with effect from the date following the termination of the leave. Where a period of notice is prescribed which a Government servant should give when he wishes to resign from service, the competent authority may decide to count the period of leave towards the notice period. In other cases also it is open to the competent authority to decide whether the resignation should become effective immediately or with effect from some prospective date.

* * * * *

(d) A resignation becomes effective when it is accepted and the officer is relieved of his duties. Where a resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation either to permit the officer to withdraw the resignation or to refuse the request for such withdrawal. Where, however, a resignation has become effective, the officer is no longer in Government Service and
acceptance of the request for withdrawal of resignation would amount to re-employing him in service after condoning the period of break. * * * *

Counsel said that under the instructions issued by the Government of India, resignation of an officer from service became effective after it was accepted and the officer was relieved of his duties and not till then. But the Supreme Court held that the circular letter had no statutory force and observed:

"It is not a rule made under Article 309, of the Constitution. It contains merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service. Our attention has not been invited to any statutory rule or regulation relating to resignation by members of the Indian Administrative Service, especially as to the date on which the resignation becomes effective.

"The letters written by the appellant on August 21, 1964, and August 30th, 1964, did not indicate that the resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Article 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

"Our attention was invited to a judgment of this Court in The State of Punjab v. Amar Singh Harika, AIR 1966 SC 1313, in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the officer concerned or was otherwise published. The principle of that case has no application here. Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus pengueltiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of
India. Apparently the State of Rajasthan did not immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties.

"The alternative ground raised by counsel that acceptance of the resignation amounts to dismissal from employment and failure to comply with the requirements of Article 311 of the Constitution vitiates the order accepting the resignation has no force. The order complained of did not purport to be one of dismissal: the Government of India accepted the resignation submitted by the appellant, they did not purport to terminate the appointment for any misconduct on the part of the appellant, or as a measure of penalty".

With greatest respect to Hon'ble Shah, J. it may be submitted that the decision in Raj Kumar v. Union of India, AIR 1969 SC 180 requires reconsideration. A Government servant after submitting his resignation can never know when his resignation will be accepted by Government. This fact only can come into his knowledge when it is communicated to him. Actually the order should be communicated to the Government servant. However, if the Government servant is evading the service then the question will be otherwise. But in the case of resignation the Government servant acts with his own volition and he will be glad enough to receive orders for acceptance of resignation. At this place a reference can be made to the decision of Supreme Court in State of Punjab v. Khemi Ram, Civil Appeal No. 1217 of 1966 decided on October 6, 1969, reported in 1970 (21) FLR 138 wherein it was decided that the suspension order shall be effective once it is communicated to him. However, in this case the Hon'ble Shelat, J. was visualising a position that the communication of suspension order can be evaded by the party for a long time. Hence actual service is not necessary. In that case the respondent was appointed as a Sub-Inspector, Co-operative Societies, in 1925 in the service of the State of Punjab. He was promoted to the post of Inspector and was confirmed thereon in 1939. In 1952, he was approved for promotion to the post of Inspector and was confirmed thereon in 1939. In 1952, he was approved for promotion to the post of Assistant Registrar and officiated thereafter as such in short term vacancies from March to November 1955. While he was serving as the Inspector, he applied for the post of Assistant Registrar in Himachal Pradesh, and on a reference by the Government, his services were lent to Himachal Pradesh Government for appointment as the Assistant Registrar. While he was so serving there, he was charge-sheeted on August 9, 1955 by the Registrar, Co-operative Societies, Punjab in connection with certain matters which occurred in 1950 while he was working under the Punjab Government. Those proceedings, however, were kept in abeyance as the police in the meantime started investigation in those matters.

In 1958, the Punjab Government decided to take disciplinary action against the respondent and informed the Himachal Pradesh Government of it on July 17, 1958. On July 16, 1958, however, the Himachal Pradesh Government had granted to the respondent 19 days leave preparatory to retirement, which was to take place on August 4, 1958. On being so informed, the Punjab Government by its telegram dated July 25, 1958 informed the Himachal Pradesh Government that it had no authority to grant such leave and requested that Government to cancel it and direct the respondent to revert to the Punjab Government immediately.

On July 31, 1958 the Punjab Government sent a telegram, to the respondent at his home address as the respondent had already left for his home
town on leave being granted to him as aforesaid. The telegram informed him that he had been suspended from service with effect from August 2, 1958. On that very day, i.e. on July 31, 1958, the Punjab Government sent to him a charge-sheet at the address of the Registrar, Co-operative Societies, Himachal Pradesh, who redirected it to the respondent's said home address. By its letter dated August 2, 1958 the Himachal Pradesh Government informed the respondent that his services were reverted to the Punjab Government and that the leave granted to him had been curtailed by two days, i.e. up to August 2, 1958, instead of August 4, 1958 as originally granted.

On August 25, 1958 the respondent sent a representation to the Registrar, Co-operative Societies, Punjab in which he contended that he had already retired from service on August 4, 1958 and that the order of suspension which he received after that date and the order for holding the enquiry against him were both invalid. On October 6, 1958 the Punjab Government replied to him rejecting his aforesaid contentions and informed him that if he did not attend the said enquiry, the same would be held ex parte. The respondent attended the said enquiry, but under protest. On the completion of the enquiry, the officer holding it made his report and sent it to the Punjab Government. On August 14, 1959 that Government sent him a notice to show cause why the penalty of dismissal should not be forwarded against him. The respondent sent his reply to the said notice. By its order dated May 28, 1960 the Punjab Government ordered the respondent's dismissal.

Thereupon, the respondent filed a Writ petition in the High Court of Punjab challenging the order of dismissal and contending: (a) that the said enquiry was illegal as by the time it was started he had already retired from service, and (b) that the order of suspension which was sought to be served on him by the said telegram, dated July 31, 1958, was received by him after his retirement on August 4, 1958 and therefore, it could not have the effect of refusal to permit him to retire.

The writ petition was the first instance, heard by a learned Single Judge. He noted that it was not denied before him that the respondent on being granted leave had proceeded to his village, that he was there when the Himachal Pradesh Government issued the notification dated August 2, 1958 curtailing his leave up to that date and that a copy of that notification with the endorsement calling upon to report to the Punjab Government for duty on August 4, 1958 was sent to the respondent on August 6, 1958. He also noted that the telegram dated July 31, 1958 informing the respondent of his suspension with effect from August 2, 1958 did not reach him till about the middle of August 1958. On these two facts it was contended by the respondent that he had already retired from service when the order reverting his service to the Punjab Government was passed, and that therefore, the subsequent proceedings starting with the order of suspension and ending with the dismissal were void.

This contention was raised on the strength of Rule 3.26 (d) of the Punjab Civil Services Rules, as it then stood, That rule provided that a Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as the respondent was not served with the said order of suspension on or before August 4, 1958 and as he had retired on that day and was, therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of
Rule 3.26 (d) and were illegal. The Single Judge accepted the contention and allowed the writ petition with the following observations:

"It is indubitably correct that action for dismissal against a Government servant can be taken during the tenure of the services. It is not denied that the petitioner was due to retire on the afternoon of August 4, 1958. It has not been challenged that the petitioner had gone to his village in Kulu Tehsil after the leave preparatory to retirement was granted to him. The petitioner was entitled to great himself as on leave preparatory to retirement till he received information to the contrary. No order has been proved to have been served on him before August 4, 1958 intimating the petitioner that had been reverted to the Punjab State or that he had been suspended. It must, therefore be held in the circumstances that the petitioner had actually retired from service and he cannot be bound by any subsequent proceedings".

On the State Government filing a Latters Patent appeal against the said order, a Division Bench of that High Court followed its earlier judgment in Dr. Pratap Singh v. State of Punjab, ILR (1962) 15 (2), Punjab 642, which had held that an order passed under rule 3.26 (d) took effect from the day it was served on the concerned Government servant, and upheld the order of the Single Judge in the following terms:

"In the present case the fact remains that the respondent was not in a position to know and could not possibly have submitted to or carried out the orders which had been made before August 4, 1958 and that also without any fault on his part, with the result that the decision of the learned Single Judge must be upheld."

In this view, the Division Bench dismissed the State's appeal.

It appears that the respondent had, besides the said contention, raised three more contentions summarised by the Division Bench in the penultimate paragraph of its judgment. These three contentions were left undecided in view of the Division Bench deciding the appeal on the first contention.

The question for determination before the Supreme Court whether the said order of suspension admittedly made before the date of the respondent's retirement as required by the said Rule 3.26 (d) did not take effect by reason only that it was received by the respondent after the said date of retirement and whether he must, therefore, be held to have retired on August 4, 1958 rendering the enquiry and the ultimate order of dismissal

SHELAT J. observed as under:

"There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein. That such a course was adopted by the Punjab Government by passing the order of suspension on July 31, 1958 cannot be gainsaid. That
fact is clearly demonstrated by the telegram, (Ex. P-1), which was in fact despatched to the respondent on July 31, 1958 by the Secretary, Co-operative Societies to the Punjab Government, informing the respondent that he was placed under suspension with effect from August 2, 1958. As the telegram shows, it was sent to his home address at village Batahar, post office Haripur, as the respondent had already by that time proceeded on leave sanctioned by the Himachal Pradesh Administration. (Ex. R-1) is the memorandum, also dated July 31, 1958, by which the Punjab Government passed the said order of suspension and further ordered not to permit the respondent to retire on August 4, 1958. That exhibit shows that a copy of that memorandum was forwarded to the respondent at his said address at village Batahar, post office Haripur. Lastly, there is Annexure ‘H’ to the respondent’s petition which consists of an express telegram dated August 2, 1958 and a letter of the same date in confirmation thereof informing the respondent that he was placed under suspension with effect from that date. Both the telegram and the letter in confirmation were despatched at the address given by the respondent, i.e., at his village Batahar post office Haripur. These documents, therefore, clearly demonstrate that the order of suspension was passed on July 31, 1958, i.e., before the date of his retirement and had passed from the hands of the Punjab Government as a result of their having been transmitted to the respondent. The position, therefore, was not as if the order passed by the Punjab Government suspending the respondent from service remained with the Government or that it could have, therefore, changed its mind about it or modified it. Since the respondent had been granted leave and had in fact proceeded on such leave, this was also not a case where, despite the order of suspension, he could have transacted any act or passed any order in his capacity as the Assistant Registrar.

“But the contention was that this was not enough and the order of suspension did not take effect till it was received by the respondent, which as aforesaid, was sometime in the middle of August 1958, long after the date of his retirement. In support of this contention certain authorities were cited before us which we must now examine to find out whether they lay down the proposition canvassed by counsel for the respondent.

“The first decision brought to our notice was in Raja Harish Chandra Rai Singh v. The Deputy Land Acquisition Officer, (1962) 1 SCR 676, where the question canvassed was as to what was the date of the award for purposes of Section 18 of the Land Acquisition Act, 1894, and where it was held that such an award of the Collector is not a decision but an offer of compensation on behalf of the Government to the owner and is not effective until it is communicated to him. The making of the award, it was said, did not consist merely in the physical act of writing the award or signing it or filing it in the office of the Collector. It also involved its communication to the owner either actually or constructively. No question, however, arose there whether an award can be said to have been communicated to the owner if it was
despatched to him but was not actually received by him. In *Bachhittar Singh v. The State of Punjab* (1962) 3 Supp SCR 713, a case of disciplinary action taken against a Government servant, it was said that an order would not be said to have come into effect until it was communicated, as until then it can be reconsidered and modified, and therefore, has till then a provisional character. That was a case whether the Minister concerned had made a notice on a file and no order in terms of that notice drawn up in the name of the Governor as required by Article 166 (1) of the Constitution or communicated to the concerned Government servant”.

“As stated earlier, the High Court relied on its own judgment in *S. Pratap Singh v. The State of Punjab*, (supra) and its observations at p. 656 of the report. The decision came up before this Court in appeal and the decision therein of this Court is to be found in *S. Pratap Singh v. The State of Punjab*, (1964) 4 SCR 733. The appellant there was a Civil Surgeon in the Punjab State Service. In 1956, he was posted to Jullundur where he remained until he proceeded on leave preparatory to retirement sometime in December, 1960. His leave was sanctioned on December 18, 1960 and was notified in the Gazette on January 27, 1961. On June 3, 1961 the Governor passed an order of suspension with immediate effect and revoked his leave. He also passed an order under rule 3.26 (d) to the effect that as he was to retire on June 16, 1961 he should be retained in service beyond that date till the completion of the departmental enquiry against him. These orders actually reached the appellant on July 10, 1961 but were published in the Extraordinary Gazette on June 10, 1961. On the question whether the State Government could validly pass the aforesaid orders, this Court held that under rule 8.15 of the Punjab Civil Services Rules there was no restriction on the power of revocation of leave with respect to the time when it is to be exercised, that the date from which a Government servant is on leave preparatory to retirement cannot be treated as the date of his retirement from service and that an order of suspension of the Government servant during such leave is valid. Two of the learned Judges held at page 771 of the Report that an order of suspension of the appellant when he was on leave could be effective from the moment it was issued. They distinguished the decisions in *Bachhittar Singh v. The State of Punjab*, (supra) and *State of Punjab v. Sodhi Sukdeo Singh*, (1961) 2 SCR 371, firstly, on the ground that the first case was one of dismissal and not of mere suspension, and secondly, that in neither case a final order had been passed. We may, however, mention that the other three learned Judges did not deal with this question, and therefore, neither expressed their dissent nor agreement. Indeed, Ayyangar, J., who spoke for them, observed at page 737 of the report that whereas they agreed with the main conclusion that the impugned orders were not beyond the Government’s power they should not be taken to have accepted the interpretation which Dayal, J., had for himself and Mudholkar, J., placed on several of the rules considered by them. In view of these observations
it is difficult to say whether the majority agreed or not with the view taken by Dayal, J., that a Government’s order becomes effective as soon as it is issued.

“The last decision cited before us was that of The State of Punjab v. Amar Singh Hariyana, AIR 1966 SC 1318, where one of the questions canvassed was whether an order of dismissal can be said to be effective only from the date when it is made known or communicated to the concerned public servant. The facts of the case show that though the order of dismissal was passed on June 3, 1949 and a copy thereof was sent to other 6 persons noted thereunder, no copy was sent to the concerned public servant who came to know of it only on May 28, 1951 and that too only through another officer. On these facts, the Court held, rejecting the contention that the order became effective as soon as it was issued, that the mere passing of the order of dismissal would not make it effective unless it was published and communicated to the concerned officer.

“The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to require. But the point is whether it was communicated to him before that date. The ordinary meaning of the word ‘communicate’ is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. I, p. 352) As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August, 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958, i.e. before August 4, 1958 when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding
receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal may, perhaps, become necessary because of the consequences which the decision in The State of Punjab v. Amar Singh Harika AIR 1966 SC 1313, contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid".
CHAPTER XVIII

EFFICIENCY BAR

SYNOPSIS

1. Enquiry against employee—If reports prior to crossing of efficiency bar can be looked into

2. Stoppage of efficiency bar and recovery

1. Enquiry against employee—If reports prior to crossing of efficiency bar can be looked into

In State of Punjab v. Dewan Chuni Lal (1970) 1 SCC 479 : AIR 1970 SC 2086, the State of Punjab challenged the judgment and order of the Punjab High Court upholding the decree of the Subordinate Judge, Gurgaon, declaring that the dismissal of the respondent from service was illegal and inoperative. The respondent, a Sub-Inspector of Police, was called upon to answer a charge framed on October 12, 1949, setting forth extracts from his confidential character roll showing inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the \textit{prima facie} charge of inefficiency as envisaged in Paragraph 16, (2) of the Punjab Police Rules.

The confidential report's extracts whereof were contained in the chargesheet make it clear that the respondent was being accused of laziness and ineffectiveness and as having a doubtful reputation as to his honesty. Excepting for the year 1948 wherein a specific instance of corruption was charged against him to other reports only contained generally adverse remarks. It was urged that the crossing of efficiency bar must be regarded as giving him a clear bill upto that date and in view of this the reports of 1941 and 1942 should not have been taken into consideration against him.

It was held:

In our view reports earlier than 1944 should not have been considered at all inasmuch as the officer concerned was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities, took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour."

2. Stoppage of efficiency bar and recovery of loss—Disciplinary proceedings started but dropped subsequently—Efficiency bar if automatically crossed.

In State of Mysore v. S. A. G. Iyengar (1969) 2 SCC 703 the respondent was working as an Executive Engineer in the Public Works Department of the Hyderabad State during the period June, 1949 to September, 1950. The Enquiry Officer who went into the cause of certain loss in respect of certain
projects under the respondent's charge found that it was due to lack of foresight and organising capacity on the part of the respondent who was asked to show cause why he should not be stopped from crossing the efficiency bar and why a certain sum of money should not be recovered from him as a result of the loss caused by his negligence. The respondent showed cause. As a result of the States' re-organisation, his service was transferred to the Mysore State which directed his compulsory retirement and asked him to pay a certain sum being the amount of loss caused to the Government. A writ petition challenging this order was allowed by the Mysore High Court. By an order dated 10-12-1960 the respondent, who had attained the age of 55 years, was continued in service but under suspension pending completion of disciplinary proceedings against him. But by a subsequent order dated 19-5-1961, the Government dropped the disciplinary proceedings against the respondent and permitted him to retire. The respondent filed a writ petition in the Mysore High Court for declaration that he should be regarded as having crossed the efficiency bar in his pay-scale and claimed all increments after the efficiency bar in the pay-scale of an Executive Engineer. The appellant resisted the claim on the ground that under Rule 38 of the Hyderabad Civil Services Rules, 1952, a specific order ought to be made permitting the respondent to cross the efficiency bar. The High Court held that consequent upon the dropping of the proceedings against the respondent the increment withheld by way of penalty should be restored and that the increased salary should be taken into account in fixing his pension. The State of Mysore appealed to the Supreme Court with special leave.

Ram Swami J. considered Rule 38 of the Hyderabad Civil Services Rules, 1952 which reads as under:

"Where an efficiency bar is prescribed in a time scale the increment next above the bar shall not be given to a Government servant without the specific sanction of the authority empowered to withhold increment."

and observed:

"On behalf of the respondent it was contended that the withholding of the increment of the respondent at the efficiency bar was intended to operate as a penalty for alleged misconduct. It was said that upon the facts of the case the only conclusion possible was that the Government wanted to stop the respondent at the efficiency bar in the time scale with a view to reimburse itself at the expense of the respondent the loss said to have been caused by him to the Government. It was, therefore, argued that after the dropping of disciplinary proceedings against the respondent without recording any finding of guilt no penalty could be imposed. It was contended that once the Government had taken the decision to stop the respondent at the efficiency bar by way of penalty it must be held that the Government had waived their right to stop the respondent at the efficiency bar for administrative reasons under Rule 38. In our opinion, there is no warrant for the contentions advanced on behalf of the respondent. It is manifest that in view of the language of Rule 38 of the Hyderabad Rules and Rule 52 of the Mysore Rules before the respondent claim payment of increments next above the bar, it is necessary that the Government should make a special order sanctioning such payment. It is true that disciplinary proceedings against
the respondent were dropped but the result claimed by the respondent cannot automatically follow as a result of the dropping of the disciplinary proceedings. In this connection the Attorney-General pointed out that the notice, dated March 16, 1955 against the respondent asked him to show cause—(1) why he should not be stopped from crossing the efficiency bar, and (2) why a sum of Rs. 23,371—14—2 should not be recovered from him on account of loss caused to the Government by this negligence. The stoppage at efficiency bar had no connection with the recovery of loss sustained by the Government and it cannot, therefore, be said that the Government wanted to impose the efficiency bar because it wanted to reimburse itself for the loss caused by the respondent. So far as the language of Rule 38 is concerned it is manifest that an express order of the appropriate authority is necessary before the respondent is allowed to cross the efficiency bar. It is not, therefore, possible to accept the contention of the respondent that the Government must be deemed to have given specific sanction under Rule 38 of the Hyderabad Rules permitting the respondent to cross the efficiency bar merely because disciplinary proceedings against him had been dropped for certain reasons.

"In the High Court the case was argued by both the parties on the assumption that Rule 38 applied to the case of the respondent. During the hearing of the appeal in this Court it was stated by Mr. Iyengar that when the respondent became due for crossing the efficiency bar Rule 38 as it stands at present was not in operation. But it was said that a rule similar to Rule 38 was in operation at the relevant time."
CHAPTER XIX

CONDUCT & MISCONDUCT

SYNOPSIS

1. Misconduct: Ordinary law of master and servant.
2. Central Civil Service (Conduct) Rules 1964:
   (a) Rule 1.
   (b) Rule 2:
   (c) Rule 3:
   (d) Rule 4: Employment of near relatives.
   (e) Rule 5: Taking part in politics and elections.
   (f) Rule 6: Joining of associations.
   (g) Rule 7: Demonstrations and strikes.
   (h) Rule 8: Government employee and Fundamental Rights.
   (i) Validity of Rule.
   (j) Rule 9: Connection with Radio or Press.
   (k) Rule 10: Criticism of Government.
   (l) Rule 11: Evidence before Committee or any other authority.
   (m) Rule 12: Subscriptions.
   (n) Rule 13: Gifts.
   (o) Rule 14: Public demonstrations in honour of Government servants.
   (p) Rule 15: Private trade or employment.
   (q) Rule 16: Investment lending and borrowing.
   (r) Rule 17: Insolvency and habitual indebtedness.
   (s) Rule 18: Moveable, immovable and valuable property.
   (u) Rule 20: Canvassing of non-official or other influence.
   (v) Rule 21: Bigamous marriages.
   (w) Rule 22: Consumption of intoxicating drinks and drugs.
   (x) Rule 23: Interpretations.
   (y) Rule 24: Delegation of power.
   (z) Rule 25: Repeal and savings.

1. Misconduct: Ordinary law of master, and servant

In Govind Menon v. Union of India.—AIR 1967 SC 1274 the Supreme Court observed:

"The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him . . . . What circumstances will put a servant into the position of not being able to perform, in a due manner his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. Innumerable circumstances have actually occurred which fall within that proposition, and innumerable other circumstances which never had yet occurred will occur, which also will fall within the proposition. But if a servant is guilty of such a crime outside his service as to make it unsafe for master to keep him in his employ, the servant may be dismissed by his master, and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him. If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, need not be misconduct in the
carrying on the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master".

In that case the Officer was appointed as a Commissioner under a statute which provided *inter alia* that the Commissioner shall be a corporation sale. It was contented that as he was holding an independent statutory post, the relationship of master and servant was not subsisting and the Government could not take action against him. The contention was repelled and it was held that it was not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it might form the subject-matter of disciplinary proceedings. It was also held that the existence of relationship of master and servant was not necessary for taking disciplinary action against a person in service.

If Government were to sit back and permit its officials to commit any outrage in their private life provided it falls short of a criminal offence the result may very well be a catastrophic fall in the moral prestige of the administration. If the contention that a Government servant is not answerable for the misconduct committed in his private life is correct, the result would be that, however reprehensible or adominable Government Servant's conduct in his life may be, the Government would be powerless to dispense with his services unless and until he commits a criminal offence or commits an act which is specifically prohibited by Government Servant's Conduct Rules. This would clothe the Government servant with an impunity which would place the Government in a position worse than that of a private employer. Nothing in the Constitution restricts the power of the State to dispense with the services of any Government servant which it considered to be unbekoming or unworthy of the official of the State nor it fettered the discretion of the State as to what type of conduct it shall consider sufficiently blame worthy to merit dismissal or removal. The State had been vested with absolute discretion in this respect. It could demand a certain standard of conduct from Government servants not only while performing their official duties but in their private life as well. For example, the State has the power to require its officials not to drink alcoholic liquors at official functions or to lead an immoral life."


There are many set of rules relating to the conducts of the Government servants. The rules have been framed by the Central Government as well as by State Governments. There are rules also for various classes of employees. Particular attention is invited to the Central Government Services (Conduct) Rules, 1964. An interpretation of these rules would reveal that it would not be possible to frame rules which may be said to be exhaustive with relation to the conduct of the Government servants. A Government servant is expected to do nothing which is unbekoming of a Government servant. It is, therefore, the exigencies of circumstances that can alone decide as to what is 'becoming' or 'unbecoming' for a Government servant to do or not to do.

The rules of conduct deal with the behaviour of a public servant not only in his official life but also in his private life. The rule is in a sense elliptic, in that it does not lay down a proper and a becoming standard of behaviour for public servants although it requires them to avoid impropriety or unbecomingness in behaviour. Behaviour runs through the general course
of life, in conduct, in department, in manners in dress, in speech and also in association. To leave the standard of behaviour pattern of public servants to the subjective satisfaction of the disciplinary authority has its dangers. A public servant, who is unconventional in his conduct and department, unconstrained in his manners, original in his dress, free styled in his speech and liberal in his association, may shock the conscience of a disciplinary authority, if that authority be either a conservative or a conventionalist.

(a) Rule 1

Rule 1 runs as under:

1. (1) These rules may be called the Civil Services (Conduct) Rules, 1964.

(2) They shall come into force at once.

(3) Save as otherwise provided in these rules and subject to the provisions of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, these rules shall apply to every person appointed to a civil service or post (including a civilian in Defence service) in connection with the affairs of the Union:

Provided that nothing in these rules shall apply to any Government servant who is—

(a) (i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890);

(ii) a person holding a post in the Railway Board and is subject to the Railway Services (Conduct) Rules;

(iii) holding any post under the administrative control of the Railway Board or of the Financial Commissioner of Railways:

(b) a member of an All India Service;

(c) a holder of any post in respect of which the President has, by a general or special order, directed that these rules shall not apply;

Provided further that rules 4, 6, 7, 12 and 14, sub-rule (3) of rule 15, rule 16, sub-rules (1), (2) and (3) of rule 18, rules 19, 20 and 21 shall not apply to any Government servant who draws a pay which does not exceed Rs. 500.00 per mensum and holds a non-gazetted post in any of the following establishments, owned or managed by the Government, namely:

(i) ports, docks, wharves or jetties;

(ii) defence installations except training establishments;

(iii) public works establishments, in so far as they relate to work-charged staff;

(iv) irrigation and electric power establishments;

(v) mines as defined in clause (j) of section 2 of the Mines Act, 1952 (35 of 1952);
(vi) factories as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948); and

(vii) field units of the Central Tractor Organisation employing workmen governed by labour laws:

Provided further that these rules shall apply to any person temporarily transferred to a service or post specified in clause (a) of the first proviso to whom but for such transfer these rules would have otherwise applied.

Explanation.—For the purposes of the second proviso, the expression 'establishment' shall not include any railway establishment or any office mainly concerned with administrative, managerial, supervisory, security or welfare functions.

(b) Rule 2:

Rule 2 reads as under:

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) 'the Government' means the Central Government;

(b) 'Government servant' means any person appointed by Government to any Civil or post in connection with the affairs of the Union and includes a civilian in a Defence Service;

Explanation.—A Government servant whose services are placed at the disposal of a company, corporation, organisation or a local authority by the Government shall, for the purposes of these rules, be deemed to be a Government servant serving under the Government notwithstanding that his salary is drawn from sources other than the Consolidated Fund of India;

(c) 'members of family' in relation to a Government servant includes—

(i) the wife husband, as the case may be, of the Government servant, whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent court;

(ii) son or daughter or step-son or step-daughter of the Government servant and wholly dependent on him, but does not include a child or step-child who is no longer in any way dependent on the Government servant or of whose custody the Government servant has been deprived by or under any law;

(iii) any other person related, whether by blood or marriage to the Government servant or to the Government servant’s wife or husband, and wholly dependent on the Government servant.

(c) Rule 3:

Rule 3 of the rule is in the following words:
“(1) Every Government servant shall at all times—

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

(ii) No Government servant shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation.—Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.”

The Government Servant’s Conduct Rules are not exhaustive. In addition to the Code of Conduct specified in these rules, there exists what is known as an “unwritten code of conduct” which must be observed by every Government servant. This unwritten code of conduct has been partially incorporated in Rule 3 of the Uttar Pradesh Government Servants’ Conduct Rules containing inter alia that every Government servant should conduct himself not only in accordance with any specific orders of Government regulating behaviour and conduct which may be enforced but also in accordance with any implied orders—that is to say, he must also honour the implications of the various orders of the Government taken as a whole. There is no doubt that this rule refers to the unwritten code of conduct and requires Government servants to behave like decent citizens in their private lives. But Rule 3 does not exhaust the content of the unwritten code. It follows, that every Government servant will observe certain standards of decency and morality in his private life. For example, the State has the power to demand that no Government servant shall re-marry during the life-time of his first wife. It may require its officials not to drink alcoholic liquors at social functions. If Government were to sit back and permit its officials to commit any outrage in their private lives provided it falls short of a criminal offence the result may very well be a catastrophic fall in the normal prestige of the administration.

It is the duty of the servant to be loyal, diligent, faithful and obedient. The liability to respect and the recognition of a subordinate role on the part of an employee also flows from the nature of contract. Thus disobedience, insubordination and acts subversive of discipline are the recognised misconducts because these acts are contrary to the obligations imposed on an employee by the nature of contract itself and, can freely be treated as implied. The foremost implied obligation of a servant is obedience, fidelity and faithfulness are other implied conditions of employment. It would be open to
the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction.—Agnani v. Badri Das and others (1969) 1ILLJ SC 684.

In State of Bombay v. Nurul Khan, AIR 1966 SC 269 the Supreme Court held that the use of improper language in communications and statements by a Government servant although not justified could not have any material bearing in reckoning the validity of an impugned order which must be judged objectively without considering the impropriety of the language used by him.

(d) Rule 4 : Employment of near relatives

Rule 4 runs as under:

"4. Employment of near relatives of Government servants in private undertaking enjoying Government patronage.—(1) No Government servant shall use his position or influence direct or indirectly to secure employment for any member of his family in any private undertaking.

(2) (i) No Class I Officer shall, except with the previous sanction of the Government, permit his son, daughter or other dependent to accept employment in any private undertaking with which he has official dealings or in any other undertaking having official dealings with the Government:

Provided that where the acceptance of the employment cannot await prior permission of the Government or is otherwise considered urgent, the matter shall be reported to the Government and the employment may be accepted provisionally subject to the permission of the Government.

(ii) A Government servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any private undertaking intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that undertaking:

Provided that no such intimation shall be necessary in the case of a Class I Officer if he has already obtained the sanction of, or sent a report to, the Government under clause (i).

(2) No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any
undertaking or any other person if any member of his family is employed in that undertaking or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the Government servant shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.”

(c) Rule 5: Taking part in politics and elections

Rule 5 is as under:

“5. (1) No Government servant shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of or assist in any other manner any political movement or activity.

(2) It shall be the duty of every Government servant to endeavour to prevent any member of the family from taking part in, subscribing in aid of or assisting any other manner any movement or activity which is, or tends directly or indirectly to be, subversive of the Government as by law established and where a Government servant is unable to prevent a member of his family from taking part in, or subscribing in aid or assisting in any other manner any such movement or activity, he shall make a report that effect to the Government.

(3) If any question arises whether any movement or activity falls within the scope of this rule, the decision of the Government thereon shall be final.

(4) No Government servant shall canvass or otherwise interfere or use his influence in connection with, or take part in an election to any Legislature or local authority:

Provided that—

(i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) a Government servant shall not be deemed to have contravened the provisions of this rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for time being in force.

Explanation.—The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.”

In so far as the Government Servants’ Conduct Rules provide for discipline and conduct and in doing so forbid conduct of certain varieties, their aim is merely regulation of the conduct of Government servants as such servants and that aim is sought to be attained by prescribing certain rules of correct conduct and laying down penalties for their breach. If a Government servant disregards any of the rules which bear upon discipline and conduct and
conducts himself in a manner not approved by the rules or forbidden by them, he may incur the penalties for which the rules provide. It cannot be that any of his other rights as a citizen will be affected. Taking the present case, if a Government servant violates the prohibition against offering herself as a candidate for election to one or another of the bodies mentioned in Rule 23, he may incur dismissal or such other penalty as the authorities may consider called for, but the breach of the conditions of service committed by him cannot disenfranchise him or take away from him any of the rights which he has in the capacity of the holder of franchise.

The Government Servants’ Conduct Rules are only of internal discipline, operating within the sphere of Government service and limited in their operation to that sphere. They specify certain acts which can be done by Government servants only in a certain way and other acts which may not be done by them at all, consistently with the conduct they are required to maintain as Government servants.”

In Rajkrishna v. Vinod Kanungo, AIR 1954 SC 202 the Supreme Court observed:

“The policy of the law is to keep Government servants aloof from politics and also to protect them from being imposed on by those with influence or in positions of authority and power and to prevent the machinery of Government from being used in furtherance of a candidate’s return. But at the same time it is not the policy of the law to disenfranchise them or to denude them altogether of their rights as ordinary citizens of the land.”

It follows that there is no mention to disenfranchise the Government servant. They are at liberty even to propose and second an election candidate.

(f) Rule 6: Joining of association

Rule 6 states:

“No Government servant shall join or continue to be a member of an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.”

(g) Rule 7: Demonstrations and strikes

Rule 7 is as under:

“No Government servant shall—

(i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant.”

(i) Government employee and fundamental rights

The Constitution of India guarantees certain fundamental rights which are enshrined in Part III of the Constitution. They apply to all the citizens of
India. Some of them apply even to foreigners in India. It, therefore, follows that they apply equally to Government servants. Save for certain exceptions under which they can be treated as a class they cannot be discriminated against and also no unreasonable restrictions can be placed on their rights guaranteed under Article 19. It would be out of place to discuss the full implication of discrimination and also the reasonable restriction that can be imposed on the Government servants. Sufficient it is that the enforcement of discipline by itself implies some restriction and discrimination which can be both inter se amongst the employees, where it is desirable to treat them as a separate class and also a group as a whole. They are bound under the various rules of the department and certain principle governing the unwritten code of discipline applicable to them.

The Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named. Article 33 of the Constitution having selected the services, members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restriction of certain freedoms in relation to Article 19 (1) (e) and (g).—Kameshwar Prasad v. State of Bihar, AIR 1962 SC 1166.

It might be broadly stated a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It is the form of demonstration which would decide whether the freedom guaranteed by Article 19 (1) (a) and 19 (1) (b) is affected. A violent and disorderly demonstration would not obviously be within Article 19 (1) (a) or 19 (1) (b). A peaceful and orderly demonstration would fall within the freedoms guaranteed under these clauses. (Ibid).

(ii) Validity of Rule.—The present Rule 7 has been enacted in view of the Supreme Court's decision in Kameshwar Prasad's case (supra) which struck down Rule 4-A of the Bihar Government's Conduct Rules, 1956. Rule 4-A which ran as under imposed a blanket bar on all demonstrations:

"4-A. No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service."

The Supreme Court while declaring old Rule 4-A as unconstitutional observed:

"It would be seen that the rule prohibits two types of activities, both in connection with matters pertaining to the conditions of service; (i) the holding of demonstrations, and (ii) resort to strikes to achieve the purpose indicated. This Court had in All-India Bank Employees' Association v. National Industrial Tribunal to consider the question as to whether the right to form an
association guaranteed by Article 19 (1) (c) involved or implied the right to resort to a strike and answered in the negative. The validity of the rule, therefore, in so far as it prohibits strikes, is no longer under challenge.

"The first question that falls to be considered is whether the right to make a 'demonstration' is covered by either or both of the freedoms guaranteed by Article 19 (1) (a) and 19 (1) (b). A 'demonstration' is defined in the Concise Oxford Dictionary as 'an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession. In Webster, it is defined as 'a public exhibition by a party, sect or society.... as by a parade or mass meeting'. Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is, in effect, therefore, a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has, however, to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Article 19 (1) (a) or 19 (1) (b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19 (1) (a) and 19 (1) (b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19 (1) (a) or 19 (1) (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.

"No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquility or which would fall under the other limiting criteria specified in Article 19 (2), the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration—be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result. As no such separation is possible, the entire rule has to be struck down as unconstitutional."

As regards the second question whether Constitution of India excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III, the Court observed:

"We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection
of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

"In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Article 33. That Article selects two of the services under the State members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them—from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the service members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19 (1) (e) and (g).

"We have rejected the broad contention that persons in the service of Government form a class apart to whom the rights guaranteed by Part III do not, in general apply. We should not be taken to imply that in relation to this class of citizens the responsibility arising from official position would not by itself impose some limitations on the exercise of their rights as citizens."

The validity of Rule 4-A of the Central Civil Services (Conduct) Rules, 1955 was also considered by the Supreme Court in O. K. Ghosh v. E. X. Joseph, AIR 1963 SC 812 as under:

"The question about the validity of Rule 4-A has been the subject-matter of a recent decision of this court in Kameshwar Prasad v. State of Bihar AIR 1966, SC 1166. At the hearing of the said appeal, the appellants and the respondent had intervened and were heard by the Court. In that case, this court has held that Rule 4-A in the form in which it now stands prohibiting any form of demonstration is violative of the Government servants' rights under Art. 19(1) (a) and (b) and should, therefore, be struck down. In striking down the rule in this limited way, this Court made it clear, that in so far as the said rule prohibits a strike, it cannot be struck down for the reason that there is no fundamental right to resort to a strike. In other words, if the rule was invalid against a Government servant on the ground that he had resorted to any form of strike specified by Rule 4-A, the Government servant would not be able to contend that the said rule was invalid in that behalf. In view of this decision,
we must hold that the High Court was in error in coming to the conclusion that Rule 4-A was valid as a whole."

".........Can it be said that the rule imposes a reasonable restriction in the interest of public order? There can be no doubt that Government servants can be subjected to rules which are intended to maintain discipline amongst their ranks and to lead to an efficient discharge of their duties. Discipline amongst Government employees and their efficiency may, in a sense, be said to be related to public order. But in considering the scope of Cl. (4), it has to be borne in mind that the rule must be in the interest of public order and must amount to a reasonable restriction. The words "public order" occur even in Cl. (2), which refers, inter alia, to security of the State and public order. There can be no doubt that the said words must have the same meaning in both Cls. (2) and (4). So far as Cl. (2) is concerned, security of the State having been expressly and specifically provided for, public order cannot include the security of the State, though in its widest sense it may be capable of including the said concept. Therefore, in Cl. (2), public order is virtually synonymous with public peace, safety and tranquillity. The denotation of the said words cannot be any wider in Cl. (4). That is one consideration which it is necessary to bear in mind. When Cl. (4) refers to the restriction imposed in the interest of public order, it is necessary to enquire as to what is the effect of the words "in the interests of." This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect, the restriction can be said to be in the interest of public order. A restriction can be said to be in the interest of public order only if the connection between the restriction and the public order is proximate and direct. In direct or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression "in the interests of public order". This interpretation is strengthened by the other requirements of Cl. (4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or far-fetched. That is another consideration which is relevant. Therefore, reading the two requirements of Cl. (4), it follows that the impugned restriction can be said to satisfy the test of Cl. (4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in Superintendant, Central Prison Fatehgarh v. Dr. Ram Manohar Lohia, AIR 1960, SC 633. In the words of Patanjali Shastri, J., in Rex v. Basudeo, 1949 FCR 657; AIR 1950 FC 67, the connection contemplated between the restriction and public order must be real and proximate, not far-fetched and problematical." It is in the light of this legal position that the validity of the rule must be determined.

"It is not disputed that the fundamental rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact
that all citizens, including Government servants, are entitled to claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form associations or unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the Service Association of Government Servants as soon as recognition accorded to the said association is withdrawn or if, after the association is formed, no recognition is accorded to it within six months. In other words, the right to form an association is conditioned by the existence of the recognition of the said association by the Government......Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the association and the discipline amongst, and the efficiency of, the members of the said association. Similarly, it is difficult to see any connection between recognition and public order."

(h) Rule 8: Connection with Radio or Press

Rule 8 reads as under:

(1) No Government servant shall, except with the previous sanction of the Government, own wholly or in part, or conduct, or participate in the editing or managing of, any newspaper or their periodical publication.

(2) No Government servant shall, except with the previous sanction of the Government or any other authority empowered by it in his behalf, or in the bona fide discharge of his duties participate in a radio broadcast or contribute any article or write any letter either in his own name or anonymously or pseudonymously or in the name of any other person to any newspaper or periodical:

Provided that no such sanction shall be required if such broadcast or such contribution is of a purely literary, artistic or scientific character."

(i) Rule 9: Criticism of Government

Rule 9 states as under:

"No Government servant shall, in any radio broadcast or in any document published in his own name or anonymously pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion—"

(i) which has the effect of an adverse criticism of any current or a recent policy or action of the Central Government or a State Government:

Provided that in the case of any Government servant included in any category of Government servants specified in the second proviso to sub-rule (5) of rule 1, contained in this clause shall
apply to bona fide expression of views by him as an office-bearer of a trade union of such Government servants for the purpose of safeguarding the conditions of service of such Government servants or for securing an improvement thereof; or

(ii) which is capable of embarrassing the relations between the Central Government and the Government of any State; or

(iii) which is capable of embarrassing the relations between the Central Government and Government of any foreign State:

Provided that nothing in this rule shall apply to any statements made or views expressed by a Government servant in his official capacity or in the due performance of the duties assigned to them.”

(See Dr. V. K. Jariya v. State of Mysore, AIR 1966 SC 1387.)

(j) Rule 10 : Evidence before committee or any other authority

Rule 10 reads as under:

“(1) Save as provided in sub-rule (3) no Government servant shall, except with the previous sanction of the Government, give evidence in connection with any inquiry conducted by any person, committee or authority.

(2) Where any sanction has been accorded under sub-rule (1), no Government servant giving such evidence shall criticise policy or any action of the Central Government or of a State Government.

(3) Nothing in this rule shall apply to—

(a) evidence given at an inquiry before an authority appointed by the Government, by Parliament or by a State Legislature; or

(b) evidence given in any judicial inquiry; or

(c) evidence given at any departmental inquiry ordered by authorities subordinate to the Government.”

(k) Rule 11 : Unauthorised communication of information

Rule 11 runs as under:

“No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such documents or information.”

(l) Rule 12 : Subscriptions

Rule 12 provides as under:

“No Government servant shall, except with the previous sanction of the Government or of such authority as may be empowered by it in his behalf, ask for or accept contributions to, or otherwise
associate himself with the raising of, any fund in pursuance of any object whatsoever."

It is obviously in the interest of democratic community as a whole to maintain purity of administration carried on with the help of the civil service. With the position a Government servant holds an appeal to the public for voluntary contribution to an association of which he is a member or for the support of any cause in which he has interest may often lead to a levy which a member of the public can reasonably apprehend that he can avoid only at his peril. Official favours or frown should not even have the appearance of being traced to a contribution paid or refused. That would apply even if the means of raising funds or subscription is by sale of tickets for entertainments.

(m) Rule 13: Gifts

Rule 13 reads as follows:

"Gifts.—(1) Save as otherwise provided in these rules no Government servant shall accept, or permit any member of his family or any person acting on his behalf to accept, any gift.

Explanation.—The expression ‘gift’ shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or personal friend having no official dealings with the Government servant.

Note I.—A casual meal, lift or other social hospitality shall not be deemed to be a gift.

Note II.—A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organisations, etc.

(2) On occasions, such as wedding, anniversaries, funerals or religious functions, when the making of a gift is in conformity with the prevailing religious or social practice, a Government servant may accept gifts from his near relatives but he shall make a report to the Government if the value of any such gift exceeds:

(i) Rs. 500-00, in the case of a Government servant holding any Class I or Class II post;

(ii) Rs. 250-00, in the case of a Government servant holding any Class III post; and

(iii) Rs. 100-00, in the case of a Government servant holding any Class IV post.

(3) On such occasions as are specified in sub-rule (2), a Government servant may accept gifts from his personal friends having no official dealing with him, but he shall make a report to the Government if the value of any such gift exceeds—

(i) Rs. 200-00, in case of a Government servant holding any Class I or Class II post;

(ii) Rs. 100-00, in the case of a Government servant holding any Class III post; and
(iii) Rs. 50·00, in the case of a Government servant holding any Class IV post.

(4) In any other case, a Government servant shall not accept any gift without the sanction of the Government if the value thereof exceeds—

(i) Rs. 75·00, in the case of a Government servant holding any Class I or Class II post; and

(ii) Rs. 25·00, in the case of a Government servant holding any Class III or Class IV post."

(n) Rule 14: Public demonstrations in honour of Government Servants.

Rule 14 runs as under:

"No Government servant shall, except with the previous sanction of the Government, receive any complementary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour, or in the honour of any other Government servant:

Provided that nothing in this rule shall apply to—

(i) a farewell entertainment of substantially private and informal character held in honour of a Government servant or any other Government servant on the occasion of his retirement or transfer or any person who has recently quit the service of any Government; or

(ii) the acceptance of simple and inexpensive entertainments arranged by Public bodies and institutions.

Note.—Exercise of pressure or influence of any sort on any Government servant to induce him to subscribe towards any farewell entertainment even if it is of substantially private or informal character, and the collection of subscriptions from Class III or Class IV employees under any circumstances for the entertainment of any Government servant not belonging to Class III or Class IV is forbidden."

(o) Rule 15: Private trade or employment

Rule 15 provides as under:

"(1) No Government servant shall, except with previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any employment:

Provided that a Government servant may, without such sanction, undertake honorary work of social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake or shall discontinue such work if so directed by the Government.

Explanation.—Canvassing by a Government servant in support of the business of insurance agency, commission, etc. owned or managed
by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every Government servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

(3) No Government servant shall, except with the previous sanction of the Government, take part in the registration, promotion or management or any bank of other company registered under the Companies Act, 1956 or other law for the time being in force:

Provided that Government servant may take part in the registration, promotion, or management of a co-operative society registered under the Co-operative Societies Act, 1912 (II of 1912) or any other law for the time being in force, or of literary, scientific or charitable society registered under the Societies Registration Act, 1860 (XXI of 1860) or any corresponding law in force.

(4) No Government servant may accept any fee for any work done by him for any public body or any private person without the sanction of the prescribed authority."

**Rule 16 : Investment, lending and borrowing.**

Rule 16 states as follows:

"(1) No Government servant shall speculate in any stock, share or other investment.

Explanation.—Frequent purchase or sale or both, of shares, securities or other investments shall be deemed to be speculation within the meaning of this sub-rule.

(2) No Government servant shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2), the decision of the Government thereon shall be final.

(4) (i) No Government servant shall, save in the ordinary course of business with a bank or a firm of standing duly authorised to conduct banking business, either himself or through any member of his family or any other person acting on his behalf,—

(a) lend or borrow money, as principal or agent, to or from any person within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place himself under any pecuniary obligation to such person, or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may give to, or accept from, a relative or a personal friend, a purely temporary loan of a
small amount free of interest, or operate a credit account with a *bona fide* tradesman or make an advance of pay to his private employee.

(ii) When a Government servant is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the prescribed authority and shall thereafter act in accordance with such order as may be made by such authority."

(q) **Rule 17: Insolvency and habitual indebtedness**

Rule 17 provides:

"A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceeding to the Government.

*Note.*—The burden of proving that the insolvency or indebtedness was the result of circumstances which, with the exercise of ordinary diligence, the Government servant could not have foreseen, or over which he had no control, and had not proceeded from extravagant or dissipated habits, shall be upon the Government servant."

(r) **Rule 18: Movable, immovable and valuable property**

Rule 18 provides:

"(1) Every Government servant shall on his first appointment to any service or post and thereafter at such intervals as may be specified by the Government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government giving the full particulars regarding—

(a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;

(c) other movable property inherited by him or similarly owned, acquired or held by him; and

(d) debts and other liabilities incurred by him directly or indirectly.

*Note I.*—Sub-rule (1) shall not ordinarily apply to Class IV servants but the Government may direct that it shall apply to any such Government servant or class of such Government servants.

*Note II.*—In all returns, the values of items of movable property worth less than Rs. 1,000.00 may be added and shown as a lump-sum. The value of articles of daily use such as clothes,
utensils, crockery, books, etc. need not be included in such return.

**Note III.**—Every Government servant who is in service on the date of the commencement of these rules shall submit a return under this sub-rule on or before such date as may be specified by the Government after such commencement.

(2) No Government servant shall, except with the previous knowledge of the prescribed authority acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:
Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is—
(i) with a person having official dealings the Government servant; or
(ii) otherwise than through a regular or reputed dealer.

(3) Every Government servant shall report to the prescribed authority every transaction concerning movable property owned or held by him either in his own name or in the name of a member of his family, if the value of such property exceeds Rs. 1,000.00 in the case of a Government servant holding any class I or class II post or Rs. 500.00 in the case of a Government servant holding any class III or class IV post:
Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is—
(i) with a person having official dealings with the Government servant; or
(ii) otherwise than through a regular or reputed dealer.

(4) The Government or the prescribed authority, may at any time, by general or special order, require a Government servant to furnish within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the Government or by the prescribed authority, include the details of the means by which, or the source from which, such property was acquired.

(5) The Government may exempt any category of Government servants belonging to class III or class IV from any of the provisions of this rule except sub-rule (4). No such exemption shall, however, be made without the concurrence of the Ministry of Home Affairs.

**Explanation.**—For the purposes of this rule—

(1) The expression “movable property” includes—

(a) jewellery, insurance policies the annual premium of which exceeds Rs. 1,000.00 or one-sixth of the total annual emolu-
ments received from Government, whichever, is less, shares securities and debentures;

(b) loans advanced by such Government servants whether secured or not;

(c) motor cars, motor-cycles, horses, or any other means of conveyance, and

(d) refrigerators, radios and radiograms.

(2) "Prescribed authority" means—

(a) (i) the Governments in the case of a Government servant holding any Class I post, except where any lower authority is specifically specified by the Government for any purpose;

(ii) Head of Department, in the case of a Government servant holding any Class II post;

(iii) Head of office, in the case of a Government servant any Class III or Class IV post;

(b) in respect of a Government servant on foreign service or on deputation to any other Ministry or any other Government, the parent department on the cadre of which such Government servant is borne or the Ministry to which he is administratively subordinate as member of that cadre."

(s) Rule 19 : Vindication of acts and character of Government servants

Rule 19 states as under:

"No Government servant shall, except with the previous sanction of the Government, have recourse of any Court or the press for the vindication of any official act which has been the subject-matter of adverse criticism or an attack of defamatory character.

Explanation.—Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity, and where such action is taken, it could be reported to the prescribed authority."

(t) Rule 20 : Canvassing of non-official or other influence

Rule 20 reads thus:

"No Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government."

(u) Rule 21 : Bigamous marriages

Rule 21 runs as under:

"(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the
Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government."

(v) Rule 22: Consumption of intoxicating drinks and drugs

Rule 22 provides:

"A Government servant shall—

(a) strictly abide by any law relating to intoxicating drinks and drugs in force in any area in which he may happen to be for, the time being;

(b) take due care that the performance of his duties is not affected in any way by the influence of any intoxicating drink or drug;

(c) not appear in a public place [in a state of intoxication;]

(d) not habitually use any intoxicating drink or drug to excess.”

(w) Rule 23: Interpretation

Rule 23 runs as under:

“If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.”

(x) Rule 24: Delegation of power

Rule 24 runs as under:

“The Government may, by general or special order, direct that any power exercisable by it or any head of department under these rules (except the powers under Rule 23 and this rule) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.”

(y) Rule 25: Repeal and saving

Rule 25 provides as under:

“Any rules corresponding to these rules, in force immediately before the commencement of these rules and applicable to the Government servants to whom these rules apply, are hereby repealed:

provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

* (Provided further that such repeal shall not affect the previous operation of the rules so repealed and a contravention of any of the said rules shall be punishable as if it were a contravention of these rules.)”

*Introduced by M. H. A. Notification. No. 25/1—67-Estts, (A) dated 3-2-69.
CHAPTER XX

PREVENTION OF CORRUPTION

SYNOPSIS

1. General.
2. Law relating to Prevention of corruption deals with "public servants" only:
   (a) Test of a public servant.
   (b) Chairman of the Managing Committee of a Municipality.
   (c) Minister in the State.
   (d) Commissioner appointed without jurisdiction is not public servant.
   (e) Chartered accountant directed to investigate affairs of Insurance Company is not a public servant.
3. Law relating to Prevention of corruption as contained in the provisions of the Penal Code:
   (a) Section 161, I. P. C.—
      (i) Public servant need not be specified public servant.
      (ii) Gratification : Meaning of.
      (iii) Ingredients of offence under section 161, I.P.C.
      (iv) Relevant considerations.
      (v) Evidence of proof.
      (vi) Laying of traps.
   (eii) Omission to specify public servant-in-charge.
   (eiii) Amassing of wealth in excess of official remuneration : Presumption of corruption.
   (fx) Sentence.
   (b) Section 165, I. P. C.:
      (i) Word "subordinate" : Meaning of.
      (c) Section 165-A, I. P. I. C.:
      (i) To bribe a commissioner having no jurisdiction.
      (ii) Conviction under section 165-A to Central Excise Inspector : Evidence of Inspector, if requires corroboration.
5. Section 5 of the Official Secrets Act.

1. General

The criminal law relating to prevention of corruption is contained in Sections 161, 165 and 165-A of the Indian Penal Code and Section 5 (2) of the Prevention of Corruption Act, 1947. The above sections of the Penal Code are intended to reach offences which are committed by public servants and are of such a description that they can be committed by public servants alone. It must not be understood that these above provisions are an exhaustive code for public servants since the Government can make rules for the conduct of its own servants. Those offences which are common between public servants and other members of the community are left to the general provisions of the Code. If a public servant embezzles public money, he is left to the ordinary law of criminal breach of trust. If he falsely pretends to have disbursed money for the public, and by this deception induces the Government to allow it in his accounts, he is left to the ordinary law of cheating. If he produces forged vouchers to back his statement, he is left to the ordinary law of forgery. There is no reason to punish these offences more severely when the Government suffers by them than when private people suffer, since the security of Government lies in the purity of its administration, without which it would lose both revenue and prestige—Gour's Penal Law of India, Chapter IX.

2. Law relating to Prevention of corruption deals with "public servants only"

As already pointed out above, the provisions of law referred to above under previous topic deal only with offences committed by public servants.
Section 21 of the Indian Penal Code enumerates a long list of categories of persons who fall specifically within the term “public servants.” Section 21 of the Penal Code is reproduced below:

"21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely;

first, (Omitted by the Adaptation of Laws Order);

second, every Commissioned Officer in the Military, Naval or Air Force of India;

third, every judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons any adjudicatory functions;

fourth, every officer of a court of justice including a liquidator, receiver or commissioner whose duty is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, to preserve order in the court; and every person specially authorised by a court of justice to perform any of such duties;

fifth, every juryman, assessor or member of a Panchayat assisting a court of justice or public servant;

sixth, every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice, or by any other competent public authority;

seventh, every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

eighth, every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences to bring offenders to justice, or to protect the public health, safety or convenience;

ninth, every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate or report on any matter affecting the pecuniary interests of the Government; or to make, authenticate or keep any document relating to the pecuniary interests of the Government;

tenth, every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

eleventh, every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
twelfth, every person—

(a) in the service or any of the Government or remunerated by fees or commission for performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.

Illustration.—A Municipal Commissioner is a public servant.

Explanation I.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation II.—Wherever the words ‘public servant’ occur, they shall be understood as every person who is in actual possession of the situation of a public servant whatever legal defect there may be in his right to hold that situation.

Explanation III.—The word ‘election’ denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by or under any law prescribed as bye-election.”

(a) Test of a public servant

In G. A. Monterio v. State of Ajmer, 1956 SCR 682 : AIR 1957 SC 13, the Supreme Court laid down the following test in order to determine whether a person is an officer of the Government:

"The true test, therefore, in order to determine whether a person is an officer of the Government, is (1) whether he is in the service or pay of the Government; and (2) whether he is entrusted with the performance of any public duty. If both these requirements are satisfied, it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed . . . . If, therefore, on the facts of a particular case the Court comes to the conclusion that a person is not only in the service or pay of the Government but also is performing a public duty, he has delegated to him the functions of the Government or is in any event performing the duties immediately auxiliary to those of someone who is an officer of the Government within the meaning of section 21 (9), Penal Code."

In another case—Akhtar Alam v. The State of Bihar, (1969) 1 SCC 142 : 1969 Pat LJR 49, the Supreme Court held that the true test in order to determine whether a person is an officer of the corporation within the meaning of section 21, clause (12) was: (1) whether he was in the service or pay of the Corporation, and (2) whether he was himself either armed with some authority of representative character by the corporation or whether his duties were immediately auxiliary to those of someone who was armed with such authority or representative character.
(b) Chairman of the Managing Committee of a Municipality

The power to make payment of fixed recurring charges, such as pay bills, imposes a duty on the Chairman of the Municipality to do so when necessary as the power is vested in the Chairman for the Municipality to do so when necessary, as the power is vested in the Chairman for the benefit of the persons entitled to receive those recurring charges. Clause (10) of section 21 of the Indian Penal Code merely requires that the person should have the duty to expend property for certain purposes. It is not restricted to such cases only where there is no limitation on the exercise of that power of expending property. The Chairman has the duty to order payment and to spend the money of the Municipality in certain circumstances and is therefore a public servant.—Maharudrappa Danappa Kesarampapayar v. State of Mysore, (1962) 1 SCR 129 : (1961) 1 Cr Lj 857 : 1961 All Cr R 196 : (1962) 1 SCJ 454 : AIR 1961 SC 785.

(c) “Head Clerk” is an officer within the meaning of Section 21 (2) as amended by Act II of 1958.

Section 21 Indian Penal Code, as it stood after the Criminal Law (Amendment) Act, 1958 (Act II of 1958), the words “public servant” include every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956. In view of Explanation 4 of the expression ‘corporation engaged in any trade or industry’ includes a banking, insurance or financial corporation, a river valley corporation and a corporation for supplying power, light or water to the public. It is not disputed in the present case that the appellant was in the service of the State Electricity Board which falls within the language of Explanation 4. What is contended for the appellant is that he was performing only routine clerical duties and cannot be treated as an officer within the meaning of clause (12) to section 21, Indian Penal Code. The word “officer” means some person employed to exercise to some extent and in certain circumstances a delegated function of Government. He is either himself armed with some authority or representative character or his duties are immediately auxiliary to those of someone who was so armed. In the present case, the appellant was a person performing duties immediately auxiliary to those of the Executive Engineer who was the Head of the office. The very designation ‘Head Clerk’ denotes that there are other clerks attached to the office who occupy subordinate position in relation to the Head Clerk and the duties of the Head Clerk from the nature of things are bound to be immediately auxiliary to the Head of the office. It must, therefore, be held that the appellant was an officer in the service or pay of the Corporation as defined in section 21, clause (12), Indian Penal Code—Akhtar Alam v. The State of Bihar, (1969) 1 SCC 142 : 1969 Pat LJR 49.

(d) Minister in the State

Minister in the pay of the State to advice and to aid the Chief Executive, whether he be Governor or President is an officer performing a public duty and is therefore a public servant within the meaning of section 21 of the Penal Code—Shiv Baha.lur Singh v. State of U. P., AIR 1953 SC 394.

(e) Commissioner appointed without jurisdiction is not public servant

It is clear that it is necessary for the application of this Explanation that the person concerned should be in actual possession of the pre-existing office of a public servant. If there be no office or post, there could be no

(f) Chartered Accountant directed to investigate affairs of Insurance Company is not a public servant

A person who is directed to investigate into the affairs of an Insurance Company under section 33 (1) of the Insurance Act, does not ipso facto become an officer. There is no office which he holds. In this case he was a chartered accountant and had been directed by order of the Central Government to investigate into the affairs of the Insurance Company and to report to the Government on the investigation made by him. Of course, he was to get some remuneration for the work he was entrusted with. It was held that he was not a public servant.—B. K. Dalmia v. The Delhi Administration, (1963) 1 SCR 253 : AIR 1962 SC 1821.

3. Law relating to Prevention of corruption is contained in the provisions of Penal Code.

Sections 161, 165 and 165-A of the Indian Penal Code deal with the offences of bribery and corruption. The sections are reproduced below:

“161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in section 21, or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—‘Expecting to be public servant’. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

‘Gratification’—The word ‘gratification’ is not restricted to pecuniary gratification or to gratifications estimable in money.

‘Legal remuneration.—The words ‘legal remuneration’ are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.
'A motive or reward for doing'—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done within these words.”

“165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person any valuable thing without consideration, or for a consideration which he knows to be inadequate,

from any person whom he knows to have been, or to be, or to be, likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in or related to the person so concerned,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.”

“165-A. Whoever abets any offence punishable under section 161 or section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

(a) Section 161, Indian Penal Code

Section 161 provides punishment for a public servant taking a bribe and not for the giver of the bribe. The bribe-giver’s case is covered by section 109 of the Penal Code under which he is liable for abetment. Section 165-A provides for his punishment.

Offences under sections 5 (1) (a) and 5 (1) (b) are an aggravated forms of sections 161 and 162 of the Indian Penal Code and the intention cannot be to abrogate the earlier offence by the creation of the new offence. Under sections 161 and 162 a prosecution can be laid even in the case of a single act by which a public servant has accepted illegal gratification, but in order to attract sub-sections 1 (a) and 1(b) of Section 5 of the Prevention of Corruption Act, 1947 there must be habitual commission of the crime. Any stray or a single instance would not suffer to bring within the ambit of the section the offence as contemplated in sections 5 (1) (a) and 5 (1) (b). The two offences can coexist and the one will not be considered as overlapping the other—Om Prakash Gupta v. State of U. P. 1957 SCA 337 : 1957 SCJ 289 : 1957 Cr LJ 575 : AIR 1957 SC 4:8 : 1957 All LJ 585.


(ii) “Gratification” : Meaning of.—Paragraph 3 of section 161 of the Code provides that the word “gratification” is not restricted to pecuniary gratification or to gratifications estimable in money. Therefore, “gratification” mentioned in section 4 (1) of the Prevention of Corruption Act, 1947, cannot be confined only to payment of money. What the prosecution has to prove before asking the court to raise presumption against an accused
person is that the accused person has received "gratification" other than legal remuneration. If it is shown that the accused received the stated amount and that the said amount was not legal remuneration then the condition prescribed by the section is satisfied. C. I. Emslen v. State of U. P., (1960) 2 SCR 592 : 1960 SCJ 368 : AIR 1960 SC 548 : 1960 Cr LJ 729.

(iii) Ingredients of offence under Section 161, Indian Penal Code.—This section requires that the person accepting the gratification should be (1) a public servant, (2) he should accept gratification for himself, and (3) the gratification should be as a motive or reward for rendering or attempting to render any service or disservice to any person with any other public servant.—The State of Ajmer (now Rajasthan) v. Shivji Lal, 1959 (Sup) 2 SCR 739 : 1959 SCJ 911 : 1959 MLJ (Cr) 639 : 1959 Cr LJ 1127 : 1959 AWR (HC) 36 : 1959 All Cr R 303 : (1961) 1 SCA 288 : AIR 1959 SC 847.

To constitute an offence under Sec. 161 it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is not even aware of it. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. Nevertheless he is guilty of the offence under Sec. 161 of the Indian Penal Code—Mahesh Prasad v. State of Uttar Pradesh, 1955 SCR 963 : 1955 Cr. LJ 249 : 1955 AWR (HC) 245 : 1955 ALJ 87 : 1955 SCJ 153 : 1955 SCA 65 : AIR 1955 SC 70.

Thus, as observed in Dalpat Singh and another v. The State of Rajasthan, (1968) 2 SC J 676, before an offence is held to fall under section 161, Indian Penal Code, the following requirements have to be satisfied: (1) the accused at the time of the offence was, or expected to be, a public servant, or obtained, or agreed to accept, or attempted to obtain from some person gratification, (3) that such gratification was not a legal remuneration due to him, and (4) that he accepted the gratification in question as a motive or reward, for (a) doing or forbearing to do an official act; (b) showing or forbearing to show favour or disfavour to someone in the exercise of his official functions; or (c) rendering, or attempting to render, any service or disservice to someone, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant. (See also Bhanu Prasad Hari Prasad Dave and another v. The State of Gujarat, AIR 1968 SC 1828).

The mere fact that a person takes money in order to get a job for another person somewhere would not by itself necessarily be an offence under Sec. 161 of the Indian Penal Code unless all the ingredients of that section are made out. If any one of the main ingredients of that section has not been made out, the accused would be entitled to acquittal. When there is no indication whatever that any public servant was to be approached or influenced by the accused, there can be no question of making a presumption that the payment was as a motive or reward for rendering service with any public servant. In this view of the matter the offence under Sec. 161 of the Indian Penal Code was not made out against the accused for one of its essential ingredients was missing and no presumption could be drawn in the circumstances in that connection—State of Ajmer

S.L.I.—6
(iv) Relevant considerations.—When a public servant is charged under section 161 of the Indian Penal Code and it is alleged that illegal gratification was taken by him for doing or procuring an official act it is not necessary for the Court to consider whether or not the accused public servant was capable of doing or intended to do such an act—Ram Sarup Gupta v. The Delhi Administration, (1969) 2 SCWR 120; see also Shiv Raj Singh v. The Delhi Administration, AIR 1968 SC 1419.

No doubt, a police officer has no right to demand any bribe, but when he is hauled up before a Criminal Court to answer a charge of having taken illegal gratification, the question whether any motive for payment or acceptance of bribe at all existed is certainly a relevant and material fact for consideration,—Madan Mohan v. State of U. P., AIR 1954 SC 637 : (1954) 55 Cr LJ 1654.

(v) Evidence and proof.—To establish the offence under Sec. 161 of the Indian Penal Code all that prosecution has to establish is that the appellants were public servants and that they had obtained illegal gratification for showing or forbearing to show, in the exercise of their official functions, favour or disfavour. The question whether there was any offence which the first appellant could have investigated or not is irrelevant for that purpose. If he had used his official position to extract illegal gratification the requirement of the law is satisfied,—Bhanu Prasad Hari Prasad Dave and another v. The State of Gujarat, AIR 1968 SC 1323.

Where a person is a public servant in the very office where the appointment is to be made and takes money in order to get the appointment made, there is no further question of the charge of evidence indicating who was the other public servant with whom the service would be rendered. The part of Section 494 which was considered in Shivjilal's case, 1959 (Sup.) 2 SCR 739 : AIR 1959 SC 847, was an entirely distinct part where it would be necessary to show who was the other public servant who would be approached—The State of Maharashtra v. Jagat Singh Charan Singh Arora, AIR 1964 SC 492 : (1964) 2 SCJ 215 : (1963) 2 SCWR 464 : 1964 SCG 228 : (1964) 1 Cr LJ 452 : 1964 MLJ (Cr) 404.

(vi) Laying of traps.—Whenever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and keepers of the law. However regrettable the necessity of employing agents provocateurs may be, it is one thing to tempt a suspected offender to over-action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done—Ram Janam Singh v. State of Bihar, AIR 1956 SC 643 : 57 Cr LJ 1254.


"It may be that the detention of corruption may sometimes call for the laying of traps, but there is no justification for the police
authorities to bring about the taking of a bribe by supplying the bribes money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is not part of their business to provide the instruments of the offence.”

The Court expressed great disapprobation of the practice that seems to have become very frequent of sending Magistrates as witnesses of police traps and endorsed the following observations of Calcutta High Court in AIR 1951 Cal 324.

“To make the Magistrate a party or a limb of the police during the police investigation seriously undermines the independence of the Magistrate and prevents his judicial outlook. The Magistrates are the normal custodians of the general administration of criminal justice and it is they who normally decide and pass judgments on the acts and conduct of the police. It is not enough to say, therefore, that the Magistrate acting as a witness in a particular case does not himself try that case. This practice is all the more indefensible when there is no separation of the executive from the judiciary.”

“The basic merit of the administration of criminal justice in the State lies in the fact that the person arrested by the police is entitled to come before an independent and impartial Magistrate who is expected to deal with the case without the Magistrate himself being in any way a partisan or a witness to police activities.

“There is another danger and that is the Magistrates are put in unenviable and embarrassing position of having to give evidence as a witness and then being disbelieved. That is not the way to secure respect for the Magistracy charged with the administration of justice. In my judgment this is a practice which is uniform to the accused and unfair to the Magistrates.

“It is also unfair to the Police. Because charged with the high responsibility and duty of performing a great and essential public service of this state the police cannot afford to run the risk of approbrium even if unfounded that they have enlisted the Magistrate in their cause. That risk is too great and involves forfeiting public respect and confidence.”

In the present case some witnesses were not a willing party to the giving of the bribe to the accused but only actuated with the motive of trapping him. Their evidence could not be treated as the evidence of accomplices. Their evidence was nevertheless the evidence of partisan witnesses who were out to entrap the accused.

The independent witnesses came on the scene after the whole affair was practically over and the stage had been reached when it was necessary to compare the numbers of the notes which had been recovered from the bedroom of the accused with the number of the notes which had been handed over to the witness when the raid was being organised. It was at that stage that they figured in the transaction. Their evidence could certainly not be impeached as that of partisan witness.
In Mahadev Dhanappa Gunakki and another v. The State of Bombay, 1953 Cr LJ 902 : 1953 SCJ 229 : AIR 1958 SC 179 : 1953 SCA 685, it was contended that although there was a definite allegation of the alleged offer of bribe made by the appellants to the two police officers and although the two police officers informed their superior officers and the latter advised the trapping of the appellants nothing was done for two months. It was concluded from such inaction that no bribe had in fact been offered and that this story was, therefore, false—It was held that there is no force in this argument, because the police authorities had par force to wait until the appellants made a further move in the matter. It is not reasonable to suggest that the police authorities should go out of their way and actively invite bribes in order to trap the appellants.

(vii) Omission to specify public servant-in-charge—Where the public servant is not specified in the charge, that would only mean that there is defect in the charge and such a defect would be curable under Section 537 of the Code of Criminal Procedure unless such error or omission or irregularity or misdirection has in fact occasioned a failure of justice. State of Maharashtra v. Jagat Singh Charan Singh Arora, AIR 1964 SC 492 : (1964) 1 Cr LJ 432 : (1964) 2 SCJ 215.

In Shivjilal’s case, 1959 (Sup) 2 SCR 729, the Supreme Court pointed out that besides the omission to indicate the other public servant in the charge there was nothing in the complaint, in the charge-sheet submitted by the police and in the evidence to show who was the other public servant with whom service or discharge would be rendered by Shivjilal. It was in these circumstances that the Supreme Court held that one of the main ingredients of that part of Section 161 which applied to that case had not been proved.

(viii) Amassing of wealth in excess of official remuneration: Presumption of corruption.—Where a person is charged with criminal misconduct under Section 5 (2) of Prevention of Corruption Act and it is seen that he is in possession of property or income which could not have been amassed or earned by the official remuneration which he had obtained, then the court is entitled to come to the conclusion that the amassing of such wealth was due to bribery or corruption and the person is guilty of an offence of criminal misconduct. Such a presumption cannot be drawn in the case of a prosecution under Sections 161, 165 and 409, Penal Code.—Om Prakash Gupta v. State of Uttar Pradesh, 1957 SCR 423 : 1957 Cr LJ 575 : 1957 SCJ 289 : 1957 SCA 337 : 1957 SCC 214 : AIR 1957 SC 458.

(ix) Sentence.—For public servant to be guilty of corruption is a very serious matter and the courts would not look upon it with undue leniency.—Raman Lal Mohan Lal Pan lya v. The State of Bombay, AIR 1960 SC 961 : 1960 Cr LJ 1380.

(b) Section 165, Indian Penal Code:

The difference between the acceptance of a bribe made punishable by Sections 161 and 165 is thus: under the former section the present is taken as a motive or reward for abuse of office; under Section 165 the question of motive or reward is wholly immaterial and the acceptance of a present is forbidden because, though ostensibly taken on no consideration, it is in reality a bid for an official favour the refusal of which after acceptance of the present, may not be always possible—Gaur’s Penal Law of India.
(i) Word "subordinate": Meaning of.—Section 165 has been so worded as to cover cases of corruption which do not come within Section 161 or Sections 162, 163. When with that intention the Legislature has used the word "subordinate" in Section 165 without any limitation, there is no justification for reading into the word the limitation by the words "in respect of those very functions". Therefore the Assistant Controller is "subordinate" to the Joint Chief Controller, even though he had no functions to discharge in connection with the appeal before the Joint Chief Controller of Imports and Exports—R. G. Jacob v. Republic of India, (1963) 3 SCR 800 : (1963) 1 Cr. L J 486 : 1963 SCD 315 : (1963) 2 Adh WR (SC) 79 : (1963) 2 SCJ 330 : (1963) 2 Andh WR (SC) 79 : (1963) 2 SCJ 330 : (1963) 2 MLJ (SC) 79 : 1963 MLJ (Cr) 453 : AIR 1963 SC 550.

(c) Section 165-A, Indian Penal Code:

Section 165-A provides for the punishment of an abetment of an offence punishable under Section 161 or Section 165 whether or not the offence is committed in consequence of the abetment.

(i) To bribe a commissioner having no jurisdiction.—A Commissioner having no jurisdiction is not public servant and therefore the appellants did not commit any offence under Section 165-A of the Indian Penal Code by their offering him money in order to have an opportunity to tamper with the book of account which were in his custody.—Padam Sen v. State of Uttar Pradesh, (1961) 1 SCR 884 : (1961) 1 Cr L J 322 : (1961) 2 SCJ 79 : AIR 1961 SC 218 : 1961 AWR (HC) 93 : 1961 ALJ 56.

(ii) Conviction under Section 165-A for offering bribe to Central Excise Inspector: Evidence of Inspector if requires corroboration.—In Chandulal Gor-handas Patel v. The State of Gujarat, (1970) 1 SCWR 931, the appellant was charged under Section 165-A of the Indian Penal Code on the allegation that when the Central Excise Inspector had shown his intention to take legal steps while investigating the act of evasion of excise duty in respect of certain silk cases, all the three accused in order to prevent him from doing so had offered a certain sum by way of bribe. The contention raised on behalf of the appellant in the Supreme Court was that unless there was corroboration it would not be safe to act on the words of the Central Excise Inspector.

The Supreme Court held that generally the Court may act on the testimony of one witness. Corroboration is required as a matter of law in some cases. To illustrate, Section 114, Illustration (4) of the Evidence Act states that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. In the present case, it cannot be said that the Inspector is an accomplice. It was said that the Inspector would be in the nature of a partisan witness and therefore his evidence required corroboration. It is not possible to take that view. It has to be remembered that in the present case, the Inspector did not have any other person to witness the offer of bribe. Such a case may not be uncommon. One would not offer bribe in the presence of others. Ordinarily, where a trap is laid because of prior information witnesses are arranged. In the present appeal, the detection of three cases of goods in the duty paid godown was sudden and events also happened with certain amount of rapidity. Therefore in a case of this description the court would look at the entire evidence with care and caution to find out whether there is any interested evidence or whether the case is manufactured out of malice and enmity. If the court finds in an examination of the entire evidence that it is reliable and there are reasons
to accept the evidence, there will be no legal impediment to the proof of the case.


(a) Section 1:

The Act has no retrospective operation. To take into consideration the pecuniary resources or property in the possession of the accused or any other person on his behalf which are acquired before the date of the Act is in no way giving the Act a retrospective operation. A statute cannot be said to be retrospective "because a part of the requisites for its actions drawn from a time antecedent to its passing."—Sajjan Singh v. State of Punjab, AIR 1964 SC 464 : (1964) I Cr. L.J 310 : SCD 1964 874.

(b) Section 2:


Section 2 of the Act provides that for the purposes of this Act "public servant" means a public servant as defined in Section 21 of the Indian Penal Code. It is not disputed that under Section 21 the appellants are public servants. The East Indian Railway which employed the appellant was at the material time owned by the Government of India and managed and run by it, and so if the status of the appellants had to be judged at the material date solely by reference to Section 21 of the Code, there would be no difficulty in holding that they are public servants as defined by the said section—P. R. Chowdhary v. The State of Uttar Pradesh, (1960) 1 SCR 290 : 1960 AWR (HC) 1 : 1960 All Cr. R 24 : 1959 Cr LJ 1497 : 1960 SCJ 122 : ILR (1959) 2 All 336 : AIR 1959 SC 1310.

It is, however, urged that, for determining the status of a railway servant, it is necessary to consider section 137 of the Indian Railways Act, 1890. Now section 137, sub-section (4), opens with the non-obstante clause and expressly states that a railway servant shall not be deemed to be a public servant for any of the purposes of that Code subject of course to the exception mentioned in sub-section (1). The argument was that the non-obstante clause has the effect of excluding the application of section 21 of the Code in all cases except those falling under Chapter IX of the Code; and it is urged that since the offences charged against the appellants are outside Chapter IX of the Code, sub-section (4) created a bar against treating them as public servants for the purpose of said offences. This argument, however, ignores the relevant words "for any of the purposes of that Code" used in sub-section (4). These words indicate that the bar created by sub-section (4) applies, and is confined to the purposes of that Code and cannot be extended beyond the said purposes. What sub-section (4) really provides is that if a railway servant is charged for an offence under the Indian Penal Code and the said offence is outside Chapter IX of the Code, he cannot be treated as a public servant. This sub-section does not purport, or intend to make any provision in respect of offences which are outside the Penal Code. In respect of such offences neither sub-section (1) nor sub-section (4) of the Railways Act would apply, and
the question as to whether railway servants fall within the mischief of the Act must be decided in the light of the provisions of the said Act itself. Coming to the question whether the appellants can be said to be Public servant under section 2 of the Act, there can be no doubt that the effect of section 2 of the Act is that the status of accused persons has to be determined by the application of section 21 of the Indian Penal Code as if the said section had been included in the Act. If that be so, the appellants cannot resist the conclusion that they are public servants under section 2 of the Act. The contention that because section 2 of the Act refers to section 21 of the Indian Penal Code the bar created by section 137 (4) of the Railways Act would inevitably come into operation is unsound. The said bar can be invoked only if the status of the accused person is being determined for any purposes of the Code other than those of Chapter IX. In the present case the main offences charged are under the Act and not under the Code, and so section 137 (4) is inapplicable. The appellants undoubtedly are public servants—S. Gangoli v. The State of Uttar Pradesh, (1960) 1 SCR 290.

**Head Clerk of Electricity Board, if public servant.**—A Head clerk employed under the State Electricity Board and attached to the office of the Executive Engineer is not a Government servant but he was the servant of the State Electricity Board constituted under the provisions of the Electricity (Supply) Act, 1948 (Act 54 of 1948). The State Electricity Board so constituted is not a department of the State Government. It is a body corporate having the power to appoint the Secretary and such other officers and servants as may be required to enable the Board to carry out the functions of the Board. On a plain reading of Section 81 of the Electricity (Supply) Act, the officers and servants of the Board are deemed to be public servants only when acting or purporting to act in pursuance of any of the provisions of the Electricity (Supply) Act, 1948. So far as the receiving of a bribe is concerned, it cannot be brought within the scope of acting or purporting to act in pursuance of any of the provisions of the Electricity (Supply) Act. Therefore, the appellant while taking the bribe, cannot be deemed to be a public servant within the meaning of Section 21, Indian Penal Code in view of the language of Section 81 of the Electricity (Supply) Act,—Akhtar Alam v. The State of Bihar, (1969) 1 SCC 142.

**Section 4:**

**Constitutionality of the section.**—Section 4 has been enacted by Parliament and, therefore, it must be held that what is lays down is a procedure established by law. It cannot be challenged on the ground that it goes against the provision of Act 21 of the Constitution. Ram Chandra Prasad v. State of Bihar, (1962) 2 SCR 50 : (1961) 2 Cr LJ 811 : (1962) 2 SCA 661 : (1962) 2 SCJ 13 : AIR 1961 SC 1629.

The presumption under section 4 arises when it is shown that the accused received the stated amount and that the said amount was not legal remuneration. The word ‘gratification’ in section 4 (1) is to be given its literal dictionary meaning of satisfaction of appetite or desire; it cannot be construed to mean money paid by way of a bribe—Sailendranath Bose v. The State of Bihar, AIR 1968 SC 1292.

**Court bound to raise presumption.**—In State of Madras v. A. Vaidyanntha Iyer, AIR 1958 SG 61 : 1958 Cr LJ 232 the Supreme Court observed:
“Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal case and shifts the onus on to the accused. It may here by mentioned that the legislature has chosen to use the words “shall presume” and not “may presume”, the former a presumption of law and the latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but section 4 of the Prevention of Corruption Act is in pari materia with the Evidence Act because it deals with a branch of law of evidence e.g., presumptions, and therefore should have the same meaning. Now ‘shall presume’ is a presumption of law and, therefore, it is obligatory on the court to raise this presumptions in every case brought under this section because, presumptions of law (unlike the case of presumptions of fact constitute a breach of jurisprudence.”

Presumption if mandatory.—Where it is proved that gratification has been accepted, then the presumption shall at once arise under this section.—State of Madras v. A. Vaidyanatha Iyer, AIR 1958 SC 61 : 1958 Cr LJ 232.

In order to raise a presumption under sub-section (1) of Section 4 of the Act, the prosecution has to prove that the accused person has received “gratification other than legal remuneration.” When it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied and the presumption thereunder must be raised. Thus what is required to be proved is that there was payment of money and not that the said payment was of an incriminating character—V. D. Jhingam v. State of U. P., AIR 1966 SC 1762.

Presumption under Section 4 when arises.—The presumption under Section 4 arises when it is shown that the accused received the stated amount and that the said amount was not legal remuneration. The word gratification’ in Section 4 (1) is to be given its literal dictionary meaning of satisfaction of appetite or desire; it cannot be construed to mean money paid by way of bribe.—Sailendranath Bose v. The State of Bihar, AIR 1968 SC 1292.

It was held by the Supreme Court in Dhanwant Rai Balwant Rai v. State of Maharashtra, AIR 1964 SC 575 : (1964) 1 Cr. LJ 437 that in order to raise the presumption under this sub-section (1), what the prosecution needs to prove is only that the accused person has received “gratification other than legal remuneration” and when it is shown that he has received a certain sum of money which was not legal remuneration then the condition prescribed by this section is satisfied and the presumption thereunder must be raised. Mere receipt of money is sufficient to raise a presumption under this sub-section—V. D. Jhingam v. State of U. P., 1966 Cr LJ 1357 : AIR 1966 SC 1762. This has already been approved in C. I. Emden v. State of U. P., AIR 1960 SC 548.

It cannot be suggested that the relevant clause in Section 4 (1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received
by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised, whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of Section 4 (1) it would be unreasonable to hold that the word "gratification" in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment—C. I. Emden v. State of Uttar Pradesh, (1960) 2 SCR 592 : 1960 SCJ 368 : 1960 MLJ (Cr.) 228 : 1960 Cr. LJ 729 : AIR 1960 SC 548.

What the prosecution has to prove.—What the prosecution has to prove is that the accused person has received "gratification other than legal remuneration" and when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied—Dhanwanrai Balwantra Desai v. State of Maharashtra, 1963 (Sup) 1 SCR 485 : (1964) SCJ 133 : 1563 AWR (HC) 358 : 1963 1 SCWLR 178 : AIR 1964 SC 575.

Burden of proof under this section and Section 114, Evidence Act.—Whereas under Section 114 of the Evidence Act it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-section (1) of Section 4, however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valuable thing is proved to have been received by an accused person the court is required to draw a presumption that the person received that thing as a motive of reward such as is mentioned in Section 161 Indian Penal Code. Therefore, the court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Sec. 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The word "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by "proof" and not by a bare explanation which is merely plausible—Dhanwanrai Balwantra Desai v. State of Maharashtra 1963 (Sup) 1 SCR 485 : (1964) 1 SCJ 133 : 1963 AWR (HC) 358 : (1963) All Cr R 185 : (1963) 1 SCWLR 178 : AIR 1964 SC 575.

The burden of proof lying upon the accused person under Section 4(1) of the Prevention of Corruption Act will be satisfied if the accused person establishes his case by a preponderance of probability and it is not necessary that he should establish his case by the test of proof beyond a reasonable doubt. In other words, the onus on the accused may well be compared to the onus on a party in civil proceedings. The criminal court must hold that the plea made by the accused is proved if a preponderance of probability is established by the evidenced by him—V. D. Jhingan v. State of U. P., AIR 1966 SC 1762.
Even if the explanation given by the accused is reasonably probable, the presumption raised against him can be said to be rebutted.

The words "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption as created by the provision cannot be said to be rebutted—Dhanwantri Balwantra i Desai v. State of Maharashtra, 1964 (1) Cr LJ 437 : AIR 1964 SC 575.

The question whether a presumption of law or of a fact stand rebutted by the evidence or other material on record is one of the fact and not of law—Dhanwantra Balwantra i Desai v. State of Maharashtra, 1964 (1) Cr LJ 437 : AIR 1964 SC 575.

The burden resting on the accused person under Section 4 would not be as light as that placed on him under Section 114 of the evidence Act and the same cannot be held to be discharged merely by reason of the fact that the explanation offered by him is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in that provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. But at the same time it may be mentioned that the burden resting on the accused will be manifested if the accused person establishes his case by a preponderance of probability and it is not necessary for him to establish his case by the test of proof beyond reasonable doubt. In other words, the nature of the burden placed on him is not the same as that placed on prosecution which must not only prove its case but prove it beyond reasonable doubt—Sailendranath Bose v. The State of Bihar, AIR 1968 SC 1292.

Section 5:

The offence under this section is wider and not narrower than the offence of bribery as defined in Section 262, Indian Penal Code. The words "in the discharge of his duty" do not constitute an essential ingredient of the offence—(1962) SCR 259 : 1961 All LJ 972 : 1962 All Cr. R. 1 : 1961 AWR (HC) 7.0 : (1962) 1 Cr LJ 203 : (1962) 2 SCA 313 : (1962) 2 SCJ 538 : AIR 1962 SC 195.

Section if repeals Section 409 Indian Penal Code—The Prevention of Corruption Act being a temporary one, the Legislature would not have intended in the normal course of things that a temporary statute like the one in question should supersede an enactment of antiquity even if the matter covered the same field—Om Prakash Gupta v. State of U. P. 1957 SCR 423 : 1957 Cr LJ 575 : 1957 SCJ 289 : 1957 SCA 337 : 1957 ALJ 585 : 1957 SCC 214 : AIR 1957 SC 458.

Facts necessary to prove offence.—In order to succeed in respect of the charge under Section 5 (1) (a), the prosecution has to prove that the accused person had accepted or obtained or agreed to accept or attempted to obtain from any person any gratification by way of bribe within the meaning of Section 161 of the Indian Penal Code—C. S. D. Swami v. The State, 1960 SCR 461 : 1960 Cr LJ 131 : 1960 SCJ 160 : ILR 1959 Punj 1955.
Section 5 (1) (b) : Scope.—The words “whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or “in Section 5 (1) (b) of the Prevention of Corruption Act qualify the expression “any person” in the same way as the portion reading “having any connection with the official function of himself.” So read “any person having any connection with the official functions of himself” would include any subordinate of the person who accepts the valuable thing. The words “of himself” do not refer to the person in the expression “any person” but refers to the pronoun “he” at the beginning of the sub-section. A subordinate of the public servant would have connection with his official functions. The sub-section aims at folding within its ambit not only outsiders “who are likely to be concerned in any proceeding or business transacted or about to be transacted” by the public officer but also any subordinate or any other person who is connected with the official functions of the public servant—P. Siraju idin v. State of Madras, (1970) 1 SCC 395.

5-a' Purchase of goods on credit with no intention to pay, if offence under section 5 (1) (b).—In Delhi Administration v. S. N. Khosla, 1971 (1) SCC 872, Sikri C. J. observed:

“In our opinion the High Court was quite right in holding that no offence had been committed under section 5 (1) (b) of the Act. It seems to us that there was consideration for the obtaining of goods on credit, it cannot be said that an office if he obtains goods on credit, even if he does not intend to pay, is obtaining a valuable thing without consideration. The case may be different if it is proved that there was an agreement with the trader that the trader would not demand the money and the office would not pay, and the bill and the remainder sent would be merely a formality. There is no evidence to sustain such an inference in this peculiar case.”


Offence under section 5 (1) (c)—If different from offence under Section 405 I.P.C.—The offence under Section 5(1)(c) is different from any previous existing offence under any penal statute and there can, therefore, be no scope for speculation about repeal. The words used in sub-section (4), “any other law”, made the position quite clear and explicit. Other law does not mean identical law in which case the word “other” will have no meaning. There can, therefore, be no doubt whatever that Section 5(1) (c) of the Prevention of Corruption Act creates a new offence called “Criminal misconduct” and cannot by implication displace the offence under Section 405, Penal Code—Om Prakash Gupta v. State of U. P., 1957 SCR 423 : 1957 Cr LJ 575 : 1957 SCJ 289 : 1957 SCA 337 : 1957 SCC 214 : AIR 1957 SC 458.

Corruption need not be in connection with his own duty.—To constitute the offence under this clause, it is not necessary that the accused (a public servant) must do something in connection with his own duty and thereby obtain valuable or pecuniary advantage.
It is wrong to say that if a public servant were to take money from a third person by corrupt or illegal means or otherwise abusing his official position, in order to corrupt some other public servant without there being any question of his misconducting himself in the discharge of his own duty, he has not committed an offence under Section 5 (1) (d). It is erroneous to hold that the essence of an offence under Section 5 (2), read with Section 5 (1) (d), is that the public servant should do something in the discharge of his own duty and thereby obtain a valuable thing or pecuniary advantage—Dhaneshwar Naran Saxena v. The Delhi Administration, (1962) 3 SCR 259 : 1961 ALJ 972 : 1962 All CR R 1 : 1961 AWR (HC) 750 : (1962) 1 Cr LJ (SC) 203 : (1962) 2 SCA 313 : (1962) 2 SCJ 568 : AIR 1962 SC 195.

The above case has overruled the case, State of Ajmer v. Shivjilal, AIR 1959 SC 847 : 1959 Cr LJ 1127. Wherein it was held that mere receiving of money by a public Servant even if it be by corrupt means, is not sufficient to make out an offence under Section 5 (2) read with this clause if there was no misconduct in the discharge of his own duty.

On a plain reading of the express words used in the clause, there is no doubt that every benefit obtained by a public servant for himself, or for any other person by abusing his position as a public servant falls within the mischief of the said clause—M. Narayanan Nambiar v. State of Kerala, 1963 (Supp) 2 SCR 724 : (1963) 2 Cr LJ 186 : (1963) 2 SCJ 582 : 1963 SC 1116.

Teacher receiving money to get employment in other department—. Section 161, I.P.C. requires that the accused accepting the gratification should (1) be a public servant, (2) accepts it for himself, and (3) should accept it as a motive or reward for rendering or attempting to render any service or disservice to any person with any other public servant—State of Ajmer v. Shivjilal, AIR 1959 SC 847.

Where the charge under Section 161, I.P.C. states that the accused (a public servant) has accepted money from a certain person “as illegal motive for securing a job for the person”, the first two ingredients set out above are clearly established but the third ingredient ‘namely, that the gratification should have been taken as a motive or reward for rendering or attempting to render any service with any public servant’ is not e.e.n charged against the accused. The charge should not merely say that the accused took the money as a motive for securing the job for the person. It should also disclose who the public servant was to whom the accused would have approached for rendering or attempting to render service to the person—Ibid.

Ingredients to be established.—To bring home an offence under Section 5(1)(a) by the Act it is necessary to prove that the act complained of were done by the appellants in the discharge of their official duties. The words “in the discharge of his duty” occurring in Section 5 do not constitute an essential ingredient of the offence under Section (1) (d),the ingredients of that offence being (1) that the accused should be a public servant, (2) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant, (3) that he should have obtained a valuable thing or pecuniary advantage, and (4) for himself a any of the person—Dalpat Singh v. The State of Rajasthan, (1968) 2 or SCJ 676.

For an offence under this section the first question that requires consideration is with what motive or as reward for what act was the sum paid as
illegal gratification by the complainant and accepted by the accused—Madan Mohan Singh v. State of U. P., AIR 1954 SC 637.

To constitute an offence under this section, it would be enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver "with any other public servant" and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance and is even aware of it. He may not even have intended to do what he holds himself out as capable of doing. He may accordingly be guilty of cheating. None the less he would be guilty of the offence under this section—Mahesh Prasad v. State of U. P., AIR 1955 SC 70.

Relevancy of evidence of previous acts of taking bribes.—The acceptance of a bribe on one occasion would not essentially or vitally be dependent on the truth or otherwise of the previous occasion when also bribes had been accepted. Under these circumstances, evidence should be confined only to the incident mentioned in the charge when fresh bribe was demanded, the trap was laid and the accused was caught—State of Bihar v. Basawan Singh AIR 1958 SC 500.

While a course of conduct can be proved when a person is arraigned under Sections 5 (1) (a) and 5 (1) (b), such a course of conduct is impossible to be let in evidence when an offence under Section 161 and 162 is being enquired into or tried. Nor would it be correct to take the view that the evidence in regard to the previous bribes is in the nature of introductory evidence forming a background to the later incident which alone is the subject-matter of the charge—Om Prakash v. State of U. P., AIR 1957 SC 458.

Proof to establish offence under Section 5 (1) (c)—The offence under section 5 (1) (c) is the same as embezzlement, which in English law, is constituted when the property has been received by the accused for or on the name or on account of the master or employer of the accused and it is completed when the servant fraudulently misappropriates that property. It is not necessary or possible in every case to prove in what precise manner the accused person had dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him may be treated as a strong circumstance against the accused person. In the case of a servant charge with misappropriating the goods of his master, the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty of account to his master and has not done so. If the failure to account was due to an accidental loss, that the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defence or circumstances which may exonerate him. If these acts are within the knowledge of the accused, then he has to prove them. Of course, the prosecution has to establish a prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on him to prove his innocence.—Krishan Kumar v. Un'ion of India, (1960) 1 SCR 452 : 1959 Cr. LJ 1508. 1960 AWR (HC) 48 : 1960 SCJ 1. AIR 1959 SC 1390.

Word "abuse" : Meaning of.—Dictionary meaning of the word "abuse" is given in Oxford Dictionary at page 7 (1961 ed.) "Misuse; make bad
use of; deceiver” and “misuse, perversion (of); an established injust or pro-
vision corrupt practice”; In the context of this it would mean that any
means where the official position of the public servant has a pressure,
influence or in any way comes to be played for receiving or obtaining the
‘valuable thing’ or pecuniary advantage”, It may be said to be a residu-
ary means of imputing the act of “obtaining valuable thing or pecuniary advan-
tage” briefly by virtue of the office of public servant. It is not at all
necessary that the public servant should do something or should have power
to do something.—Dhaneshwar Narain Saxena v. Delhi Administra-

Section 5 (1) (e), if creates a new offence.—This sub-section did not
create a new offence but only laid down a rule of evidence enabling the
court to raise a presumption of guilt in certain circumstances. It cannot
be gainsaid that this method of proof is a complete departure from the
established principle of criminal jurisprudence that the burden always lies
on the prosecution to prove all the ingredients of the offence charged and
that the burden never shifts on to the accused to disprove the charge framed
against him.—C. S. D. Swami v. State of Punjab, AIR 1960 SCJ: (1960) 1
SCR 461; 1960 Cr. LJ 131.

Ingredients of offence under Section 5 (1) (a) and 5 (1) (d).—The
elements necessary to prove an offence under Section 5 (1) (a) are: (1) that
the accused was a public servant; (2) that he habitually accepted or obtain-
ed from any person gratification for himself or for any other person;
and (3) that he did so as a motive or reward for doing or for bearing an
official act. In the case of a charge under Section 5 (1) (d) it would be
necessary to prove that (1) the accused was a public Servant; (2) that he
used corrupt or illegal means or otherwise abused his position; (3) that
he obtained for himself or for any other person any valuable thing or
pecuniary advantage—Bhagwan Sahai v. The State of Punjab, 1960 Cr LJ
676: AIR 1960 SC 487.

Sections 5 (1) (c) and 5 (1) (d) read with Section 5 (2)—sanction for
charge under Section 5 (1) (d): If separate sanction required for
charge under section 5 (1) (e).—A charge-sheet was filed against the
appellant under Section 5 (1) (e) and (5) (1)(d) read with Section 5(2)
of the Act. The Special Judge, convicted the appellant for a charge
under Section 5(1) (e) read with Section 5(2), but acquitted him in respect
of the charge under Section 5(1)(d). Appeal against conviction was dismissed
by the High Court. On appeal to the Supreme Court it was held that
there was no validity on the submission that the sanction given by the
Government did not cover the trial of the charge under Section 5(1)(e) and
that, therefore, there was no justification in holding that the conviction
under section 5(1)(e) read with Section 5(2) was bad for want of the requisite
sanction—Major Som Nath v. Union of India and another, 1971 (2)
SCC 387.

Essence of offence under Section 5 (1) (d) and 5(2).—Mere
receiving of money by a public servant even if it be by corrupt
means is not sufficient to make out an offence under Section 5(2) read with
Section 5(1) (d). The offence under this provision consists of criminal
misconduct in the discharge of his duty. In order, therefore, that this
offence is committed, there should be misconduct by the public servant in the discharge of his duty. In other words, the public servant must do something in connection with his own duty and thereby obtain money for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. If a public servant takes money from a third person in order to corrupt some other public servant and there is no question of his misconducting himself in the discharge of his own duty, that action may be an offence under Section 161 of the Indian Penal Code but would not be an offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. The essence of an offence under Section 5(2) read with Section 5(1)(d) is that the public servant should do something in the discharge of his own duty and thereby obtain any valuable thing or pecuniary advantage for himself or for any other person by corrupt or illegal means or by otherwise abusing his position. The words “by otherwise abusing his position” read along with the words “in the discharge of his official duty” appearing in Section 5(1)(d) make it quite clear that an offence under that section acquires that the public servant should misconduct himself in the discharge of his own duty.—The State of Ajmer v. Shivjilal, 1959 SCJ 911 : 1959 All Cr R 303 : (1961) 1 SCA 288 : AIR 1959 SC 847.

Obtaining pecuniary advantage: Meaning.—The words “pecuniary advantage are of wide amplitude but even so in the context of Section 5(1)(d) obtaining goods on credit cannot be held to amount to obtaining pecuniary advantage.—Delhi Administration v. S. N. Khosla, (1971) 1 SCC 872.

Offence under Section 5(1)(d) and bribery: Distinction.—The word “obtains” does not eliminate the idea of acceptance of what is given or offered to be given, though it connotes also an element of effort on the part of the receiver. One may accept money that is offered, or solicit payment of a bribe, or extort the bribe by threat or coercion; in each case, he obtains a pecuniary advantage by abusing his position as a public servant. The word “obtains” is used in Sections 161 and 165, Penal Code. The other words “corrupt or illegal means” find place in Section 162. Apart from “corrupt and illegal means”, we have also the words “or by otherwise abusing his position as a public servant”. If a man obtains a pecuniary advantage by the abuse of his position, he will be guilty under clause (d), Section 161, 162 and 163, refer to a motive or a reward for doing or for bearing to do something showing favour or disfavour to any person, or for inducing such conduct by the exercise of personal influence. It is not necessary for an offence under clause (d) to prove all this. It is enough if by abusing his position as a public servant a man obtains for himself any pecuniary advantage, entirely irrespective of motive or reward for showing favour or disfavour. To certain extent the ingredients of the two offences are common, no doubt. But to go further and contend that the offence as defined in clause (d) does not come within the meaning of bribery is to place too narrow a construction on the clause.—Ramkrishnan v. State of Delhi, 1956 SCR 182 : 1956 SCJ 432 : 1956 Cr. LJ 837 : 1956 SCA 577 : AIR 1956 SC 476.

Railway servant is a public servant.—Before “the amendment, railway servants were treated as public servants only for “the purpose of Chapter 9, Penal Code, but now as the result of the amendment all railway servants have become public servants not only for the limited purposes but also generally. In any event, they are public servants under the Preven-

Section 5(3), if creates separate offence.—The sanction was given under sub-section (2) read with sub-section (3) of Section 5 of the Act. The phaenology used indicates the consciousness on the part of the sanctioning authority that sub-section (3) is not a separate offence but it is only a supporting provision to the substantive offence under sub-sections (1) and (2). Sub-section (3) does not create a separate offence. It only lays down a rule of evidence which marks a departure from the well-established principle of criminal jurisprudence that onus is always on the prosecution to bring home the guilt to the accused. Under this provision in the circumstances mentioned therein the court shall presume unless this provision in the circumstances mentioned therein the court shall presume unless the contrary is proved that the accused person is guilty of criminal misconduct in the discharge of his official duty. When the sanction is given under sub-section (2) read with sub-section (3) it only means that on the facts disclosed in the said two documents, a case has been made out for drawing a presumption of guilt against the accused—Ram Sagar Pandit v. The State of Bihar, (1964) 2 Cr. LJ 65: 1963 SCD 617: (1963) 3 SCJ 565.

Section 5 (3) provides an additional mode of proving offence punishable under sub-section (2).—This sub-section provides an additional mode of proving an offence punishable under sub-section (2) for which any accused person is being tried. This additional mode is by proving the extent of the pecuniary resources or property in the possession of the accused or any other person on his behalf and thereafter showing that this is disproportionate to his known sources of income and that the accused person cannot satisfactorily account for such possession. If these facts are proved the section makes it obligatory on the courts to presume that the accused person is guilty of criminal misconduct in the discharge of his official duty, unless the contrary, i.e. that he was not so guilty is proved by the accused. The section goes on to say that the conviction for an offence of criminal misconduct shall not be invalid by reason only that it is based solely on such presumption. This is a deliberate departure from the ordinary principle of criminal jurisprudence, under which the burden of proving the guilt of the accused in criminal proceedings lies all the way on the prosecution.—Sajjan Singh v. The State of Punjab, AIR 1964 SC 464: 1964 Cur LJ (SC) 37: (1964) 1 CrLJ 310: 1964 SCD 874; K. B. Subbalayya v. State of Bihar, (1969) 1 SCC 617.

Repeal of Section 5 (3) during pendency of appeal: Effect.—It is not possible to accept the contention that as Section 5 (3) of the Act was repealed by the Parliament while the appeal was pending in the High Court, the presumption enacted in Section 5 (3) cannot be misled by the High Court. It is true that as a general rule alteration in the form of procedure are retrospective in character unless there is some good reason or other why they should not be. But there is another equally important principle viz. that a statute should not be construed as to create new disabilities or obligation or impose new duties in respect of transactions which were complete at the time the amending Act came into force. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law but whatever procedure was correctly

Words “unless contrary is proved” in Section 5 (3) : Meaning.—The requirement of the section is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge of his official duties ‘unless the contrary is proved’. The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary. After the conditions laid down in the earlier part of sub-section (3) of Section 5 of the Act have been fulfilled by evidence to the satisfaction of the court, the court has got to raise the presumption that the accused person is guilty of criminal misconduct in the discharge of his official duties, and this presumption continues to hold the field unless the contrary is proved, that is to say, unless the court is satisfied that the statutory presumption has been rebutted by cogent evidence. Not only that, the section goes further and lays down in forceful words that “his conviction therefor shall not be invalid by reason only that it is based solely on such presumption”—C.S.D. Swami v. The State, 1960 SCR 461 : 1960 Cr.LJ 131 : 1960 SCJ 160 : AIR 1960 SC 7.

Words “satisfactorily in Section 5 (3) : Meaning—The legislature has advisedly used the expression “satisfactorily account”. The emphasis must be in the word “satisfactory” and the legislature has thus deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came of his large wealth but also to satisfy the court that his explanation was worthy of acceptance.—C. S. D. Swami v. The State (1960) 1 SCR 461 : 1960 Cr. LJ 131 : AIR 1960 SC 7.

Expression “known sources of income under Section 5 (3)—The expression “known sources of Income” must have reference to sources known to the prosecution on allthrough investigation for the case. It was not, and it could not be, contended that “known sources of income” means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters “specially within the knowledge” of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate any officer so concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a Government servant the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement, unless he had a justification for borrowing from his provident fund.—C. S. D. Swami v. The State, (1960) 1 SCR 461 : 1960 Cr. LJ 131 : 1960 SCJ 160 : AIR 1960 SC 7.

Section 5 (3) to be liberally construed.—There can be no doubt that the language of such a special provision must be strictly construed. If the
words are capable of two constructions, one of which is more favourable to the accused than the other, the court will be justified in accepting the one which is more favourable to the accused. There can be no justification, however, for adding any words to make provision of law less stringent than the Legislature has made it—Sajjan Singh v. The State of Punjab, AIR 1964 SC 464-67 : (1964) 1 Cr. LJ 310 : 1964 SCD 874.

**Duty of prosecution to establish charge.**—All that the prosecution has to do is to show that the accused, or some person on his behalf, is in possession of pecuniary resources or property disproportionate to his known source of income and for which the accused cannot satisfactorily account. Once that is established then the court has to presume, unless the contrary is proved, that the accused is guilty of the new offence created by Section 5, namely, criminal misconduct in the discharge of his official duty—Biswabhusan Naik v. The State of Orissa, 1955 SCR 92 : 1954 Cr. LJ 1002 : 1954 MWN 465 : 1954 SCA 928 : 1954 SCJ 537 : AIR 1954 SC 359.

**Property in excess of remuneration : Presumption.**—Where a person is charged with criminal misconduct and it is seen that he is in possession of property or income which could not have been amassed or earned by the official remuneration which he had obtained, then the court is entitled to come to the conclusion that amassing such wealth was due to bribery or corruption and the person is guilty of an offence of criminal misconduct—Om Prakash Gupta v. State of U. P., 1957 SCR 423 : 1957 Cr. LJ 575 : 1957 SCJ 239 : 1957 SCA 337 : AIR 1957 SC 458.


> “When the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making them cognizable, it may be presumed that it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated high rank. Having regard, therefore, to the peremptory language of sub-section (4) of section 5 of the Act as well as to the policy apparently underlying it, it is reasonably clear that the said provision must be taken to be mandatory. . . .

> “It may be of considerable importance to the accused that the evidence in this behalf is collected under the responsibility of the authorised and competent investigating officer or is at least such for which such officer is prepared to take the responsibility. It is true that the result of a trial in court depends on the actual evidence in the case but it cannot be posed that the higher rank and the consequent greater responsibility and experience of a police officer has absolutely no relation to the nature and quality of evidence collected during investigation and to be subsequently given in court”.

**Defect under Section 3, proviso and Sec. 5(4) : If cured by Section 156 (2).**—Sub-section (2) of Section 156, Criminal Procedure Code cures investigation by an officer not empowered under that section i. e. with reference
to sub-sections (1) and (3) thereof. Obviously sub-section (2) of Section 156 cannot cure the violation of any other specific statutory provision prohibiting investigation by an officer of a lower rank than a Deputy Superintendent of Police unless specifically authorised. But apart from the implication of the language of Section 156 (2), it is not permissible to read the empatic negative language of sub-section (4) of Section 5 of the Act or of the proviso to section 3 of the Act, as being merely in the nature of an amendment of or a proviso to sub-section (1) of Section 156, Criminal Procedure Code—H. N. Risbud v. State of Delhi, 1955 SCR 1150 : 1955 Cr. LJ 526 : 1955 SCA 258 : 1955 SCJ 283 : AIR 1955 SC 196.

**Objection as to investigation when can be raised.**—Where the objection relating to the investigation made by an officer of inferior rank has not been raised in the trial court nor in the High Court, it cannot be allowed to be raised before the Supreme Court in appeal by Special leave—Din Dayal Sharma v. State of U. P., AIR 1959 SC 831 : 1959 Cr. LJ 1120.

**Sanction.**—The allegation against the appellant was that during his tours in several villages, his son who was a Director of a film company accompanied him and at the time of mutations the appellant asked the parties whose mutation he was attesting to purchase shares in the company of his son and that many of such persons on being so pressed by the appellant—purchased shares and did so because they were asked by the appellant who showed the official favour. The Commissioner sanctioned prosecution under Section 5-A charge was framed against the appellant under Section 5 (1) (a) of the Act and he was convicted.

For the appellant two questions were raised : (1) that the sanction for prosecution purported to be under Section 5 (1) (d) and therefore the appellant could not be convicted under Section 5 (1) (a) and that the High Court had no power to convert the conviction from one under Section 5 (1) (a) to one under Section 5 (1) (b) because the charge also was under Section 5 (1) (a). A subsidiary point was raised that in any event no offence under Section 5 (1) (d) had been made out against the appellant as no pecuniary advantage was proved.

The Supreme Court held that "the various elements of the sanction do not exclude habituality, and receipt of illegal gratification as reward or motive for doing an official act. No doubt the word "habitually" is not used in the sanction but the dates between which the offence is committed and the plurality of persons might well indicate habituality. Further, though every kind of gratification was not pecuniary advantage or valuable thing pecuniary advantage and valuable thing are included in gratificaton........Therefore the sanction, in our opinion, fall both within clause (a) of Section 5 (1) and clause (d) of Section 5 (1).

It was further held "that the High Court has not in terms altered the conviction from Section 5 (1) (a) to Section 5 (1) (a) although some of its observations have given room for such an argument. What the High Court meant was that the appellant had not taken a bribe in the sense in which that word is usually understood. The appellant had abused his position and held another person to derive a pecuniary advantage thereby. The facts, however, show that he had done this consistently for over several months. This would amount to his habitually obtaining, in the discharge of his duty, gratification for another person". Therefore the conviction was upheld—Bhagwan Sahai v. The State of Punjab, 1960 Cr. LJ 676 : AIR 1960 SC 487.

An accused can be retried after proper sanction has been obtained—L. D. Healy v. State of U. P., (1969) 1 SCC 149.


Charge: Essentials.—No particulars need be set out in the charge in such case because the offence under Section 5 (1) (a) does not consist of individual acts of bribe-taking as in Section 161 of the Indian Penal Code but is of a general character. Individual instances may be useful to prove the general averment in particular cases but it is by no means necessary because of the presumption which Section 5 (3) required the Court to draw—Biswaibhusan Naik v. The State of Orissa, 1955 SCR 92 : 1954 Cr. LJ 1002 : 1954 MWN 463 : 1954 SCA 928 : 1954 SCJ 537 : AIR 1954 SC 359.

If there is evidence forthcoming to satisfy the requirements of the earlier part of sub-section (3) of Section 5, conviction for criminal misconduct can be had on the basis of the presumption which is a legal presumption to be drawn from the proof of facts in the earlier part of sub-section (3) aforesaid. Hence, the failure of the charge under clause (a) of sub-section (1) of Section 5 does not necessarily mean the failure of the charge under Section 5 (1) (d)—C. S. D. Swami v. The State, 1960 SCR 461 : 1960 Cr. LJ 131 : 1960 SCJ 160 : 11LR 1959 Punj 1955 : AIR 1960 SC 7.

The circumstances that the charge did not disclose the amounts the appellant took as bribes and the person from whom he had taken such bribes does not invalidate the charge, though it may be a ground for asking for better particulars. The charge, as framed, clearly stated that the appellant accepted gratification other than legal remuneration and obtained pecuniary advantage by corrupt and illegal means. The charge, no doubt, should have contained better particulars so as to enable the appellant to prove his case. But the appellant never complained in the trial court or the High Court that the charge did not contain the necessary particulars. The record, on the other hand, disclosed that the appellant understood the case against him and adduced all the evidence which he wanted to place before the court. It also appears that the appellant never raised any objection either before the special Judge or in the High Court on the score that the charge was defective and that he was misled in his defence on the ground that no particulars of the persons from whom the bribes, were taken were mentioned—Nani Gopal M.tra v. The State of Bihar, (1970) 2 SCJ 29 : 1970 CrLJ 1396 : AIR 1970 SC 1636.

Defence plea: Circumstances.—In, Jotiram Laxman Surange v. State of Maharashtra 1970 Cr LJ 507 : AIR 1970 SC 329 the question for determination before the Supreme Court was whether the amount in question was given to the appellant as a bribe or a story was made out and,
in fact the amount was paid in the purchase of small savings certificate. The Supreme Court held that the evidence in support of the prosecution version has been given on oath on the other side, there is no evidence except that the appellant made his statement, under Section 342 of the Code of Criminal Procedure giving his version. The High Court very rightly believed the prosecution evidence because there were a number of circumstances which showed that his version must be correct, while the plea put forward by the appellant cannot be true. No receipt was given by the appellant when he received the sum of Rs. 150 from him. If the money was really received for purchase of small savings certificates, the appellant would surely have given a receipt when he accepted this money for that purpose. The absence of the receipt is only consistent with the acceptance of this money as a bribe.

**Acquittal under Section 5 (2), if bars trial under Section 409 Indian Penal Code.**—Acquittal under Section 5 (2) of this Act does not bar a trial under Section 409, Indian Penal Code—*State of M. P. v. Veereshwar Rao Agnihotri*, AIR 1957 SC 592 : 1958 SCA 249 : 1957 Cr. LJ 892 : 1957 SCJ 519.

**Accused acquitted under Section 5 (1) (e) cannot be convicted under Section 5 (2) on the presumption of Section 5 (3).**—Where the only charge of criminal misconduct alleged against the accused was of the nature mentioned in Section 5 (1) (e) and that charge has failed and the accused is acquitted on it, the accused cannot be convicted under Section 5 (2) by calling in aid of the presumption under Section 5 (3). The offence which is punished under sub-section (2) or can be founded on the rule of presumption laid down in sub-section (3) must be the offence of criminal misconduct of one or more of the categories mentioned in clause (a) to (d) of sub-section (1)—*Surajpal Singh v. State of Uttar Pradesh*, (1961) 2 SCR 971 : 1961 ALJ 298 : (1961) 1 Cr. LJ 730 : (1961) 2 SCJ 293 : ILR (1961) 2 All. 365 : AIR 1961 SC 583.

**Trial both under Section 5(2) and Section 409, Indian Penal Code can proceed simultaneously.**—*See State of Punjab v. Shadi Lal*, 1960 Cr. LJ 539 : AIR 1960 SC 397.


In *Munnalal v. The State of U. P.*, AIR 1964 SC 28 : (1964) 3 SCR 88 : 1964 SCD 21 : (1964) 2 SCJ 307 : 1964 (1) Cr. LJ 11 the accused who was a cashier was not converting money of the Municipal Board to his own use but was using the same for advances to the officers of the Board. It was held that the sentence already undergone was sufficient.

There is no warrant for the view that the offences committed in the course of traps are less grave and call only for lenient or nominal sentences—*Ram Krishan v. State of Delhi*, 1956 SC 182 : 1956 SCJ 432 : 1956 Cr. LJ 837 : 1956 SCA 577 : 1956 SCC 247.

**Section 5-A:**

**Object and scope of the section.**—*In Sailendra Nath Bose v. State of Bihar*, AIR 1968 SC 1292 : 1968 Cr. LJ 1484 the Supreme Court said:

“The object of the legislature in enacting Section 5-A was to see that the investigation of offences punishable under Sections 161,
165 or 165-A, I.P.C. as well as those under Section 5 of the Prevention of Corruption Act should be done ordinarily by officers of the rank of Deputy Superintendent or above. No doubt Section 5-A, also provides for an alternative procedure. An officer below the rank of Deputy Superintendent can investigate those offences if he obtains the previous permission of a First Class Magistrate. The Legislature proceeded on the basis that except for good reasons the Magistrate would not accord permission for officers below the rank of a Deputy Superintendent of Police to investigate those offences. But exigencies of administrative convenience may require that some of that cases have to be investigated by offices below the rank of Deputy Superintendents. For that reasons it was provided that in such circumstances the permission of a Magistrate of the First Class should be obtained”.

In *H. N. Risbud v. State of Delhi*, AIR 1955 SC 196 : 1955 Cr. LJ 26 their Lordships of the Supreme Court held:

“It may be of considerable importance to the accused that the evidence in this behalf is collected under the responsibility of the authorised and competent investigating officer or is at least such for which such officer is prepared to take responsibility. It is true that the result of a trial in court depends on the actual evidence in the case but it cannot be posited that the higher rank and the consequent greater responsibility and experience of a police officer has absolutely no relation to the nature and quality of evidence collected during investigation and to be subsequently given in Court.”

*Safeguard provided in the section must be strictly complied with.—* Section 5-A was inserted in the Act by Act LIX of 1952 to protect public servants against harassment and victimization. The said statutory safeguards must be strictly complied with for they were conceived in public interest and were provided as a guarantee against frivolous and vexatious prosecution.—*State of Uttar Pradesh v. Bhagwant Kishore Joshi*, (1964) 5 SCR 71 : 1964 ALJ 938 : 1963 SCD 863 : 1963 AWR (HC) 749 : (1964) 1 Cr. LJ 140 : (1963) 2 All. 900 : AIR 1964 SC 221.

*Prior permission.—* The investigation in this case was started by Sub-Inspector 10 days prior to his obtaining permission of the Magistrate. This was in contravention of the provisions of Section 5-A—*The State of Madhya Pradesh v. Mubarak Ali*, AIR 1959 SC 707 : 1959 Cr. LJ 920 : 1959 SCJ 843 : (1960) 1 SCA 95.

In *Sailendra Nath Bose v. State of Bihar*, AIR 1968 SC 1292 : 1968 Cr. LJ 1484 an Inspector of Police on March 12, 1964, merely applied for and obtained permission from a First Class Magistrate to lay a trap, the permission to investigate the case was obtained by him only on 21st March, 1964. It was argued in the Supreme Court that by that time (i.e. by 21st March, 1964), the entire investigation was over, hence there was no valid investigation. The Supreme Court held that a permission made under Section 5-A of this Act is a permission to investigate the case and laying of trap is a part of investigation.

*Scope of the word “investigation” in Section 5-A.—* A permission under Section 5-A of the Act is a permission to investigate the case.
Laying the trap is a part of the investigation. The word 'investigation' under Section 4 (1) of the Code of Criminal Procedure includes all the proceedings under the Code for the collection of evidence conducted by a Police Officer or any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. Section 5-A does not contemplate two sanctions, one for laying the trap, and other for further investigation. Once an order under that provision is made, that order covers the entire investigation—Saileniranath Bose v. The State of Bihar, AIR 1968 SC 1292: 1968 Cr.LJ 1484.

Objection regarding illegality of investigation.—The proper stage to raise an objection regarding illegality or irregularity committed during the stage of investigation is before the trial begins. If before the commencement of the trial the objection is raised regarding the illegality or irregularity of investigation, the Special Judge can rectify the illegality and cure the defects in the investigation by ordering the Deputy Superintendent of Police to carry on the investigation himself while the case remained pending in the Court of the Special Judge—Muni Lal v. Delhi A Iministration, (1971) 2 SCC 48; State of Madhya Pradesh v. Mubarak Ali, AIR 1959 SC 707: 1959 SCJ 843: (1961) 1 SCA 95.

Where an objection relating to the investigation made by an officer below the rank of the Deputy Superintendent of Police has neither been raised in the trial court, nor in the High Court, it cannot be allowed to be raised before the Supreme Court in appeal by Special leave—Din Dayal Sharma v. State of U. P., AIR 1959 SC 831: 1959 Cr.LJ 1120; See also H. N. Rishbud v. State of Delhi, AIR 1955 (SC) 196.

Non-compliance: Illegality or Irregularity.—In H. N. Rishbud v. State of Delhi, 1955 SCR 1150: 1955 Cr.LJ 526: AIR 1955 SC 196 Their Lordships observed as follows:

"It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court (while not declining cognizance) will have to take such necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.

"Such a course is not altogether outside the contemplation of the scheme of the Code (Cr.P.C.) as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge who (for purposes of procedure at the trial) is virtually in the position of a Magistrate trying a warrant case.

"When the attention of the Court is called to such an illegality at a very early stage, it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 573
Cr.P.C. of making out that such our error has in fact occasioned a failure of justice.

"...............when such a breach is brought to the notice of the Court at an early stage of the trial, the Court will have to consider the nature and extent of the violation and pass appropriate order for such re-investigation as may be called for (wholly or partly) and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act.

"It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5 (4) of the Prevention of Corruption Act (now incorporated in Section 5-A) has to be decided and the course to be adopted in these proceedings to be determined."

Where permission to prosecute is granted mechanically and without applying the mind and the investigation is held partly before and partly after the permission, such investigation is illegal. However, such an irregularity (committed in the course of investigation) would not affect the competency and jurisdiction of the Court of the City Magistrate. Moreover, the illegality (being an irregularity) would be curable under S. 537 of the Cr. P.C.—Mubarak Ali v. State, AIR 1955 SC 157.

An investigation by an officer or a lower rank without permission can be said to cause prejudice. When a Magistrate is approached for granting such permission, he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it—H. N. Rishbud v. State of Delhi, 1955 SCR 1150 : 1955 Cr. LJ 526 : 1955 SCA 236 : 1955 SCJ 293 : AIR 1955 SC 196.

Where the investigation has to be made by an officer other than the designated officer he should get the order of a Magistrate empowering him to do so before he proceeds to investigate and it is desirable that the order giving the permission should ordinarily, on the face of it, disclose the reasons for giving the permission. For one reason or other, if the said salutary practice is not adopted in a particular case, it is the duty of the prosecution to establish, if that fact is denied that the Magistrate in fact has taken into consideration the relevant circumstances before granting the permission to a subordinate police officer to investigate the case—The State of Madhya Pradesh v. Mubarak Ali, AIR 1959 SC 707 : 1959 Cr. LJ 920 : (1960) 1 SCA 95.

The investigation of the case was made by an officer below the rank of a Deputy Superintendent. No prejudice was pleaded and much less established. An illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the proceeding investigation does not vitiate the result unless the miscarriage of justice has been caused thereby—Sailendranath Bose v. The State of Bihar, AIR 1968 SC 1292.

The proviso to section 5-A of the Act is mandatory and not directory and an investigation conducted in violation thereof is illegal. However,
the illegality committed in the course of investigation does not effect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the proceeding investigation does not vitiate the result unless miscarriage of justice had been caused thereby—Major E. C. Barsay v. State of Bombay, (1961) 2 Cr. LJ 828 : 1962 1 SCA 106 : AIR 1961 SC 1762.

Originally the entire investigation was done by a Sub-Inspector of Police and thereafter the case under Sec. 409/406 of the Indian Penal Code was instituted against the appellant, his brother and the Executive Officer. That case was later on withdrawn and it was thereafter that sanction was granted for the prosecution of the appellant and his brother under Section 5(2) of the Act and investigation was made as required by Section 5-A. But the evidence showed that this investigation merely consisted of this, that the duly authorised investigating officer went through the papers of the earlier investigation and decided to file four prosecutions as already indicated on the basis of the earlier investigation. It did appear from these facts that though the letter of Section 5-A of the Act was complied with, its spirit was not, for in reality there was no investigation by the office authorised under that section and the real investigation was by a Sub-Inspector of Police who was never authorised.

Even if there was irregularity in the investigation and Section 5-A was not complied with in substance, the trial cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of the illegal investigation—Munnalal v. State of Uttar Pradesh, (1964) 3 SCR 88 : 1964 SCD 21 : (1964) 2 SCJ 307 : 1964 Cr. LJ 11 : ILR (1963) 2 All. 916 : AIR 1964 SC 28.

An illegal investigation does not vitiate the trial. The High Court erred in quashing the proceedings against the respondent solely on the ground of illegal investigation. In order to set aside the conviction it must be shown that there has been miscarriage of justice as a result of bad and irregular investigation. The procedure adopted by the Inspector was wholly unwarranted by the provisions of the Prevention of Corruption Act. There must be something on record to show that superior officers were otherwise engaged so as not to be in a position to take up the investigation under the Act. The grant of permission to investigate is not merely a mechanical act. The Magistrate erred in giving the sanction. The High Court should also go into the question of prejudice before quashing the proceedings on ground of illegal investigation—State of Andhra Pradesh v. P. V. Narayana, AIR 1971 SC 811 : 1971 (1) SCC 483 ; see also Munny Lal v. Delhi Administration, 1971 (2) SCC 48.

Even though the provisions of Sec. 5-A of the Prevention of Corruption Act to the effect that no police officer below the rank of the Deputy Superintendent of Police shall investigate any offence punishable under sub-section (2) of Sec. 5 of the Prevention of Corruption Act without an order of a 1st Class Magistrate had not been complied with, would invalidate the trial and conviction if the proceedings culminate that way—State of M. P. v. Veereshwar Rao Agnihotri, AIR 1957 SC 592.

Section 6.

Scope of the section : Sanction : Validity.—Section 6 of the Act does not require the sanction to be given in a particular form. The
principle expressed by the Privy Council, namely, that the sanction should be given in respect of the facts constituting the offence charged equally applied to the sanction under Section 6 of the Act. In the present case, all the facts constituting the offence of misconduct with which the appellant was charged were placed before the Government. The second principle, namely, that the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction. In the present case, though the sanction ex facie does not disclose the facts, the documents which are exhibited in the case give all the necessary relevant facts constituting the offence of criminal misconduct—Ram Sagar Pandit v. The State of Bihar, (1964) 1 Cr. LJ 65 : 1963 SCD 617 : 1963 Mad LJ (Cr) 569 : (1963) 2 SCJ 565.

It is not necessary for the sanction under the Prevention of Corruption Act to be in any particular form, or in writing or for it to set out the facts in respect of which it is given. When the facts are not set out in the sanction, proof has to be given alinude that sanction was given in respect of facts constituting the offence charged, but an omission to do so is not fatal so long as the fact can be, and are, proved in some other way—Biswa bhusan Naik v. State of Orissa, 1955 SCR 92 : 1954 Cr. LJ 1002 : 1954 SCA 928 : 1954 SCJ 537 : 1954 AWR (HC) 395 : AIR 1954 SC 359.

The order of sanction showed on the face of it what were the facts constituting the offence charged and that prima facie case was made out against the appellant. The order also further recited that the Deputy Inspector General "after fully and carefully examining the material before him in regard to the aforesaid allegations in the case considers that a prima facie case is made out." The Supreme Court held that the order of sanction fulfilled the requirements of Section 6 of the Prevention of Corruption Act—Shiva Raj Singh v. Delhi Administration, AIR 1968 SC 1419.

The Statement of the sanctioning authority disclosed that before he accorded his sanction he went through all the papers and after being satisfied that sanction should be given, he accorded his sanction. It is true that he did not call for any record in connection with the matter from his office nor did he call for the connected claim cases or find out as to how they stood. It was not for the sanctioning authority to Judge the truth of the allegations made against the appellant, by calling for the records of the connected claim cases or other records in connection with the matter from his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord his sanction—Indu Bhusan Chatterjee v. State of West Bengal, 1953 SCR 999 : 1953 Cr. LJ 279 : 1958 SCJ 581 : 1958 All Cr. R 326 : 1958 SCA 348 : 1958 AWR (HC) 557 : AIR 1958 SC 148.

Where the prosecution was sanctioned under Section 6 (1) by the Chief Medical Officer who was not competent to remove person concerned from his office, it was held that the sanction was invalid and accused was entitled to acquittal—Sailendra Nath Bose v. State of Bihar, AIR 1968 SC 1292 ; See also R. J. Singh Ahluwalia v. State of Delhi, 1970 UJ SC 885.

Section how to be construed.—Section 6 must be construed with reference to the words used therein independent of any construction which

Accused ceasing to be public servant at time of trial: Section does not apply.—In giving effect to the ordinary meaning of the words used in Section 6 of the Act, the conclusion is ineluctable that at the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of Section 6 can apply. Where the accused have ceased to be public servants at the time the court takes cognizance of the offences alleged to have been committed by them as public servant. Accordingly the provisions of Section 6 of the Act does not apply and the prosecution against them is not vitiated by the lack of a previous sanction by a competent authority—S. A. Vankataraman v. The State, 1958 SCR 1037 : 1958 Cr. LJ 254 : 1958 SCJ 504 : 1958 AWR (HC) 602 : ILR 1958 Punj 986 : AIR 1958 SC 107.

Sanction: Strict compliance.—The sanction under the Act is not intended to be an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden—Jaswant Singh v. State of Punjab, 1958 SCR 762 : 1958 ALJ 58 : 1958 AWR (HC) 127 : 1958 Cr. LJ 265 : 1958 SCJ 355 : 1958 SCA 407 : 316 ILR 1958 Punj. 572 : AIR 1958 SC 124.

Sanction: Sanctioning authority had applied his mind: Proof.—It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case—Jaswant Singh v. State of Punjab, 1958 SCR 762 : 1958 ALJ 58 : 1958 AWR (HC) 127 : 1958 Cr. LJ 265 : 1958 SCJ 355 : 1958 SCA 407 : ILR 1958 Punjab 572 : AIR 1958 SC 124.

The burden of proving that the requisite sanction has been obtained rests on the prosecution, and such burden includes proof that the sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based and these facts might appear on the face of the sanction or might be proved by extraneous evidence—Madan Mohan Singh v. State of Uttar Pradesh, AIR 1954 SC 637 : 1954 Cr. LJ 1656.

Four cases filed with sanction subsequently split into seven cases: Original sanction if covers the other three cases.—The Special Judge split up the four cases before him into seven, but it is not disputed the abouts involved in the three new cases, which the Special Judge had directed for splitting up due to the difficulty of joint trial were with respect to amounts which were included in the four cases filed before him and with respect to which there was sanction. The mere fact that in view of
the provision as of Section 239 of the Code of Criminal Procedure, the Special Judge thought it necessary to separate the trial of with respect to certain items for which there was sanction, would not mean that these cases which were directed by the Special Judge to be split up for that reason had no sanction behind it. The sanction of the original four cases would cover these three cases also which were split out of the original four cases—Munnalal v. State of Uttar Pradesh, (1964) 3 SCR 88 : 1964 SCD 21 : (1964) 2 SCJ 307 : 1964 Cr.LJ 11 : ILR (1964) 2 All 916 : AIR 1964 SC 28.

Sanction for prosecution granted by appointing authority: Validity.—A sub-divisional officer is the appointing authority of a Patwari in view of Sections 10 and 11 read with clause (1) of Schedule II of the Act. Section 43 of Chapter V, no doubt provides that the Deputy Commissioner shall subject to rules made under Section 227 appoint a Patwari to each circle but this section does not deprive the S. D. O. of his power, and therefore, sanction granted by the S. D. O. for prosecution of an offence under Section 161, Penal Code and 5 (a) Prevention of Corruption Act, is valid—Bhailal v. State of Maharashtra, 1970 SC Cr R 324.

Word “employed: Meaning.—Having regard to the scheme of the three clauses of Section 6, it is difficult to construe the word “employed” in clause (a) and (b) as meaning “employed for the time being”. The said word in the context must mean “permanently employed”—R. R. Chari v. State of Uttar Pradesh, (1963) 1 SCR 121 : (1962) 2 Cr.LJ 510 : 1962 AWR (HC) 732 : AIR 1962 SC 1573.

Amendments

Section 7.

Accused as competent witness in his defence.—Section 6 provides that for the prosecution of an offence of Criminal misconduct under Section 5 (2) or for an offence section 161 or 165, Penal Code, previous sanction is necessary of either the Central Government or the State Government or the authority competent to remove the Government servant. The last section of the statute is a departure or deviation from the procedure till then obtaining in a criminal case and thereby an accused person is held competent to be a witness on his behalf. Whereas under Section 342 as it stood before the recent amendment, on accused person was entitled to be administered on oath and thereby competent to testify in a court of law in a case in which he is accused; under Section 7 any person charged with an offence punishable under Section 161 or Section 165 or Section 165-A Penal Code or under sub-section (2) of Section 5, Prevention of Corruption Act, is a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial; and there are also certain safeguards provided in the matter of giving such testimony—Om Prakash Gupta v. State of Uttar Pradesh, 1957 Cr. LJ 575 : 1957 SCJ 289 : 1957 SCA 337 : AIR 1957 SC 458.

Relevant Provisions of Evidence Act

Section 132.

132. Witness not excused from answering on ground that answer will criminate.—A witness shall not be excused from answering any question as to any matter relevant to the matter
in issue in any suit or in any civil or criminal proceeding, upon
the ground that the answer to such question will criminate, or
may tend directly or indirectly to criminate, such witness, or
that it will expose, or tend directly or indirectly to expose,
such witness to a penalty or forfeiture of any kind:

Proviso. Provided that no such answer, which a witness shall be
compelled to give, shall subject him to any arrest or prosecution
or be proved against him in any criminal proceeding, except a
prosecution for giving false evidence by such answer.

Section 144.

144. Evidence as to matters in writing.—Any witness may be asked
whilst under examination, whether any contract, grant or other
disposition of property, as to which he is giving evidence, was
not contained in a document, and if he says that it was, or if he
is about to make any statement as to the contents of any docu-
ment, which, in the opinion of the Court, ought to be produced,
the adverse party may object to such evidence being given until
such document is produced, or until facts have been proved
which entitle the party who called the witness to give secondary
evidence of it.

Explanation.—A witness may give oral evidence of statement made
by other persons about the contents of documents if such state-
ments are in themselves relevant facts.

Illustration

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me
of theft, and I will be revenged on him." This statement is
relevant as showing A's motive for the assault, and evidence
may be given of it, though no other evidence is given about the
letter.

Section 145.

145. Cross-examination as to previous statements in writing—
A witness may be cross-examined as to previous statements made
by him in writing or reduced into writing, and relevant to
matters in question, without such writing being shown to him,
or being proved; but if it is intended to contradict him by the
writing, his attention must, before the writing can be proved,
be called to those parts of it which are to be used for the purpose
of contradicting him.

Section 146.

146. Questions lawful in cross-examination.—When a witness is
cross-examined, he may, in addition to the questions herein-
before referred to, be asked any questions which tend—

(1) to test his veracity
(2) to discover who he is and what is his position in life, or
(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Section 147.

147. When witness to be compelled to answer.—If any such question relates to a matter relevant to the suit or proceeding, the provisions of Section 132 shall apply thereto.

Section 148.

148. Court to decide when question shall be asked and when witness compelled to answer.—If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion the Court shall have regard to the following considerations:

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testified;

(2) Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect, in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Section 149.

149. Question not to be asked without reasonable grounds.—No such question as is referred to in Section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Illustrations

(a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(b) A pleader is informed by a person in court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement.
This is a reasonable ground for asking the witness whether he is a *dakait*.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a *dakait*. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a *dakait*.

Section 150.

150. Procedure of Court in case of question being asked without reasonable grounds.—If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Section 151.

151. Indecent and scandalous questions.—The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Section 152.

152. Questions intended to insult or annoy.—The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, to the Court needlessly offensive in form.

153. Exclusion of evidence to contradict answer to questions testing veracity.—When a witness has *been asked* and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations

(v) A claim against an underwriter is registered on the ground of fraud.
The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Section 154.

154. Question by party to his own witness.—The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Section 155.

155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him, to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

1. Subs. by Act, 18 of 1872, Sec. II, for "had".
(4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

156. Questions tending to corroborate evidence of relevant fact, admissible.—When a witness whom it is intended to corroborate gives evidence of any relevant fact he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Section 157

157. Former statements of witness may be proved to corroborate later testimony as to same fact.—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.
Section 158

158. What matters may be proved in connection with proved statement relevant under section 32 or 33.—Whenever any statement, relevant under Section 32 or 33, is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if the person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Section 159

159. Refreshing memory.—A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

When witness may use copy of document to refresh memory.—Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document;

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Section 160

160. Testimony to facts stated in document mentioned in Section 159.—A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Section 161

161. Right of adverse party as to writing used to refresh memory.—Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Section 162

162. Production of documents.—A witness summoned to produce a document shall, if it is in his possession or power, bring it to
Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to determine on its admissibility.

Translation of documents.—If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under Section 166 of the Indian Penal Code (45 of 1860).

Section 163

163. Giving, as evidence, of document called for and produced on notice.—When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Section 164.

164. Using as evidence of document production of which was refused on notice.—When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustration

A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Section 165

165. Judge’s power to put questions or order production.—The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant, and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to
answer or produce under Section 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Section 166

166. Power of jury or assessors to put questions.—In cases tried by jury or with assessors, the jury or assessors may put any questions to the witness, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Sections 251 and 251-A of Criminal Procedure Code clause (a):

Section 251

1[252. Procedure in warrant-cases.—In the trial of warrant-cases by Magistrates, the Magistrate shall,—

(a) in any case instituted on a police report, follow the procedure specified in Section 251-A; and

(b) in any other case, follow the procedure specified in the other provisions of this chapter.

Section 252

252. Evidence of prosecution.—(1) 2[In any case instituted otherwise than on a police report, when the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution:

3[Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.]

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the cases and to be able to give evidence for the prosecution and shall summon to give evidence before himself such of them as he thinks necessary.

Section 435, Cr. P. C. clause (b)—The section is reproduced below:

(1) The High Court or any Sessions Judges or District Magistrate or any Sub-Divisional Magistrate empowered by the State

1. Secs. 251 and 251-A subs. by Act 26 of 1955, Sec. 34 for Sec. 251.
2. Subs. by Act 26 of 1955, Sec. 35, for "When accused appears"
3. Added by Act 18 of 1923, Sec. 70.
Government in this behalf, may call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, he be released on bail or on his own bond pending the examination of the record.

Explanation:—All Magistrates whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and Sec. 437:

(2) If any Sub-Divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper or that any such proceedings are irregular, he shall forward the record with such remarks thereon as he thinks fit, to the District Magistrate.

(3) Omitted by Act XVIII of 1923.

(4) If an application under this section has been made either to the Sessions Judge or the District Magistrate, no further application shall be entertained by the order of them.

Section 435 Cr. P. C., as modified by clause (c)—Section 435 Cr. P.C. as modified by clause (c) is given below:

435(1). The High Court or any Sessions Judge or District Magistrate or any Sub-Divisional Magistrate empowered by the State Government in this behalf, may call for and examined the record of any proceeding before any criminal court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or orders recorded or passed and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record:

Provided that where the powers under this sub-section are exercised by a court on an application made by a party to such proceedings the court shall not ordinarily call for the record of the proceeding.—

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceeding may be made from the certified copies thereof;

and in any case, the proceeding before the inferior court shall not be stayed except for reasons to be recorded in writing.
Section 540-A, Cr. P.C. as modified by clause (d)—After the new clause has been inserted by clause (d) of Section 7-A, Prevention of Corruption Act 1947, Section 540-A shall read as under:

"540-A (1). At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate, may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence; and may at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry on trial or order that the case of such accused be taken up or tried separately.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge or Magistrate may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination."

5. Section 5 of the Official Secrets Act.

Section 5 of the Official Secrets Act is also relevant for our present purpose and is, therefore, reproduced below:

5 (1). "If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note document or information which relates to or is used in a prohibited place or relates to anything in such place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract:

(a) wilfully communicates the code or pass words, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or
(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.”

6. **Criminal Law Amendment Act, 1952.**

It is a short Act consisting of one to ten sections, but it has made material changes in the existing criminal law. It provides for a more speedy trial of certain offences. The aim of the Act is not only to provide for a more speedy trial of offences relating to attempt bribery and corrupt practices but also to make the punishment more severe and deterrent. The procedure relating to the trial of offences under Sections 161 and 165 Indian Penal Code, has been materially changed and certain amendments have been made in Sections 164 and 337 of the Code of Criminal Procedure by Sections 4 and 5.

Offences under Sections 161, 165 and 165-A, Indian Penal Code or any such conspiracy or any attempt to any abetment of such offences are made triable by special Judges. The State Government is authorised to appoint special Judges from those who have been Sessions, Additional Sessions or Assistant Sessions Judges. The special Judges who have been given wide powers may take cognizance of offences without accused being committed to them for trial. They can tender pardon to persons directly or indirectly concerned. They can pass any order authorised by law. They are to follow the Code of Criminal Procedure, 1898 and their courts would be deemed
to be the courts of Sessions Judge trying cases without the aid of assessors or jury and their orders would be appealable and revisable by the High Court like those of Session’s Judge. Under Section 10 all cases pending in the courts of Magistrates are to be transferred to the courts of the Special Judges as soon as the Act comes into force. However, Section 10 does not purport to transfer cases pending in the court of Sessions at the commencement of the Act to the court of a special Judge—Din Dayal Sharma v. State of U. P., AIR 1959 SC 831, where a case was transferred to the court of Sessions before the Act came into force and was pending before the Assistant Sessions Judge when the Act came into force, the Assistant Sessions Judge has jurisdiction to try the case—Asgarali Nazarali Singapurwala v. State of Bombay, AIR 1957 SC 503.

(a) Section 1

Section 1 of the Act is as under:

"Short title—This Act may be called the Criminal Law (Amendment) Act, 1952".

Bribery and corruption having been rampant and the need for weeding them out having been urgently felt, it was necessary to enact measures for the purpose of eliminating all possible delay in bringing the offenders to book. It was with that end in view that provisions were enacted in the impugned Act for speedier trial of the said offences and the appointment of Special Judges who were invested with exclusive jurisdiction to try the same and were also empowered to take cognizance thereof without the accused being committed to them for trial, and follow the procedure prescribed for the trial of warrant cases by Magistrates. The proceedings before the Special Judges were thus assimilated to those before the Courts of Sessions for trying cases without a Jury or without the aid of assessors and powers of appeal and revision invested in the High Court were also similarly circumscribed. All these provisions had the necessary effect of bringing about a speedier trial of these offences and it cannot be denied that this intelligible differential had rational relation to the object sought to be achieved by the impugned Act. Both these conditions were thus fulfilled and it could not be urged that the provisions of the impugned Act were in any manner violative of Article 14 of the Constitution.—Asgarali Nazarali Singapurwala v. State of Bombay, 1957 SCR 678; AIR 1957 SC 503; 1957 Gr.LJ 605; 1957 SCJ 421; 1957 AWR (HC) 513; 1957 SCA 783.

(b) Section 2

Section 2 of the Act reads as follows:

2. Amendment of Section 165, Act XLV of 1860.—In Section 165 of the Indian Penal Code (hereinafter referred to as Principal Act), for the words “simple imprisonment for a term which may extend to two years,” the words “imprisonment of either description for a term which may extend to three years” shall be substituted.

(c) Section 3

Section 3 of the Act is as under:

3. Insertion of new Section 165-A in Act XLV of 1860.—After Section 165 of the principal Act, the following section shall be inserted namely:
"165-A. Punishment for abetment of offences defined in Section 161 or Section 165—Whoever abets any offence punishable under Section 161 or Section 165, whether or not that offence is omitted in consequence of the abetment shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

(d) Section 4

Section 4 states:

"Amendment of Section 164, Act V of 1898.—In sub-section (1) of Section 164 of the Code of Criminal Procedure 1898, after the words 'under this chapter' the words 'or under any other law for the time being in force' shall be inserted."

(e) Section 5

Section 5 of the Act reads as under:

5. Amendment of Section 337, Act V of 1898.—(1) In Section 337 of the Code of Criminal Procedure, 1898—

(a) in sub-section (1) after the words "the Indian Penal Code, namely, sections" the figures and letters "161, 165, 165-A" shall be inserted;

(b) after sub-section (2-A), the following sub-section shall be namely.:

"(2-B) In every case where the offence is punishable under Section 161 or Section 163, or Section 165-A of the Indian Penal Code (Act XLV of 1860), or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (II of 1947), and where a person has accepted a tender of pardon and has been examined under sub-section (2), then notwithstanding anything contained in sub-section (2-A) the Magistrate shall, without making any further enquiry, send the case for trial to the Court of the Special Judge appointed under the Criminal Law (Amendment) Act, 1952.

(2) The amendment made by sub-section (1) shall remain in force for a period of two years from the commencement of the Criminal Law (Amendment) Act, 1952.

(f) Section 6

Section 6 states as under:

6. Power to appoint Special Judges.—(ii) The State Government may, by notification in the official Gazette, appoint as many Special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences, namely:

(a) an offence punishable under Section 161, Section 162, Section 163, Section 164, Section 165, or Section 165-A of the Indian Penal Code (Act XLV of 1860) or of Section 5 of the Prevention of Corruption Act, 1947 (II of 1947);
Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a Special Judge under this Act unless he is, or has been, a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1893 (Act V of 1893).”

Jurisdiction of Special Judge.—In Ram Chandra v. State of Bihar, 1961 (2) Cr LJ: AIR 1961 SC 1629, the accused committed an offence under Section 161 of the Indian Penal Code and Section 5(2), Prevention of Corruption Act at Dhanbad in Manbhum District. The case was chal-laned to the Magistrate of Dhanbad. On an application by the accused, the High Court transferred it to the Court of the Munsif Magistrate at Patna. Subsequent to this order of transfer, the Criminal Law (Amendment) Act, 1952 came into force on July 28, 1952. The case, thereafter, was forwarded to the Special Judge at Patna in view of Section 10 of the Criminal Law Amendment Act, 1952. The contention of the accused was that there was the special Judge at Manbhum and that he alone could have tried this case. It was held:

“It follows that the provisions of section 526 of the Criminal Procedure Code empowering the High Court to transfer any case from a Criminal Court subordinate to it to any other Court competent to try it, apply to the case before any special Judge. If this had been transferred to the court of the special Judge, Manbhum on the coming into force of the Criminal Law Amendment Act, it would have been open to the High Court to transfer the case from that court to the court of special Judge, Patna. The case had been transferred from Dhanbad to Patna at the request of the appellant. The trial at Patna cannot be said to have prejudiced the appellant in any way. The mere omission of a formal forwarding of this case to the Special Judge at Manbhum and of a formal order of the High Court to transfer it to the Court of the Special Judge at Patna, have not, in our opinion, prejudiced the appellant in any way”.

(g) Section 7

Section 7 is as follows:

7. Cases triable by Special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law, the offences specified in sub-section (1) of Section 6 shall be triable by Special Judges only.

(2) Every offence specified in sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed or, where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.

(3) When trying any case, Special Judge may also try any offence other than an offence specified in Section 6 with which the accused may, under the Code of Criminal Procedure 1898, be charged at the same trial.

(i) Power of High Court to transfer cases.—The power of High Court to transfer cases under Section 526, Criminal Procedure Code apply

(ii) "Any other law" : Meaning.—In Major E. G. Barsay v. State of Bombay—(1961) 2 Cr. LJ 823 : (1962) i SCA 106 : AIR 1961 SC 1762, the Supreme Court held:

"Doubtless the Army Act is comprehended by the words "any other law". The offences in question are certainly offences specified in sub-section (1) of Section 6 of the Criminal Law (Amendment) Act. The non-obstante clause in Section 7 clearly confers jurisdiction to try persons committing the said offences on a special Judge. But it is contended that the Army Act is a special Act, cannot take away the jurisdiction conferred on a court-martial in respect of the said offences. That proposition of law may have some bearing when there is conflict of jurisdiction arising out of a general Act and a special Act, without any specific exclusion of the jurisdiction in the general Act of that conferred under the special Act. But that principle may not any relevance to a case where the general Act in express terms confers jurisdiction on a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law. In such a situation, the intention of the Legislature is clear and unambiguous, and no question, of applying any rule of interpretation would arise for the rules of interpretation are evolved only to ascertain the intention of the Legislature".

This view has, however, been superseded by the Criminal Law (Amendment) Act, 1966 and the Army personnel have been exempted from being tried by the Special Judge. They are now triable by the Court-Martial exclusively.

(iii) Section 529 Criminal Procedure Code : Applicability to Courts of Special Judges—

529. Irregularities which do not vitiate proceedings.—If any Magistrate not empowered by law to do any of the following things, namely,—

(a) to issue a search-warrant under Section 98 ;
(b) to order, under Section 155, the police to investigate an offence ;
(c) to hold an inquest under Section 176 ;
(d) to issue process under Section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
(e) to take cognizance of an offence under Section 195, sub-section (1), clause (9) or clause (b) ;
(f) to transfer a case under Section 192 ;
(g) to tender a pardon under Section 337 or Section 338 ;
(h) to sell property under Section 524 or Section 525 ; or
(i) to withdraw a case and try it himself under Section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.
Section 8 of the Act reads as under:

8. Procedure of power of Special Judge.—(1) A Special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused person, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of warrant cases by Magistrate.

(2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, tender pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and every other person concerned whether as principal or abettor in a commission thereof and any pardon so tendered shall, for the purposes of Sections 339 and 339-A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under Section 338 of that Code.

(3) Save as provided in sub-section (1) of Section 7, the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge and for the purposes of the said provisions the Court of Special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors and the person conducting a prosecution before Special Judge shall be deemed to be a public prosecutor.

(3-A) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Section 350 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to the proceedings before a Special Judge and for the purposes of the said provisions a Special Judge shall be deemed to be a Magistrate.

(4) A Special Judge may pass upon any person, convicted by him, any sentence authorized by law for the punishment of the offence of which such person is convicted.

(i) Section 350, Cr. P.C., : Applicability of.—The position before the amendment was that a Special Judge could deliver judgment on the evidence recorded by his predecessor as he had not heard the witnesses. This is not only a case of irregularity but want of competency. The Code does not conceive of such a trial. The trial offends the cardinal principle of law, the acceptance of which by the Code is clearly manifest from the fact that the Code embodies an exception to that principle in Section 350. Therefore, Section 537 of the Code has no application.—Pyare Lal v. State of Punjab, (1962) 3 SCR 328 : AIR 1962 SC 690 : (1962) 1 Cr. LJ 688 : 1962 AWR (HC) 414 : 1962 All Cr. R 239 : 1962 MLJ (Cr) 625 : (1962) 2 SCJ 492.

(ii) Section 8(2) : Scope of.—Section 8(2) of the Act is enabling and its terms are wide enough to enable the Special Judge to tender a pardon to any person who is supposed to have been directly or indirectly concerned in, or privy to, an offence. This must necessarily include a person arraigned before him. But it may be possible to tender a pardon to a person not so arraigned. The power so conferred can also be exercised at any
time after the case is received for trial and before its conclusion. There is nothing in the language of the section to show that the Special Judge must be moved by the prosecution. He may consider an offer by an accused—Lt. Commander Pascal Fernandes v. The State of Maharashtra and others, (1968) 2 SCJ 12.

Sub-section (2) of Section 8 of the Act necessarily differs in some respects from the provisions of the Code of Criminal Procedure because the procedure of trial before the Special Judge is different, but on the tender of pardon by the Special Judge the provisions of Sections 339 and 339-A of the Code apply. The tender of pardon by the Special Judge is deemed by fiction to be one tendered under Section 338 of the Code for purposes of Secs. 339 and 339-A. The powers of the Special Judge are not circumscribed by any condition except one, namely, that the action must be with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence. The pardon so tendered is also a condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor. The disclosure must be complete as to himself and as to any other person concerned as principal or abettor. There is no provision for the recording of reasons for so doing, nor is the Special Judge required to furnish a copy to the accused. There is no provision for recording a preliminary statement of the person—Lt. Commander Pascal Fernandes v. The State of Maharashtra and others, (1968) 2 SCJ 12.

(iii) Tender of pardon by Special Judge: Matters to be considered—In the matter of tender of pardon the interests of the accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice, if it is prejudicial to an accused. There are also matters of public policy to consider. Before the Special Judge acts to tender pardon, he must, of course, know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused—Ibid.

(iv) Tender of pardon: Proper procedure.—Ordinarily it is for the prosecution to ask that a particular accused, out of several, may be tendered pardon. But even where the accused directly applies to the Special Judges he must first refer the request to the prosecuting agency. It is not for the special Judge to enter the ring as a veritable director of prosecution. The power which the special Judge exercises is not on his own behalf but on behalf of the prosecuting agency, and must, therefore, be exercised only when the prosecution joins in the request. The State may not desire that any accused be tendered pardon because it does not need approver's testimony. It may also not like the tender of pardon to the particular accused because he may be the brain behind the crime or the worst offender. The proper course for the special Judge is to ask for a statement from the prosecution on the request of the prisoner. If the prosecution thinks that the tender of pardon will be in the interests of a successful prosecution of the other offenders whose conviction is not easy without the approver's testimony, it will indubitably agree to the tendering of pardon. The Special Judge (or the Magistrate) must not take on himself the task of determining the propriety of tendering pardon in the circumstances of the case—Ibid.
(i) **Section 9.**

Section 9 of the Act is as follows:

9. **Appeal and Revision.**—The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapter XXXI and XXXII of the Code of Criminal Procedure, 1898 (Act V of 1898) on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court.

(j) **Section 10.**

Section 10 of the Act runs as follows:

10. **Transfer of certain pending cases.**—All cases triable by a Special Judge under Section 7 which, immediately before the commencement of this Act, were pending before any Magistrate shall, on such commencement, be forwarded for trial to the Special Judge having jurisdiction over such cases.

(i) **Pending case : Meaning of.**—A legal proceeding is “pending” as soon as commenced and until it is concluded, i.e., so long as the Court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein—Stroud’s Judicial Dictionary, 3rd Edition, 3rd Volume, p. 2141.

What is the meaning of the word “pending”? It includes insolvency in which any proceedings can by any possibility be taken . . . . . . A cause is said to be pending in a Court of justice when any proceeding can be taken in it. That is the test—*In re : Clagett’s Estate : Fordham v. Clagget*, (1882) 20 ChD 637 (652).

(ii) **Section 531, Cr.P.C, : Applicability.**—There is nothing in this section which may lead to the non-application of Section 531, Criminal Procedure Code.—*Ram Chandra Prasad v. State of Bihar*, AIR 1961 SC 1629.

7. **The Anti-Corruption Laws (Amendment) Act, 1964**

The following extract from the statement of Objects and Reasons give a clear understanding of the object of this legislation:

"The Committee on Prevention of Corruption was appointed in 1962 to review the problem of corruption and to suggest measures to combat it. The Committee has made various suggestions for dealing with the problem and has, inter alia, recommended certain changes in the law to ensure speedy trial of cases of bribery, corruption and criminal misconduct, and to make the law otherwise more effective. The Bill is intended to give effect to such of these recommendations that have been accepted.

The following are the main features of the Bill:

(a) The definition of ‘public servant’ in Section 21 of the Indian Penal Code is proposed to be amended so as to bring within its purview certain additional categories of persons such as persons performing adjudicatory functions under any law, liquidators, receivers, commissioners, etc.

(b) The Code of Criminal Procedure, 1898, is being amended so as to bring within the purview of Section 198-B of the Code the offence of defamation by spoken words also and
to make it clear that it should not be necessary to take the consent of the person defamed before proceedings are instituted under the section. It is also proposed to provide that trials under this section may be held in camera under certain circumstances. Besides, it is also proposed to amend the Code so as to empower the Central Government to appoint public prosecutors.

(e) The Delhi Special Police Establishment Act, 1946, is being amended to enable officers of the Delhi Special Police Establishment not below the rank of a Sub-Inspector, to exercise the powers of an officer-in-charge of police station.

(d) The Committee has recommended a number of important amendments to the Prevention of Corruption Act, 1947. It has suggested that the presumptions enunciated in sub-sections (1) and (2) of Section 4 of the Act should be made available also in respect of offences under Section 5 and possession of disproportionate assets should be made a substantive offence. It has also recommended that habitually corrupting public servants should be made an offence and that attempts to commit certain offences under Section 5 of the Act should also be made punishable. Certain other recommendations in regard to investigation into corruption cases have also been made. It is proposed to give effect to all these recommendations, subject, of course, to suitable safeguards.

The Committee has suggested certain amendments to the Code of Criminal Procedure, 1898, particularly to the provisions relating to the inspection of documents (in so far as they have a bearing on the inspection of bankers' books), adjournments, stay of proceedings, calling of records, recording of evidence in the absence of the accused, etc. As these recommendations have been made in the context of the limited problem of prevention of corruption, it is proposed to give effect to them by inserting suitable provisions in the Prevention of Corruption Act, 1947.

(e) Further, it is considered necessary to take powers to obtain an order of attachment of money or other property believed to have been obtained by the commission of offences under Section 5 of the Prevention of Corruption Act, 1947 and for this purpose, it is proposed to amend the Criminal Law Amendment Ordinance, 1944, suitably.

(f) The Criminal Law Amendment Act, 1952, is being amended to make the new offences under the Prevention of Corruption Act also triable by special courts."


The Act is reproduced below for ready reference:

Be it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:

1. **Short title.**—This Act may be called the Anti-Corruption Laws (Amendment) Act, 1964.
2. Amendment of Act 45 1860.—In the Indian Penal Code,—

(1) in Section 21—

(i) for clause Third, the following clause shall be substituted namely:

"Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions";

(ii) in clause Fourth, after the words "officer of a Court of Justice", the brackets and words "(including a liquidator, receiver or Commissioner)" shall be inserted;

(iii) in clause Ninth, the words "and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty" shall be omitted;

(iv) for clause Twelfth, the following clause shall be substituted, namely:

"Twelfth.—Every person—

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

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956)."

(v) Explanation 4 shall be omitted.

(2) In Section 161, Section 162 and Section 163, after the words "the Legislature of any State", the words and figures "or with any local authority, corporation of Government company referred in Section 21" shall be inserted.

3. Amendment of Act 5 of 1898.—In the Code of Criminal Procedure, 1898,—

(1) in Section 198-B:

(a) in sub-section (1), the brackets and words "(other than the offence of defamation by spoken words)" shall be omitted;

(b) after sub-section (5), the following sub-section shall be inserted, namely:

"(5-A). Every trial under this section shall be held in camera if either party thereto so desires or if the Court of Session so thinks fit to do."

(c) after sub-section (13), the following sub-section shall be inserted, namely:

"(14) Where a case is instituted under this section for the trial of an offence, nothing in sub-section (13) shall be construed as requiring a complaint to be made also by the person aggrieved by such offence."

(2) in sub-section (2) of Section 222, for the words "dishonest misappropriation of money, it shall be sufficient to specify the gross sum", the words "dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum
or, as the case may be, describe the movable property” shall be substituted;

(3) in sub-section (1) of Section 492, for the words “The State Government”, the words “The Central Government or the State Government” shall be substituted;

(4) in sub-section (1) of Section 495, for the words “generally or specially empowered by the Central Government or the State Government” shall be substituted.

4. Amendment of Ordinance 38 of 1944—In the Schedule to the Criminal Law Amendment Ordinance, 1944, after item 4, the following item shall be inserted, namely:

“4-A. An offence punishable under Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947)”.

5. Amendment of Act 25 of 1946.—In the Delhi Special Police Establishment Act, 1946, in Section 5, after sub-section (2), the following sub-section shall be inserted, namely:

“(3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment or of above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercised the powers of the officer in charge of a police-station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.”.

6. Amendment of Act 2 of 1947.—In the Prevention of Corruption Act, 1947—

“(1) in Section 4:

(a) in sub-section (1), after the words and figures “or Section 165 of the Indian Penal Code”, the words, brackets, letters and figures “or of an offence referred to in clause (a) or clause (b) of sub-section (1) of Section 5 of this Act punishable under sub-section (2) thereof” shall be inserted;

(b) in sub-section (2), after the words, figures and letter “Section 165-A of the Indian Penal Code”, the words, brackets and figures “or under clause (ii) of sub-section (3) of Section 5 of this Act” shall be inserted.

(2) in Section 5—

(a) in sub-section (1)—

(i) the words “in the discharge of his duty” shall be omitted;

(ii) in clause (d) the word “or” shall be inserted at the end and after clause (d) as so amended, the following clause shall be inserted namely:

(c) “if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.”;
(b) in sub-section (2), the words "in the discharge of his duty" shall be omitted;

(c) for sub-sections (2-A) and (3), the following sub-sections shall be substituted, namely:

"(3) whoever habitually commits—

(i) an offence punishable under Section 162 or Section 163 of the Indian Penal Code (45 of 1860), or

(ii) an offence punishable under Section 165-A of the Indian Penal Code,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine:

Provided that the Court may, for any special reasons recorded in writing, impose a sentence of imprisonment of not less than one year.

(3-A) Whoever attempts to commit an offence referred to in clause (e) or clause (d) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3-B) Where a sentence of fine is imposed under sub-section (2) or sub-section (3), the Court in fixing the amount of fine shall take into consideration the amount or the value of the property if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily."

(3) for Section 5-A, the following section shall be substituted, namely:

"5-A. Investigation into cases under this Act.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), no police officer below the rank:

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;

(c) in the presidency-town of Bombay, of a Superintendent of Police; and

(d) elsewhere, of a Deputy Superintendent of Police, shall investigate any offence punishable under Section 161, Section 163 or Section 165-A of the Indian Penal Code, (45 of 1860), or under Section 5 of this Act without the order of a Presidency Magistrate or a Magistrate of the first class, or the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such
offence without the order of a Presidency Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant:

Provided further that an offence referred to in clause (e) sub-section (1) of Section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(2) If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' book, then, notwithstanding anything contained in any law for the time being in force, he may inspect any banker's book in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken, certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section:

Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this sub-section the expressions "bank" and "bankers' books" shall have the meanings assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891)."

(4) in sub-section (1) of Section (6), after the words, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (3-A)" shall be inserted;

(5) after Section 6, the following section shall be inserted namely:

"6-A. Particulars in a charge in relation to an offence under Section 5(1)(e).—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), when an accused is charged with an offence under clause (e) of sub-section (1) of Section 5, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 234 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year."

(6) in Section 7, the words, brackets and figure "sub-section (2) of" shall be omitted:

(7) after Section 7, the following section shall be inserted, namely:

"7-A. The Code of Criminal Procedure, 1898, to apply subject to certain modifications.—The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall, in their application to any
proceeding in relation to an offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code (45 of 1860), or under Section 5 of this Act, have effect as if,—

(a) in sub-section (8) of Section 251-A, for the words "The accused shall then be required to give in writing at once or within such time as the Magistrate may allow, a list of the persons (if any), whom he proposes to examine as his witnesses and of the documents (if any), on which he proposes to rely, and he shall then be called upon" had been substituted;

(b) in sub-section (1-A) of Section 344, after the second proviso, the following proviso had been inserted, namely:
"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 435 has been made by a party to the proceedings."

(c) in sub-section (1) of Section 435, before the Explanation, the following proviso had been inserted namely:
"Provided that where the powers under this sub-section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceeding—

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceeding may be made from the certified copies thereof; and in any case, the proceedings, before the inferior Court shall not be stayed except for reasons to be recorded in writing."

(c) after sub-section (2) of Section 540-A, the following sub-section had been inserted, namely:
"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge or Magistrate may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination."

(6) in Section 8, after the word, brackets and figure "sub-section (2)"", the words, brackets, figure and letter "or sub-section (3-A)" shall be inserted.

7. Amendment of Act 46 of 1952.—In the Criminal Law Amendment Act, 1952, in clause (a) of sub-section (1) of Section 6, the words, brackets and figure "sub-section (2) of" shall be omitted.
CHAPTER XXI

SYNOPSIS

1. Pension—Meaning of.
2. Pension under the Pensions Act (XXIII of 1871)—Scope of.
3. Pension and Grants.
4. Whether arrear of pension can be claimed—Period of limitation for.
5. Right to receive pension flows by virtue of the Rules and not from the order granting the pension.
6. Whether the pension is property.
7. Reduction in pension.
8. Recovery from pension loss suffered by the Government.
9. Whether order of granting pension to State servant could be altered by succeeding Government.
10. Whether President can fix a different rate of exchange than right to take pension at official rate of exchange.
11. Pension to Chief Justices appointed after the enforcement of High Court Judges (Condition of Service) Act, 28 of 1954.

1. Pension—Meaning of

The word “pension” has not been defined any where. However, it has ‘been held that it implies periodical payments of money to a pensioner. Two essentials are necessary in order to constitute a pension: (1) it must be a periodical payment, and (2) it must be a grant not in respect of any right, privilege, perquisite or office but on political considerations or on account of past service or present infirmities or as a compassionate allowance. It is a bounty for past services rendered to public or to the state. It is mainly designed to assist the pensioner in providing his daily wants. It is a mere bounty or gratuity given by the Government in consideration of recognition of meritorious past services rendered by the pensioner, or by some kinsman or ancestor.

“Pension” has been used in contradiction to the words “grant of money or land revenue.”

“Pension” is a bounty for past services.

“Pension,” “Gratuity” and “Provident fund,” as is well known, are three different and distinct types of retirement benefits although the basis for calculating all of them is furnished by the salary or emoluments drawn by a Government servant.

2. Pension under the Pensions Act (XXIII of 1871)—Scope of

Section 12 deals only with pension, pay or allowance mentioned in section 11, and not with grants by Government of money or land revenue nor with such pensions which may not come under section 11. A comparison of sections 8 and 9 makes it clear that grant of land revenue is different from pension. While a right is given to bring a suit for the recovery of land revenue, no such right is given with respect to pension.
3. Pension and Grants

By “Pensions and grants, read in connexion with the rest of the Act, we understand personal grants and not grants to endowments of the nature now under consideration. Having regard to the public religious services, it was intended should be maintained thereout, the endowment appears to fall within the provisions of Act XX of 1863.

4. Whether arrear of pension can be claimed—Period of limitation for

Anand Swarup Singh v. State of Punjab, [1972 SLR 147] the facts were that the plaintiff joined as Naib Tahsildar in Patiala State on June 14, 1930, he was removed from service on January 20, 1949. His representation against his removal was rejected. Thereafter on October 25, 1965. He filed a civil suit for recovery of arrears of pension, said to be due from August 25, 1959 till October 24, 1965. The trial court decreed the claim as prayed for.

The State of Punjab went up in appeal against the decree of the trial court. In the grounds of the appeal it was specifically stated: “it is prayed that the judgment and decree of the lower court to the extent it awards the amount of pension for 6 years be set aside and it be held that the respondent is entitled to recover the said amount for 3 years.” From this it was clear that in the appeal the State of Punjab merely disputed the plaintiff’s right to claim arrears of pension for six years, but conceded his right to claim pension for three years immediately preceding the suit. But curiously enough at the time of the hearing of the appeal everyone appears to have overlooked the scope of the appeal. The High Court went into the question whether the suit brought by the plaintiff was maintainable. It came to the conclusion that the suit was maintainable and it accordingly dismissed the suit in its entirety. This conclusion was wholly untenable in view of the scope of the appeal filed by the State of Punjab. It may further be noted that on October 14, 1966, the President of India revoked the order made on January 20, 1949 and restored the plaintiff to service but by his order dated October 25, 1966 the President declared that the plaintiff must be deemed to have retired on September 28, 1955 when he attained the age of 55 years. In view of this order, which the court was told was placed before the High Court, the High Court was not justified in holding that the plaintiff’s suit was not maintainable as the plaintiff had not prayed for a declaration setting aside the order made on January 20, 1949. In this view it is not necessary to consider the correctness of the High Court’s conclusion that the suit as brought by the plaintiff was not maintainable.

Now coming to the question whether the plaintiff was entitled to claim arrears of 6 years pension but question appears to be concluded by the decision of the Supreme Court in Shri Madhav Laxman Vaikunthe v. The State of Mysore, [(1961) I SCR. 886] wherein the Supreme Court held that in the case of a claim for arrear of salary the period of limitation will be that laid down in Article 102 of the Indian Limitation Act, 1908. It has not been shown that the ratio of that decision was inapplicable to the instant case. Therefore it was held that the Plaintiff would have a decree against the defendants, for arrears of pension for three years preceding the suit with interest at the rate mentioned in the trial court’s decree.
5. Right to receive pension flows by virtue of the Rules and not from the order granting the pension

The grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules.—Deoki Nandan Prasad v. State of Bihar, AIR 1971 SC 1409 at p. 1419.

6. Whether the pension is property

The question whether the pension granted to a public servant is property attracting Article 31 (1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India, [AIR 1962 Punj. 503]. It was held that such a right constitutes property and any interference will be a breach of Article 31 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was, given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh [ILR (1965) 2 Punj. 1] approved the decision of the learned Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is property within the meaning of Article 31 (1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as property cannot possibly undergo such mutation at the whim of a particular person or authority.

The matter again came up before a Full Bench of the Punjab and Haryana High Court in K.R. Erry v. The State of Punjab, [ILR (1967) 1 Punj. & Har. 373 (FB)]. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the
basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration nor with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. It has been agreed with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant.

The Supreme Court in State of Madhya Pradesh v. Ranojirao Shinde, [(1968) 3 SCR 439 : AIR 1968 SC 1053] had to consider the question whether a cash grant is property within the meaning of that expression in Articles 19 (1) (f) and 31 (1) of the Constitution. This Court held that it was property, observing “it is obvious that a right to sum of money is property”.

Having due regard to the above decisions, it was held that the right of the petitioner to receive pension is property under Article 31 (1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19 (1) (f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19 (1) (f) and 31 (1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pensions Act (Act 23 of 1871) there is a bar against a Civil Court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.—Deokinandan Prašād v. The State of Bihar, AIR 1971 SC 1409 at pp. 1419-20.

7. Reduction in pension

Article 311 (2) of the Constitution does not deal with the question of pension at all; it deals with three situations; namely, (i) dismissal (ii) removal, and (iii) reduction in rank. The appellant says that the reduction in pension is equivalent to reduction in rank. All that need be said that reduction in rank applies to a case of public servant who is expected to serve after the reduction. It has nothing to do with reduction of pension, which is specifically provided for in Article 302 of the Mysore Services Regulations. That Article says that if the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper. There is a note under this article, which says that the full pension admissible under the regulations not to be given as a matter of course but rather to be treated as a matter of distinction. It was under this article that the Government acted when it reduced the pension to two-thirds. Reduction in pension being a matter of discretion with the Government, it cannot therefore be said that it committed any breach of the regulation, in reducing the pension of the appellant.—M. Narasimhachar v. State of Mysore, AIR 1960 SC 247 at p. 251.

8. Recovery from pension loss suffered by Government

Where the appellant challenged that part of the order of the Government which provided that a sum of Rs. 5,215 be deducted from the amount due to him and from his pension in monthly instalments. It was held that
it was enough to say that there was a provision in the Mysore Services Regulations providing for this, which was Art. 216-A. Under that Article the Government reserved to itself the right to order the recovery from the pension and compassionate allowances of a Government servant of any amount, on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officers during his service. There was a proviso to this Article which said that departmental proceedings, if not instituted while the officer was on duty, shall not be instituted except under certain circumstances.—M. Narasimhachar v. State of Mysore, AIR 1960 SC 247 at p 251.

9. Whether order of granting pension to State servant could be altered by succeeding Government

Where the respondent held various offices in the Government of Rewa. By an order made on 3rd April, 1948 and published in an extraordinary issue of the Rewa Raj Gazette the Rules stated that “Col. Lal Rampal Singh entered State service on 21st November, 1922 and he is now anxious to retire. It find that he has put in a service of more than 25 years up-to-date and as such he is allowed to retire on a full pension of Rs. 350 per month of his last grade, as a special case with effect from the date of this order, and the so-called breaks in his service, if there be any, are hereby condoned.”

The respondent in his petition stated that in Rewa the rules had made a set of Rules which was called “Rewa State Pension and Gratuity Rules” for grant of pension to Rewa State Civil Servants. He, however, added that the Rules was not bound by those Rules as he was a sovereign ruler. It seems quite clear from the terms of the order that the Ruler purported to act under the Rewa State Rules. This appears from the reference in the order to “full pensions” condonation of the “breaks in his service” and “special case”. This also appears from the fact that the order granted the respondent certain advance which could only have been done to justify the full pension of Rs. 350 per month under the rules. Obviously under the rules the respondent would have been entitled to smaller pension in view of the breaks and if the increments had not been granted. The Ruler was not therefore, acting in the exercise of his sovereign power and in disregard of the Rules; on the contrary he was purporting to act in terms of the Rules. That being so, it has to be held that the order of 3rd April, 1948 was not a law but an executive order passed in terms of the Rules. If was open to the succeeding Government to set aside that order by another executive order. What appropriate order can be passed by the Government of India was not a sustain that arose at the present moment. The respondent’s rights under the Rewa State Rules, accepting it as a law binding on the Indian Union, were not in the least affected. He was however not entitled to any rights except those which the Rules justify. The first contention of the respondent therefore that the order of 3rd April, 1948 was a law which could only be altered by another law duly passed by the Union or other competent legislature must fail.

Another point raised was that if the order was not a law it was a grant and that as the Indian Union had paid the respondent in terms of the order up to March 27, 1953, it must be deemed to have accepted that grant and it could not now deprive the respondent of his right of property under
the grant. It seems that this contention was ill-founded. What the Ruler did by his order of 3rd April, 1948, does not appear to have been to make a grant but to have passed an order purporting to act under the Rules. If that order was not justified by the Rules, it was illegal and was liable to be set aside by another order duly made under them. Pension is furthermore, normally always a matter of grace when there was no law governing. It was implicit in the grant of a pension that it may be subsequently reviewed. Therefore, the grant of the pension assuming that to be the correct view to take—must always have been subject to alteration. The succeeding State was hence competent to review the order even if it had been the pension for sometimes in terms of it.—State of M. P. v. Col. Lal Rampal Singh, AIR 1966 SC 820 at pp. 820-21.

10. Whether President can fix a different rate of exchange than right to take pension at official rate of exchange

Where the members of the Indian Civil Service held cadre posts under the Government of India or the Government of a Province and they were therefore governed by the conditions of service applicable to these posts subject to the provisions of section 10 (2) of the Indian Independence Act, 1947 and Article 314 of the Constitution and it may be noted that Civil Service Regulations which acquired statutory force under section 96-B sub-section (4) of the Government of India Act, 1915, contained not only rules specially applicable to the Indian Civil Service but also rules applicable generally to Government Servants. The power of the Secretary of State under section 96-B extended to making rules for all services in India and at that time there was no distinction between Central Services and Provincial Services. The rules in Civil Service Regulations which were not specially applicable to any public services like the Indian Civil Service or to any special departments or special offices therefore governed all Government servants whether serving in connection with the affairs of the Centre or the Provinces. So also the Civil Services (Classification, Control and Appeal) Rules, 1930 made by the Secr.ety of State under section 96-B, sub-section (2) applied to all Government Servants including those who subsequently under the Government of India Act, 1935 became part of the Provincial Services. Then there were also rules made by Provincial Governments subsequent to the coming into force of the Government of India Act, 1935, in relation to Provincial force of the Government of India Act, 1935, in relation to Provincial Services. All these rules were applicable generally to Government Servants and since the members of the former Indian Civil Service held cadre post under one Government or the other after 15th August, 1947, these rules such of them as were relevant and appropriate, applied to them subject to the provisions of section 10 (2) of the Indian Independence Act, 1947. A plain reading of that section makes it clear that it was intended to serve a two-fold purpose. It has a positive as well as a negative content. It confers on the members of the former Indian Civil Service a right to receive the same conditions of service as respects remuneration, leave and pension as they were entitled to immediately prior to 15th August, 1947 and also by necessary implication guarantees that those conditions of service shall not be altered. It does not merely say that the conditions of service which they have shall not be changed. It was not a mere negative guarantee. It positively gives those conditions of service. That was the plain natural construction of section 10 (2) and it was also borne out by the following observations of Jagannathadas, J., in Rajagopalan's case "some
of the conditions of service previously governing these persons were
continued by Section 10 (2) of the Indian Independence Act, 1947...". Same
was the effect also of Article 314. It was therefore, evident that though
the rules specially applicable to the Indian Civil Service became obsolete
and ineffective and ceased to apply proprio vigore from and after 15th
August, 1947, the conditions of service contained in those rules as respects
remuneration, leave and pension continued to apply to the members of the
former Indian Civil Service by reason of section 10 (2) of the Indian
Independence Act, 1947 and Article 314 of the Constitution.—J. D. Kapadia
v. Union of India, 1972 SLR 149 at pp. 159—160.

Now the next question was that what were the conditions of service
as respects pension to which the members of the Indian Civil Service were
entitled immediately prior to 15th August, 1947? The argument of the
petitioner was that the conditions of service as respects pension were to be
found in Article 561 as it then stood and according to that Article, the
members of the Indian Civil Service were entitled on retirement to a pension
of Rs. 10,666-10-8 subject to a minimum of £ 1000. This right to receive
a minimum pension of £ 1000/-, said the petitioner, was conferred and
guaranteed by section 10 (2) of the Indian Independence Act and
Article 314 and the petitioner was, therefore, entitled to insist that he
should receive the equivalent rupees value of £ 1000, according to the
official rate of exchange prevailing on the date of payment. The
principal answer given on behalf of the respondents was that by reason
of the amendment of Article 561 and 983 the petitioner being an Indian
officer was entitled to receive only the fixed sum of Rs. 13,333-33 by wav
of pension. But this answer based on the amendment purported to be made
by the President by the notification dated 29th June, 1957 was without sub-
stance. As already pointed out above, Articles 561 and 983 became obsolete
and ineffective from 15th August, 1947 and the purported amendment of
these Articles was futile and meaningless it was an ineffectual attempt to
amend Articles which were dead and inoperative an exercise in futility.
The respondents were not entitled to rely on the amendment for restricting
the right of the petitioner to receive pension of the fixed sum of
Rs. 13,333.33. The conditions of service as respects pension which applied
to the petitioner were those contained in Article 561 and according to the
respondents also Article 983 as they stood immediately prior to 15th
August, 1947 and since these conditions of service were guaranteed to the
petitioner by Article 314 of the Constitution, it was not competent to the
President to alter them except by a constitutional amendment. Of course,
since Article 314 of the Constitution, it was not competent to the President
to alter them except by a constitutional amendment. Of course, since
Article 314 opens with the words “except as otherwise expressly provided
by this Constitution”, if there was any express provision in the Constitution
that the members of the former of Indian Civil Service shall have different conditions service as respects pension than those to
which he was entitled immediately before the commencement of the
Constitution, such express provision would prevail but the President cannot,
by invoking the proviso to Article 309 or section 3, sub-section (3) of the
All India Services Act, 1957, made under Article 312 prescribe conditions
of service which would override the guarantee in Article 314. The power
conferred on the President under the proviso to Article 309 was by the
very terms of that Article subject to the other provisions of the Constitution
which would include Article 314 and Article 312 does not make any express
provision authorising Parliament to make law prescribing conditions of
service in derogation of Article 314. No rules can, therefore, be made by the President under the proviso to Article 309 or Section 3 sub-section (1) of the All India Services Act, 1951 which would have the effect of altering the conditions of service guaranteed under Article 314. To take any other view would be to rob the guarantee of Article 314 of all its meaning and content. Therefore, even if it were possible to read the Presidential notification dated 29th June, 1957 as an attempt to alter the conditions of service embodied in Articles 561 and 983 as they stood immediately prior to 15th August, 1947, it would be invalid and of no effect, for such alteration could be made only by means of constitutional amendment. The result was that the purported amendment of Articles 561 and 983 had no effect on the pension rights of the petitioner which continued to be governed by the conditions of service as they prevailed immediately prior to 15th August, 1947.

The respondents, faced with this situation, tried to extricate themselves out of it by putting forward a rather ingenious contention. Their argument was on the following lines. The conditions of service as respects pension which applied to the petitioner were to be found not in one Article alone, namely, Article 561 but in two Articles namely, Articles 561 and 983. Article 983 consisted of two clauses. The first clause dealt with the situation where payment of pension was taken at the Home Treasury but there being no Home Treasury in existence after independence, this clause became obsolete and inoperative. The second clause provided that where payment was taken in India, the recipient may take in his option either Rs. 10,666-10-8 of the rupees equivalent of £1000 “at such rate of exchange as the Secretary of State in Council may by order prescribe”. Under this clause after the commencement of the Constitution, President must be deemed to have been substituted for the Secretary of the State and the power to prescribe the rate of exchange for determining the rupee equivalent of £1000 would be exercisable by the President. The Presidential notification fixing the sum of Rs. 13,333-33 as pension though purporting to be issued under the proviso to Article 309 and section 3 (1) of the All India Services Act, 1951 could, therefore, be justified under this clause as amounting in substance to prescription of the rate of exchange for conversion of £1000/and would bind the petitioner. This argument plausible though it may seem was not well founded and must be rejected. In the first place it was debatable whether Article 983 could be regarded as embodying a condition of service as respects pension guaranteed under Article 314. The argument of the petitioner was that it did not constitute a condition of service as respects pension since it did not deal with the substance of the obligation but merely provided for mode of payment of pensions. The respondents on the other hand urged that the second clause by empowering the Secretary of State to fix a rate of exchange different from official rate for payment of pension in India affected the substance of the obligation and it was, therefore, as much a condition of service as Article 561. It was not necessary to resolve this controversy. It will be assumed for the purpose of argument that Article 983 constituted as much a condition of service as Article 561. Even so the respondents cannot succeed in repelling the argument of the petitioner.—J. D. Kapadia v. Union of India, 1972 SLR 149 at pp. 160, 161, 162.

Since the conditions of service embodied in Articles 561 and 983 as they stood immediately prior to 15th August, 1947 were conferred and guaranteed by section 10(2) of the Indian Independence Act and Article 314, it was necessary in order to determine these conditions of service to read
service interrogation of Article 314. No rules can, therefore, be made by these Articles as if they were written out with pen and ink in section 10 (2) and Article 314. Now the first clause of Article 983 provided for a situation where the payment of pension was taken at the Home Treasury. But obviously there could be no Home Treasury after transfer of power on 15th August, 1947. The concept of Home Treasury became totally non-existent in the changed situation arising as a result of transfer of power and the first clause of Article 983, therefore, became obsolete and inoperative from 15th August, 1947 on the application of the principle laid down by the House of Lords in Erat of Antrim's petition.—[(1967) 691 at p. 71b] as already referred. What, therefore, survived under section 10 (2) and Article 314 was second clause of Article 983. This clause provided that where payment of pension was taken in India, the recipient shall be entitled to receive at his option either Rs. 10,666-10-8 or the rupee equivalent of £ 1000/- at such rate of exchange as the Secretary of State-in-Council may by order prescribe". But on transfer of power the Secretary of State also ceased to exist. As pointed out by Jagannadhadas J. in Rajagopalan's case: "...the Secretary of State who as a Member of the British Cabinet acting in the name of the Crown and responsible to the British Parliament was exercising such control as was vested in him in respect of the affairs of India and in particular as regards these services completely disappeared." The latter part of the second clause of Article 983 as written out in section 10 (2) and Article 314 therefore, became meaningless since there was no Secretary of State who could exercise the power to prescribe the rate of exchange contemplated in that provision. That part become obsolete and ineffective and the power conferred by it ceased to be exercisable. This obsolete part must, therefore, be erased while reading Articles 561 and 983 in section 10 (2) and Article 314. The respondents, however, contended that after transfer of power Governor-General and after the commencement of the Constitution President must be substituted for Secretary of State in Council and the latter part of the second clause of Article 983 could not, therefore, be deemed to have become obsolete and inoperative on the ground that the Secretary of State ceased to exist on transfer of power. The power which was formerly exercisable by the Secretary of State in Council said the respondents would now, after the commencement of the Constitution, be exercisable by the President and, therefore, the President's notification dated 29th June, 1957 was within the scope of his power under the second clause of Article 983. This argument was based on the assumption that in the second clause of Article 983 as written out in section 10 (2) and Article 314, Secretary of State-in-Council, could be read as substituted by Governor-General after the commencement of the Constitution, by President. Now undoubtedly if this assumption were well founded, there would be no answer to the argument but it was difficult to think that there was any warrant for this assumption. It has been referred on behalf of the respondents to various adaptation orders made under the Indian Independence Act, 1947 as also under the Constitution and particularly, India (Provisional Constitution) Order, 1947, India Adaptation of Existing Laws Order, 1947, and the Adaptation of Laws Order, 1950, but none of these adaptation orders authorised substitution of Secretary of State-in-Council by Governor-General or President in Section 10 (2) of Article 314. Clause 10 of India Adaptation of Existing Laws Order, 1947, and Clauses 16 and 21 of Adaptation of Laws Order, 1950 would have undoubtedly availed the respondents if the question were whether Secretary of State should be read as substituted by Governor-General or President in Articles 561 and 983 but, as pointed out above, these
Articles became obsolete and ineffective and ceased to apply *proprio vigore* from and after 15th August, 1947 and it was only by force of section 10(2) and Article 314 that the conditions of service as embodied in Articles 561 and 983 as they stood immediately prior to 15th August, 1947 continued to apply to the members of the former Indian Civil Service. Unless, therefore, it has been found some adaptation order or some provision of law which permits substitution of Secretary of State-in-Council by Governor-General and President in Section 10(2) and Article 314, it cannot be held that according to the conditions of service, guaranteed under section 10(2) and Article 314 the President can prescribe the rate of exchange at which the minimum pension of £ 1000 should be paid. It was also significant to note that words as similar thereto as changed circumstances may permit in Section 10(2) and Article 314 qualify, only “rights” and not “conditions of service”. Section 10(2) and Article 314 provide that the members of the former Indian Civil Service shall have the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit but so far as the conditions of service were concerned there was no such qualification. It was no doubt at one stage in the course of arguments faintly suggested on behalf of the respondents that the words “as similar thereto as changed circumstances may permit” govern both “rights” and “conditions of service” but having regard to the language of the provision, it was not possible to accept that construction. Grammar and context do not permit it. Since the words “as similar thereto as changed circumstances may permit” were not applicable to “conditions of service,” it was not possible to suggest that by reason of the changed circumstances arising as a result of transfer of power, the conditions of service should be adapted by reading “Secretary of State” as substituted by “Governor-General” and “President”. The respondents cannot, therefore, rely on the second clause of Art. 983 as a source of power for issuing the Presidential notification fixing the sum of Rs. 13,333.33 as pension.

The same question can also be looked at from a slightly different angle. Let us examine once again what were the conditions of service as respect pension to which the members of the Indian Civil Service were entitled immediately prior to 15th August, 1947. Article 561 conferred on them a right to receive a minimum pension of £ 1000. Article 928 made different provision according as payment of pension was taken at the “Home Treasury” or in India. If payment was taken at the “Home Treasury,” the recipient could take, at his option, either Rs. 10,666-10-8 converted into sterling at such rate of exchange as the Secretary of State-in-Council may by order prescribe or the fixed minimum of £ 1000. If on the other hand, payment was taken in India, he could take at his option either Rs. 10,666-10-8 or the fixed minimum of £ 1000. converted into rupees, at such rate of exchange as the Secretary of State-in-Council may by order prescribe. This mode of payment was intended to ensure to the recipient a minimum pension of £ 1,000. He could always so exercise his option that in any event he could have a minimum pension of £ 1,000. If the rate of exchange prescribe by the Secretary of State-in-Council was less than the official rate of exchange so that by taking payment in India he would get less than the real rupee equivalent of £ 1,000/- he could take payment at the “Home Treasury” and thereby receive the real value of £ 1,000. Of course if the rate of exchange fixed by the Secretary of State-in-Council was higher than the official rate of exchange the recipient would get more than the real value of £ 1,000 by taking payment in India, and would, therefore, be better off by taking payment in India than what he would be by taking payment at the Home Treasury where he would get
only £ 1,000. It was, therefore, obvious that under the conditions of service existing immediately prior to 15th August, 1947, a member of the Indian Civil Service was in any event entitled to receive a minimum of £ 1,000/- as pension. This was the substance of his conditions of service as respects pension and it was this substance which was conferred and guaranteed by Section 10 (2) and Article 314. The petitioner cannot be deprived of this right to receive the real value of £ 1,000 as pension by adopting a construction which discards the first clause of Article 983 as obsolete and inoperative and gives effect to the second clause by substituting the word "President" for the words "Secretary of State-in-Council." The right of the petitioner to a minimum pension of £ 1,000 according to its real value at the official rate of exchange a right which the petitioner had immediately prior to 15th August, 1947 cannot be defeated by the President fixing a rate of exchange less than the official rate under the second clause of Article 983. It was a right which was conferred and guaranteed by Section 10 (2) and Article 314 and it must be recognised and given effect to notwithstanding the President's notification fixing an amount less than the real value of £ 1,000 according to the official rate of exchange.—J. D. Kapadia v. Union of India, 1972 SLR 149 at pp. 162, 163, 164.

11. Pension to Chief Justices appointed after the enforcement of High Court Judges (Conditions of Service) Act, 28 of 1954.

It is, however, clear that Para 18 of the Government of India (High Court Judges) Order, 1937, in so far as it provides for pension payable to a Chief Justice could scarcely apply to the two I. C. S. Chief Justices who never held the offices of Chief Justices during the operation of the 1937 Order, having been appointed as Chief Justices only after the enforcement of the High Court Judges (Conditions of Services) Act, 28 of 1954. [Shri R. L. Narasimham v. Union of India, AIR 1972 SG 2405 at p. 2410.]

12. Question of pension in Sterling

Beginning with the First Schedule of the High Court Judges (Conditions of Service) Act, 28 of 1954 it has been found that all the Paras of part I specify the amount of pension payable in rupees. Para 3 provides for basic pension and Paras 4 and 5 for additional pension. Para 4 reads:

"4. For the purpose of calculating additional pensions, service as a Judge shall be classified as follows:—

Grade I. Service as Chief Justice in any High Court;

Grade II. Service as any other Judge in any High Court".

Para 5 which also fixes the maximum aggregate pension per annum provides:

"5. For each completed year of service for pension in either of the grades mentioned in paragraph 4, the Judge who is eligible for a basic pension under this Part shall be entitled to the additional pension specified in relation to that grade in the second column of the Table annexed hereto:"
Provided that the aggregate amount of his basic and additional pension shall not exceed the amount specified in the third column of the said Table in relation to the higher grade in which he has rendered service for not less than one completed year."

It is not denied that Shri Malik who was not a member of the Indian Civil Service was to be paid his pension in accordance with the scale and provisions in Part I of the First Schedule as laid down by Section 14 of 1954 Act. As regards Shri Desai also it is not disputed that he had on his retirement elected under the proviso to Section 15 to receive his pension under Part I of the First Schedule. All that he has pleaded in the rejoinder affidavit was that there was never any question of option between the 1937 Order and the 1954 Act. This plea ignores the fact that had he exercised his option to receive his pension under Part II he would have been entitled to invoke the ordinary rules of the Indian Civil Service applicable to him, had he not been appointed as Judge, and that his election to receive pension under Part I rules out all claim to pension in sterling. So far as these two Chief Justices were concerned it was hardly open to dispute that they have both to receive their pension under Part I. The claim made in the writ petition by Shri Desai that he was entitled to draw his pension at the Treasury in England in sterling was also in view of his election not easy to sustain and indeed no convincing argument was advanced in its support. It was only in the case of Shri Narasimham that it was suggested that he had exercised his option without prejudice to his right to claim pension in pounds sterling under the 1937 Order to be converted into rupees, if that would be more favourable to him. Under the proviso to Section 15 as was clear he was required to elect to receive his pension either under Part I or under Part II. Part II of the First Schedule applies to a Judge who was a member of the Indian Civil Service and who has not elected to receive the pension payable under Part I. Under paragraph 2 of Part II pension payable to such a Judge was the pension to which he would be entitled under the ordinary rules of the Indian Civil Service if he had not been appointed a Judge, his service as a Judge being treated as service there-in for calculating that pension, and to the additional pension, if any, to which he would be entitled under paragraph 3. It may be recalled that the original paragraph 3 as enacted in 1954 provided for a scale of additional pension for Judges completing not less than seven years of service, and that the amount was expressed in sterling. By the Amending Act No. 46 of 1958 this scale in paragraph 3 was specified in rupees instead of sterling with retrospective effect. This amendment was effected long before Shri Narasimham retired.—[Shri R. L. Narasimham v. Union of India, AIR 1972 SC 2405 at pp. 2413-14].

<table>
<thead>
<tr>
<th>Service</th>
<th>Additional Pension per annum</th>
<th>Max. aggregate pension per annum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rs.</td>
<td>Rs.</td>
</tr>
<tr>
<td>Grade I</td>
<td>740</td>
<td>20,000</td>
</tr>
<tr>
<td>Grade II</td>
<td>470</td>
<td>16,000</td>
</tr>
</tbody>
</table>
It is true that in the absence of election by Shri Narasimham under section 15 of the High Court Judges (Conditions of Service) Act, of 1954 it was apparently not possible to calculate pension payable to him under the 1954 Act. It was, however, open to him, if he so desired, to elect to receive pension under Part II. Instead of so electing, he elected to receive pension under Part I without prejudice to his right to claim at superannuation payment of pension under the 1937 Order by converting sterling into rupees if that were more favourable to him. After the amendment of paragraph 3 of Part II or the First Schedule, even under that Part there was no question of calculating, pension payable to retired Judges of the High Courts in pounds sterling. Indeed, the 1954 Act, after its amendment marks the final break with the foreign currency in the matter of payment of pensions to the High Court Judges and the beginning of uniform treatment of all High Court Judges in the matter of payment of pension by providing for calculation and payment in Indian currency. The anomaly which was a relic of the British rule originally motivated by an apparent desire to bestow a special privilege and facility, carrying financial benefit, on British Judges serving in India was finally removed by this amendment. It is hardly necessary in this connection to emphasise the desirability of keeping our basic economic structure, so far as practicable, free from the direct effects of unpredictable fluctuations in the value of foreign currency. It was thus apparently with the intention of delinking the fixation of pension to the retired L.C.S. Judges of the High Court from the pound sterling—a foreign currency—that the Parliament in its wisdom decided to effect the necessary amendment in the 1954 Act, which removed the anomaly of paying pensions to a certain category of High Court Judges by first determining the amount of pension in a foreign currency and then converting that amount into Indian rupees for payment to them. It also eliminated the possibility of recurring variations, depending on the uncontrollable fluctuations in the value of pound sterling, in the amount of pensions payable to that category of Judges.—[Shri R. L. Narasimham v. Union of India, AIR 1972 SC 2405 at p. 2414-2415.]

Now Section 25 of the 1954 Act enacted by Parliament as contemplated by Article 221 (2) which has already been reproduced merely saves the pre-existing right of the three Chief Justices in respect of pensions from less favourable effect of the provisions of the 1954 Act. The question, therefore, arose if the 1954 Act has the effect of giving to the three Chief Justices less favourable terms in respect of their pensions than those to which they would have been entitled had the 1954 Act not been passed. For determining this question we have to turn to the 1937 Order; vide Article 221 (2) read with para 10 (4), Part D, Second Schedule of the Constitution. Para 18 of the 1937 Order provided for the calculation of pension, payable to a Chief Justice on his retirement (whether or not he is a member of the Indian Civil Service) in accordance with the scale and rules in Part I of the Third Schedule. In that Part pensions are expressed in sterling only. According to para 21, it may be recalled, such pension when expressed in sterling only, if paid in India, had to be converted at such rate of exchange as the Secretary of State (before India became a Dominion) or the Governor-General (after India became a Dominion) may, from time to time, prescribe. This para, quite plainly did not impose any legal obligation on the authorities concerned to adopt the current or market rate of exchange. Neither any statutory provision nor any precedent or principle was brought to our notice from which we could be
persuaded to spell out any such obligation. The authorities concerned were free to prescribe whatever rate of exchange they considered proper. By virtue of Article 221 (2) of the Constitution, until Parliament by law determined differently, every Judge was entitled to such rights in respect of pensions as are specified in the Second Schedule. In that Schedule, as provided by para 10 (4) before its amendment by the Constitution (Seventh Amendment Act, 1956) of Part D, the rights in respect of pension of the Judges of the High Courts were continued to be governed by the provisions which immediately before the commencement of the Constitution were applicable to them in the corresponding provinces. The Proviso to Article 221 (2), it may be recalled, only protected the rights of a Judge in respect of pension against variation to his disadvantage. Assuming, this proviso to take within its fold the right of a Judge in respect of pensions under the 1937 Order, it may be pointed out, that there was no right conferred on a Judge under that order to get his pension, specified in pounds sterling only, converted into rupees at the current or market rate of exchange. There was, therefore, no question of any such right being protected under the Constitution. The only right that could be protected was to get the pension expressed in sterling only converted for payment in India at such rate of exchange as the Governor-General may from time to time prescribe. The protection thus granted was also to last only for the interim period till Parliament made a law in respect of pensions as provided by Article 221 (2). This sub-Article, clearly showed that the framers of the Constitution intended the law relating to pensions of all High Court Judges, including the Chief Justices to be placed on a more uniform, rational and stable basis. Such law in the form of the 1954 Act, it may be recalled, was brought on the statute book in 1954. The protection guaranteed to the Judges of the High Courts in the proviso to Article 221 (2) was reproduced in the 1954 Act as well in the form of Section 25. Now if there was no pre-existing right in the three Chief Justices to get their pensions expressed in sterling only converted for payment to them into rupees at the current or market rate of exchange, obviously there was no question of preserving or protecting any such right either under the Constitution or under the 1954 Act. Under the said Act pensions expressed in sterling only were, according to Section 18, to be converted into rupees at such rate of exchange as the Central Government specified in this behalf from time to time. This right is expressed in terms identical with those used in Para 21 of the 1937 Order except that the authority empowered to specify the rate of exchange for the conversion was the Central Government in substitution for the Governor-General. No complaint was made by the Chief Justices against this substitution. It was thus clear that the statutory provisions beginning with the 1937 Order and ending with the 1954 Act nowhere vested in the High Court Judges a right to have their pensions expressed in sterling to be converted into rupees at the prevailing market rate of exchange at the time of their retirement or of payment of pension to them. It is therefore difficult to hold that either the Constitution or the 1954 Act preserves any right in the three Chief Justices to get their pensions expressed in sterling only converted for payment to them in India into rupees at the prevailing market rate of exchange.—[Shri R. L. Narasimham v. Union of India, AIR 1972 SC 2405 at p. 2415-16].
CHAPTER XXII

SYNOPSIS

1. Probationer—who is.
2. Probationer by implication.
3. Allowing the probationers to continue in their posts after the probationary period.
4. Reasonable salary to workmen who are probationers.
5. Tahsildar as a probationer charged excess travelling allowance and could not pass departmental examination.
6. Whether a probationer can be discharged during the period of probation.
7. Appointment as a probationer—Employee not confirmed but continuing in service after the expiry of the probationary period.
8. Termination of service in accordance with the conditions of probationary service and not as a measure of punishment—if Article 311 can be invoked.

1. **Probationer—who is.**

“Probation” means ‘testing of a person’s capacity, conduct or character especially before he is admitted to regular employment”. In Webster’s dictionary “probation” is said to have been derived from the Latin word “probatio” and French “probare” meaning to try, examine, prove and is self defined as any proceeding design to ascertain truth, to determine character, qualification, etc., examination, trial or a period of trial, as to engage a person on probation.

A “probationer” cannot automatically acquire the status of a permanent member of a service unless of course the rules under which he is appointed expressly provide for such a result.—*S. Sukhbans Singh v. State of Punjab*, AIR 1962 SC 1711 at pp. 1714-15.

The meaning given to the word “probation” in Wharton’s Law Lexicon thirteenth Ed., “suspension of a final appointment to an office until a person temporarily appointed (who is called a ‘probationer’) has by his conduct proved himself to be fit to fill it. The above meanings make it clear that till probationer holds only a temporary appointment till he has proved himself to be fit to fill the permanent appointment. “Probation” has been discussed by Barwell & Kar in their Book “Master and Servant” Vol. I which is as follows :

“**Probation**”—A term found in many contracts of service provides that for a year, or for some shorter period succeeding the date when the servant is to join for duty, he will be treated as “on probation.”

A person appointed on probation would not ordinarily get automatic confirmation in service on the expiry of the stipulated probationary period and that if he is allowed to continue in service without any action being taken by the employer either by way of confirmation or by way of termination he would continue only as probationer even after the expiration of the.
period of probation. This has been clearly laid down by the Supreme Court in *Express Newspapers Ltd. v. Labour Court, Madras*, AIR 1964 SG 806.

2. **Probationer by implication.**

Where the service rules fixes a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation was allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he could not be deemed to continue in that post as a probationer by implication. The reason was that such an implication was negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it was permissible to draw the inference that the employee allowed to continue in the post of completion of the maximum period of probation has been confirmed in the post by implication.—*The State of Punjab v. Daraw Singh*, AIR 1968 SC 1210 at p. 1212.

3. **Allowing the probationers to continue in their posts after the probationary period.**

Where the respondents, the probationers, were officiating in a permanent posts and under Rule 6 (3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules 1961, they continued to hold those posts on probation in the first instance for one year. The maximum period of probation fixed by the Rules was three years which expired on October 1, 1960. The respondents continued to hold their posts after October 1, 1960 but formal orders confirming them were not passed.

The employees referred to in Rule 6 (1) held their posts in the first instance on probation for one year commencing from October 1, 1957. On completion of the one year period of probation of the employee, four courses of action were open to the appointing authority under section 6 (3). The authority could either (a) extend the period of probation provided the total period of probation including extensions would not exceed three years, or (b) revert the employee to his former post if he was promoted from some lower post, or (c) dispense with his services if his work or conduct during the period of probation was unsatisfactory, or (d) confirm him in his appointment. It could pass one of these orders in respect of the respondents on completion of their one year period of probation. But the authority allowed them to continue in their posts thereafter without passing any order in writing under rule 6 (3). In the absence of any formal order, the question was whether by necessary implication from the proved facts of these cases, the authority should be presumed to have passed some order under rule 6 (3) in respect of the respondents, and if so, what order should be presumed to have been passed.

The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication. But under the proviso to Rule 6 (3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6 (3), it was not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.
Immediately upon completion of the extended period of probation on October 1, 1960, the appointing authority could dispense with the services of the respondents of their work or conduct during the period of probation was in the opinion of the authority unsatisfactory. Instead of dispensing with their services on completion of the extended period of probation the authority continued them in their posts until sometime in 1963, and allowed them to draw annual increments of salary including the increment which fell due on October 1, 1962. The rules did not require them to pass any test or to fulfil any other condition before confirmation. There was no compelling reason for dispensing with their services and re-employing them as temporary employees on October 1, 1960 and the High Court rightly refused to draw the inference that they were so discharged from services and re-employed. In these circumstances, the High Court rightly held that the respondents must be deemed to have been confirmed in their posts. Though the appointing authority did not pass formal orders of confirmation in writing, it should be presumed to have passed orders of confirmation by so allowing them to continue in their posts after October 1, 1960. After such confirmation, the authority had no power to dispense with their services under rule 6 (3) on the ground that their work or conduct during the period of probation was unsatisfactory. It follows that on the dates of the impugned orders, the respondents had the right to hold their posts. The impugned orders deprived them of this right and amounted to removal from service by way of punishment. The removal from service could not be made without following the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and without conforming to the constitutional requirements of Article 311 of the Constitution. As the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1952 was not followed and as the constitutional protection of Article 311 was violated, the impugned orders were rightly set aside by the High Court.—The State of Punjab v. Daraw Singh, AIR 1968 SC 1210 at pp. 1211, 1212, 1213.

4. Reasonable salary to workmen who are probationers

There can be no justification for granting a claim for leave, pay and compensation for forced unemployment over and above the salary claimed by the workmen in the application for the entire period, there being no provision for encashment of the leave in the company.

As regards the period for which salary should be awarded, the workmen being probationers, not permanent, considering all the circumstances, one year’s salary would be roughly the correct measure of the monetary value of the benefit of reinstatement in this case.—[Victor Oil Co. Ltd. v. Amarnath Das, (1961) 3 FLR 239 : (1961) 2 LLJ 118 (SC)].

5. Tahsildar as a probationer charged excess travelling allowance and could not pass departmental examinations

In the case of State of U. P. v. Akbar Ali Khan [AIR 1966 SC 1812] the respondent was posted as a probationer Tahsildar and had drawn excess travelling allowance in respect of certain journeys: The State Government directed the Deputy Commissioner to hold an enquiry after taking into consideration the explanation of the respondent. On 27th September, 1956 the Government of U. P. directed that the respondent be apprised of the grounds for holding an enquiry and that he be given an opportunity to show cause why his probation be not terminated. On 13th August, 1957
the respondent was informed that the Governor of U. P. agreeing with
the Board had ordered that the probation of the respondent be terminated,
and that he be reverted to the post of Naib-Tahsildar. The respondent
submitted a memorial to the Governor on October 12, 1957. After consi-
dering the memorial the Governor passed an order cancelling that part of
the order which related to the stoppage of promotion of the respondent,
and confirmed the termination of probation, because in the view of the
Governor the respondent “had during the probation not made sufficient
use of his opportunities and had failed to give satisfaction.”

The respondent then presented a petition before the High Court.
In the view of the High Court the Governor by his later order sought to
convert the earlier order of punishment into an order under rule 14 of
the Subordinate Revenue Executive Service (Tahsildar) Rules, 1944, but
the Governor had no “power to convert an order of punishment retro-
spectively into an order under rule 14, nor could be appropriate to himself
the function of subsequently interpreting the earlier order and laying
down that the order was an order under the rule and not an order of
punishment.”

The respondent was posted as a Tahsildar and placed on probation
for two years. The initial period of probation was liable to be extended
by the Board of Revenue or by the Governor. There was no rule that on
the expiry of the period of probation the probationer shall be deemed to
have been confirmed in the post which he was holding as a probationer.
If a probationer was found not to have made sufficient use of his opportu-
nities or had failed to pass the departmental examination “completely”
or if he had otherwise failed to give satisfaction he may be reverted to his
substantive appointment again confirmation in the appointment at the end
of the period of probation could only be made if the probationer had passed
the departmental examination for Tahsildars “completely” and the
Commissioner reported that he was fit for confirmation and that his integrity
was unquestionable. It was common ground in this case that the respon-
dent had not passed the departmental examination before 1955. He had
therefore not qualified himself for confirmation.

The scheme of the rules was clear. Confirmation in the post which a
probationer was holding does not result merely from the expiry of the
period of probation, and so long as the order of confirmation was not made,
the holder of the post remained a probationer. It had been held by the
Supreme Court that when a first appointment or promotion was made on
probation for a specified period and the employee was allowed to continue
in the post, after the expiry of the said period without any specific order of
confirmation he continued as a probationer only and acquired no sub-
stantive right to hold the post. If the order of appointment itself stated
that at the end of the period of probation the appointee would stand
confirmed in the absence of any order to the contrary, the appointee would
acquire a substantive right to the post even without an order of confirm-
ation. In all other cases, in the absence of such an order or in the
absence of such a service rule, an express order of confirmation was
necessary to give him such a right. Where after the period of probation
an appointee was allowed to continue in the post without an order of
confirmation, the only possible view to take was that by implication the
period of probation had been extended, and it was not a correct proposition
to state that an appointee should be deemed to be confirmed from the "mere

In the view of the High Court the Order dated August 13, 1957, determining the probation and withholding promotion for a period of seven years from the date of reversion being a composite punitive order, could not be made by the Governor without giving to the respondent reasonable opportunity of showing cause against the action proposed to be taken in regard to him. That view was strongly pressed upon for acceptance. The proceeding against the respondent, it was true, commenced on a report which charged him with having submitted travelling allowance bills in respect of journeys not performed by him. But it was clear from the letter dated September 27, 1956, that the inquiry made against the respondent was only for the purpose of affording him an opportunity to show cause why his "probation should not be terminated forthwith". The Governor of U. P. after considering the explanation submitted by the respondent, by order dated August 13, 1957, terminated the probation of the respondent, and further directed that he should not be considered for promotion for a period of seven years from the date of reversion. The second part of the order, it appeared, was not given effect to, for even before December 1, 1958, the respondent was posted as an officiating Tahsildar. By the second order dated December 1, 1958, the Governor of U. P. cancelled the stoppage or promotion and only confirmed the order in so far as it related to termination of probation. It cannot be held that the first limb of the order dated August 13, 1957, was punitive in character. The inquiry against the respondent was held for the purpose of determining his probation. Under Rule 14 of the Subordinate Revenue Executive Service (Tahsildar) Rules, 1944, the Governor was authorised to revert a person appointed on probation, it appeared at any time that the person had not made sufficient use of his opportunities or had failed to pass the departmental examination completely or had otherwise failed to give satisfaction. An officer who had submitted travelling allowance bills in respect of journeys not undertaken by him may not unreasonably be regarded as one who "had failed to give satisfaction." It could not be assumed merely because an inquiry was directed to ascertain whether a person appointed on probation has failed to give satisfaction that it was intended to hold an inquiry with a view to impose punishment against that person. Inquiry against the respondent which was commenced for ascertaining whether he should be continued on probation or whether his probation should be terminated, did not change its character merely because the Governor made an order which he could not make in that inquiry. There was nothing to show that the scope of the inquiry was at any time extended. The order withholding promotion was one which the Governor was in the inquiry incompetent to pass, and apparently the order was not given effect to, and when presumably his attention was drawn to the irregularity that part of the order was cancelled.

The High Court also held that inquiries under Rule 14 no inquiry could be made against the respondent before termination of probation and that the Governor held an inquiry under Rule 55 (3) of the Civil Services (Classification, Control and Appeal) Rules, and in making that inquiry the
State authorities did not act in conformity with the rules and the constitutional safeguards. But the assumption made by the High Court could not be accepted. The inquiry was commenced under Rule 14 of the Subordinate Revenue Executive Service (Tahsildar) Rules, 1944 and ever lost that character. Reversion to a substantive appointment could be directed under Rule 14 in the conditions mentioned therein, and for ascertaining the existence or otherwise of those conditions, the appointing authority may hold some inquiry. Mere holding of an inquiry was therefore not a ground for holding that the order which followed as a result of the inquiry was not made under Rule 14.

The High Court also held that inquiries under Rule 14 of the Subordinate Revenue Executive Service (Tahsildar) Rules, 1944, and Rule 55 (3) of the Civil Services (Classification, Control and Appeal) Rules which applied to the Provincial Services applied to different situations. Rule 55 (3) at the material time dealt with probationers and provided:

“This rule shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary Government servant, for any specific fault or on account of his unsuitability for the service. In such cases, the probationer or temporary Government servant concerned shall be apprised of the grounds of such proposal, given an opportunity to show cause against the action to be taken against him, and his explanation in this behalf, if any, shall be duly considered before orders are passed by the competent authority”.

Clauses (1) and (2) deal with the dismissal, removal or reduction in rank of a member of a service, but those clauses are expressly made inapplicable by the first sentence of clause (3) of Rule 55 to termination of employment of a probationer and by the second part the procedure to be followed in the inquiry for determination of probation was prescribed. Rule 14 of the Subordinate Revenue Executive Service (Tahsildar) Rules, 1944 conferred power upon the appointing authority to terminate probation in certain eventualities. Under that rule an inquiry may be made, if the appointing authority thinks it fit to do so and to such an inquiry Rule 55 (3) which primarily deals with the procedure to be followed before an order was passed determining probation may apply.

Therefore it was held that the High Court was in error in holding that the order made by the Governor determining the probation of the respondent infringed the protection of Article 311. The Governor initially passed an order stopping promotion. The latter part of the order which the Governor was incompetent to pass under rule 14 did give rise to a justifiable grievance which the respondent could set up, but after that order as cancelled the respondent had no cause for grievance. It could not be said that by terminating the probation any penalty was imposed; and if that be the correct view the opinion expressed by the High Court that by passing the order dated December 1, 1958 the Governor was seeking to convert the earlier order of punishment into an order under rule 14 of the Subordinate Revenue Executive Service (Tahsildars) Rules, 1944 retrospectively could not be accepted. The order terminating probation was made under rule 14 and continued to retain that character. The vice in the second part of the order did not either before or after it was cancelled affect the validity of the order terminating the respondent’s probation.—State of U. P. v. Akbar Ali Khan, AIR 1966 SC 1842 at pp 1845, 1846, 1847.
6. Whether a probationer can be discharged during the period of probation

It was equally well settled that a Government servant, who was on probation could be discharged and such discharge would not amount to dismissal or removal within the meaning of Article 311 (2) and would not attract the protection of that Article where the services of a probationer were terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he was liable to be discharged at any time during the period of his probation subject to the rules governing such cases; see State of Orissa v. Ram Narayan Das, (1961) 1 SCR 606 : AIR 1961 SC 177]. The appellant in the instant case was undoubtedly a probationer. There was also no doubt that the termination of his service was not by way of punishment and could not therefore amount to dismissal or removal within the meaning of Article 311. As a probationer he would be liable to be discharged during the period of probation subject to the rules in force in that connection.—Ranendra Chandra Banerjee v. The Union of India, AIR 1963 SC 1552 p. 1554.]

7. Appointment as a probationer—Employee not confirmed but continuing in service after the expiry of the probationary period

There can be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after that period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear, that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired except on the ground of misconduct or other sufficient reason in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer.—[Ex press Newspapers (Pvt.) Ltd. v. Presiding Officer, AIR 1964 SC 806 : (1964) 3 FLR 289 : (1964) 1 LLG 9.]

8. Termination of service in accordance with the conditions of probationary service and not as a measure of punishment. If Article 311 can be invoked

Where the appellant was selected for the post of Programme Assistant on 3rd May, 1949 and was appointed on probation for one year and the letter of appointment said that during the said period his services might be terminated without any notice and without any cause, being assigned. He was asked to accept the offer on this condition. The appellant accepted the offer and joined service on 4th June, 1949. His period of probation expired on June 3, 1950, but it was extended from time to time. On July 4, 1952, the appellant was informed that his probation period could not be extended and was called upon to show cause why his services should not be terminated. The appellant showed cause. He was finally informed that the explanation given by him was not satisfactory and that his services were to be terminated after August 31, 1952. It was held that it was not in dispute that the appellant was never confirmed in his appointment. It was also not in dispute that though the letter of appointment said that the
appellant will be on probation for a period of one year, his probation period was extended from time to time. Though the letter of appointment did not say in so many words that the probation was likely to be extended, it was implicit therein that the probation would continue till such time as the appellant was confirmed or discharged and so would the term in the appointment letter that his services were liable to be terminated without any notice and without any cause being assigned, during the period of probation.

It was, however, urged on behalf of the appellant that the rules themselves made it obligatory that Article 311 (2) should be complied with before the services of a probationer were terminated. In this connection reliance was placed on Explanation 2 to (Rule 49 of the Civil Service (Classification, Control and Appeal) Rules, as amended on October 10, 1947. That Explanation read as follows:

"The discharge of a probationer whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this rule.

Now if this Explanation was in force in 1952 when action was taken against the appellant, his contention that Article 311 (2) applied to him would be correct. But it is found that Rule 49 was further amended in November, 1949 and by that amendment Explanation 2 was deleted, and a new Explanation, which took the place of Explanations 1 and 2 of the rule as it stood after the amendment of October 10, 1947 was substituted. This new Explanation which was in force at the relevant time, was in these terms:

"The termination of employment:—

(a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the rules governing the probationary service; or

(b) * * * *

(c) * * * *

does not amount to removal or dismissal within the meaning of this rule or of Rule 55".

Therefore when action was taken against the appellant in 1952, it was this Explanation which governed the appellant accordingly if his services were terminated in accordance with the terms of his appointment and the rule governing his probationary service and not as a measure of punishment, the appellant cannot claim the protection of Article 311 (2). His contention based on Explanation 2 to Rule 49 as it existed after the amendment of October 1947 must therefore fail as that Explanation had been deleted long before action was taken against the appellant. The main contention of the appellant therefore that he was entitled to the protection of Article 311 must fail.—Ranendra Chandra Banerjee v. The Union of India, AIR 1963 SC 1552 at pp. 1553—54.

Rule 3 (a) of the Civil Services (Classification, Control and Appeal) Rules thus excludes the application of the Rules only in case of persons for
whose appointment and conditions of employment special provision was made by or under any law for the time being in force. Where it has been shown that any special provision has been made as to the appointment and conditions of employment of persons in the All India Radio Service by or under any law for the time being in force, it was held that could be said therefore that the terms which appears in the letter of appointment issued to the appellant, was a special provision by virtue of any law or was inserted under any law for the time being in force. That term was nothing more than the usual term one finds in letters of appointment issued to persons appointed on probation. Therefore the High Court was therefore not right in holding that Rule 55-B of the Rules would not apply to the appellant because of this term in the letter of appointment issued to him, and that Rule 55-B of the rules would apply to the appellant and was not excluded by Rule 3 (a) of the Rules.—Ranendra Chandra Banerjee v. The Union of India, AIR 1963 SC 1552 at p. 1555.

_____


CHAPTER XXIII

DEPARTMENTAL ENQUIRY

SYNOPSIS

1. Whether fresh departmental enquiry can be held on same facts.
2. Enquiry officer to hold enquiry on considerations of natural justice and fairplay.
3. Enquiry by the High Court whether the order of dismissal of public servant was based on without evidence—Mala fide exercise of power.
4. Findings of facts recorded by enquiry officer in case of departmental enquiry, if not binding on the Government.
5. Departmental action against the police officer without substantial compliance with the provisions of the Rule is invalid.
6. Whether institution of enquiry by the State Government against the member of Secretary of States’ service known as the Indian Police serving under the Bihar Government after independence is invalid.

1. Whether fresh Departmental enquiry can be held on same facts.

In Devendra Pratap Narain Rai Sharma v. State of U.P., (AIR 1962 SC 1334 at p. 1336), it was held that the State Government was competent to direct a fresh enquiry against the appellant for dereliction of duty even if such dereliction was in the period relating to which proceedings were previously started and the appellant had been dismissed from service. The appellant was not in the earlier proceedings exonerated by the High Court in respect of the alleged misconduct charged against him, and, in any event, charge against him in the second enquiry was different from the charge in the first enquiry. The High Court had in the suit challenging the order passed in the first enquiry expressly observed that on the question as to misconduct and the punishment, no opinion was expressed. The suit filed by the appellant was decreed only on the ground that he had not been afforded a reasonable opportunity of showing cause against the charge against him and also the punishment decided to be imposed upon him.

Authorities on which reliance was placed, namely, Dwarkachand v. State of Rajasthan [ILR (1957) 7 Raj. 1029 : AIR 1958 Raj. 38], Kanak Chandra Bairagi v. Supdt. of Police, Sibsagar, (AIR 1955 Assam 240) and Mohan Singh Chowdhary v. Divisional Personnel Officer, Northern Railway, Ferozpur Cantt. [ILR (1957) Punj. 1833 : AIR 1959 Punj 37] do not support the plea that the second enquiry was, in the circumstances of the case, barred. An adjudication on the merits by a quasi-judicial body may or may not debar commencement of another enquiry in respect of the same subject-matter. But in the instant case the court was not concerned with the scope of the High Court order. The binding effect of a judgment depends not upon any technical consideration of form, but on substance. The High Court in the appeal filed by the appellant find not exonerate the appellant from the charges. The High Court decreed the suit on the ground that the procedure for imposing the penalty was irregular, and such a decision cannot prevent state from commencing another enquiry in respect

( 116 )
of the same subject-matter consistently with the provisions of Arts. 310 and 311. In Dwarkachand's case [ILR (1957) 7 Raj 1029 : AIR 1958 Raj 38], in a previous enquiry the public servant concerned had been exonerated; and in Mohan Singh Chowdhary's case [ILR 1957 Punj 1833 : AIR 1959 Punj, 37] a decision by the civil court declaring illegal an order dismissing a public servant by an officer not authorised in that behalf was held binding on all the parties in proceedings under Art. 226 till such decision was set aside in accordance with law. In Kamak Chandra's case (AIR 1955 Assam 240), it was held that an order in exercise of powers of revision by the Governor under the authority reserved to him setting aside an order of censure passed by a subordinate authority and dismissing the public servant concerned from service did not amount to a second departmental enquiry. These cases do not lend support to the proposition that after an order passed, in an enquiry against a public servant imposing a penalty is quashed, by a civil court no further proceeding can be commenced against him even if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public servant concerned were never investigated.

If the State Government was competent to order a fresh enquiry, there was no reason why it would be in competent to direct suspension of the appellant during the pendency of the enquiry.

2. Enquiry into quasi-judicial or quasi-legal proceedings of natural Justice and fairplay.

If it appears that the relevant statutory rule regulating the departmental enquiry which was held against the respondent made it obligatory on the enquiry officer to hold an oral enquiry if the respondent so demanded, then there would be no doubt that the failure of the enquiry officer to hold such an oral enquiry would introduce a serious infirmity in the enquiry and would plainly amount to the failure of the appellant to give a reasonable opportunity to the respondent. In a given case, Government would be justified in placing its case against the charge-sheeted officer only on documents and may be under no obligation to examine any witnesses, though even in such cases, if the officer desires that the persons whose reports or orders were being relied upon against him should be offered for cross-examination, it may have to be considered whether such an opportunity ought not to be given to the officer.

It was plain that the requirement that an oral enquiry shall be held if the authority concerned so directs, or if the charge-sheeted officer so desires was mandatory. Indeed, this requirement was plainly based upon considerations of natural justice and fairplay. If the charge-sheeted officer wanted to lead his own evidence in support of his plea, it was obviously essential that he should be given an opportunity to lead such evidence. Therefore once the respondent expressed his desire to the enquiry officer that he wanted to lead evidence in support of his plea that his alleged disobedience of the Government orders was not deliberate, it was obligatory on the enquiry officer to have fixed a date for recording such oral evidence and give due intimation to the respondent in that behalf.

It was true that the oral enquiry which the enquiry officer was bound to hold could well be regulated by him in his discretion. If the charge-sheeted officer starts cross-examining the departmental witnesses in an irrelevant manner, such cross-examination could be checked and controlled.
If the officer desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine such witnesses, but in doing so, he would have to record his special and sufficient reasons. In other words the right given to the charge-sheeted officer to cross-examine the departmental witnesses or examine his own witnesses could be legitimately examined and controlled by the enquiry officer, he would be justified in conducting the enquiry in such a way that its proceedings were not allowed to be unduly or deliberately prolonged. But it would be impossible to accept the argument that if the charge-sheeted officer wanted to lead oral evidence, the enquiry officer could say that having regard to the charges framed against the officer, he would not hold any oral enquiry. —[State of Bombay v. Nurul Latif Khan. AIR 1966 SC 269 at pp. 273-74].

3. Enquiry by High Court whether the order of dismissal of public servant was based on without evidence—Mala fide exercise of power

In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311 (2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rested was not supported by any evidence at all. It was true that the orders of dismissal which may be passed against a Government Servant found guilty of misconduct, could be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he was guilty of the charges framed against him were in the nature of quasi-judicial proceedings and there could be little doubt that a writ of certiorari, for instance, could be claimed by a public servant if he was able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which was the basis of his dismissal, was based on no evidence. Mala fide exercise of power could be attacked independently on the ground that it was mala fide. Such an exercise of power was always liable to be quashed on the main ground that it was not a bona fide exercise of power. But it cannot be held that if mala fides were not alleged and bona fides were assumed in favour of the appellant, its conclusion on a question of fact could not be successfully challenged even if it was manifest that there was no evidence to support it. The two infirmities were separate and distinct though, conceivably, in some cases both may be present. There may be cases of no evidence even where the Government was acting bona fide; the said infirmity may also exist where the Government was acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that did not mean that if it was proved that these was no evidence to support the conclusion of the Government a writ of certiorari would not issue without further proof of mala fides.—Union of India v. H. C. Goel, AIR 1964 SC 364 p 369.

4. Findings of facts recorded by enquiry officer in case of departmental enquiry, if not binding on the Government

The second opportunity to which a public servant was entitled could be effective only if “the competent authority after the enquiry was over and after applying its mind to the gravity or otherwise of the charges proved against the Government servant, tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant”. It was obvious that where the learned Chief Justice referred to the charges proved against the Government servant it was not intended
to be suggested that the findings made by the enquiry officer in that behalf were final. The enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to Act. That was the only purpose of the enquiry held by competent officer and the report which he made as a result of the said enquiry. Therefore, it was held that the High Court was in error in coming to the conclusion that the appellant was not justified in differing from the findings recorded by the enquiry officer. As just indicated, if it was held that the report of the enquiry officer was not binding on the Government, then the constitutional safeguard afforded by the Article 311 (1) and (2) could not be said to have been contravened by the appellant and the grievance made by the respondent in that behalf must fail.—Union of Indian v. H. C. Goel, AIR 1964 SC 364 p. 369.

5. Departmental action against the Police Officer without substantial compliance with the provisions of the Rule is invalid.

Chapter XVI of the Punjab Police Rules deals with punishments. Rule 1 prescribes the punishments and provides “that no police officer shall be departmentally punished otherwise that as provided in these rules”. Rule 23 provides for prompt record of complaints against a police officer made by a member of the general public and the transmission of the record to the Superintendent of Police or other gazetted officer under whose immediate control the officer who has recorded the complaint is serving. If such officer is of opinion that the allegations in the record constitute a prima facie case for inquiry, a departmental inquiry as in Rule 24 must be held. Rule 33 specially deals with certain types of complaints against a police officer. In State of Uttar Pradesh v. Babu Ram Upadhy, [(1961) 2 SCR 679 at pp. 711, 727-728 : AIR 1961 SC 751 pp. 765, 772] the Court by majority held that the provisions of paragraph 486 rule 1 of the U. P. Police Regulations were mandatory and that a departmental action against the Police officer in disregard thereof was invalid. The minority held that the paragraph was directory and as there was substantial compliance with its provisions the departmental proceedings were not invalid. In Jagan Nath v. Sr. Supdt. of Police, Ferozepur, [AIR 1962 Punj. 38] the Punjab High Court held that the provisions of rule 1693 (1) and (2) were mandatory and that a departmental inquiry held without following its provisions was illegal.—Delhi Administration v. Chaman Shoh, AIR 1969 SC 1103 p. 1110.

6. Whether institution of enquiry by the State Government against the member of Secretary of State’s Service known as Indian Police serving under Bihar Government after Independence is invalid

In Taraknath Ghosh v. The State of Bihar, [AIR 1968 SC 1372] the facts were that the appellant was appointed by the Secretary of State for India to the Secretary of State’s Service known as the Indian Police on 25th January, 1973. When agreement took place with the British Government for independence of India, the Central Government, on 21st October, 1946, in agreement with a number of Provincial Governments including the Government of Bihar, constituted another service known as the Indian Police Service. On 29th June, 1965 while the appellant was working as the Deputy Inspector General of Police in Bihar, an order was made by the State Government placing the appellant under suspension pending enquiry. This order was partially amended by the Central Government by passing an
order of suspension of the appellant in view of the enquiry instituted by the State Government. On 13th July, 1965, the appellant filed a writ petition under Article 226 of the Constitution in the High Court at Patna challenging these orders passed against him. The order for institution of an enquiry made by the State Government, which had been directed in pursuance of Rules 4 and 5 of the All India Services (Discipline and Appeal) Rules, 1955 was challenged on two grounds: one ground was that the appellant had never become a member of the Indian Police Service and these Rules did not apply to him, so that no enquiry could be instituted against him under these Rules. The second ground was that in any case in view of Rule 55 of the Civil Services (Classification Controll and Appeal) Rules, 1950 read with Article 314 of the Constitution the Government of the State of Bihar had no power to order institution of an enquiry against the appellant, even if it be held that he had become a member of the Indian Police Service. The order of suspension was challenged on the sole ground that if the enquiry itself had been invalidly instituted, the order of suspension automatically became invalid.

It was held that it may be mentioned that those persons, who were appointed to the Indian Police under the Crown before Indedendance, ceased to be members of any regularly constituted service when the Indian Independance Act came into force in the year 1947. When Independance was achived by India, the Secretary of the State and the Crown ceased to have any authority in India, so that no service of the Secretary of State or the Crown could continue thereafter. Under the agreement that was entered into by the new Indian Government with the British Government, provision was made that members of the provisions Secretary of State's Service could continue to serve the Govenment of India or Provincial Government and certain rights were preserved to them if they continued to do so. There was however no provision that the old Secretary of State's Service would continue, so that with the passing of the Indian Independence Act, Secretary of State's Service like the Indian Civil Service and the Indian Police ceased to exist.

On the passing of the Indian Independence Act, the appellant ceased to be a member of the service constituted by the Secretary of State, but he continued to serve the Government of India and the Province of Bihar as a result of which certain rights relating to conditions of service and disciplinary matters, which were earlier applicable to him, were preserved. At the time when the Indian Police (Cadre) Rules were framed, the appellant was not a member of any regularly constituted service and his position remained the same, until, under the Recruitment Rules of 1954, he was included in the Indian Police Service. With effect from the date of enforcement of these Rules he again became a member of a regularly constituted service and he could be competently included in that service, because on that date he was only holding a cadre post, but was not a member of any other regular service. While he was simply holding a cadre post, there was no bar to the Central Government making a Rule under section 3 of the All India Services Act, 1951, so as to include him in the Indian Police Service consequently, the first ground of attack on behalf of the appellant that the Rules of 1955 did not apply to him must be rejected because when those Rules came into force the appellant was already a member of the Indian Police Service which service was governed by those Rules. — Taraknath Ghosh v. State of Bihar, AIR 1968 SC 1372 pp. 1374,—1377.
The second ground of attack on behalf of the appellant was based on the contention that under Article 314 of the Constitution the appellant was entitled to the same rights as respects disciplinary matters, or rights as similar thereto as changed circumstances permitted as the appellant was entitled to immediately before the commencement of the Constitution. According to the appellant, immediately before the commencement of the Constitution, he was governed in the matter of discipline by the Rules of 1930, so that the rights which he was entitled to under those Rules were preserved to him under Article 314. This proposition is not disputed on behalf of the respondents. What was, however, disputed was the interpretation sought to be put on behalf of the appellant on Rule 55 of the Rules of 1930. The appellant urged that, under rules 55 of those Rules, an enquiry against a member of the Indian Police could only be instituted at the instance of the authority entitled to pass an order of dismissal, removal or reduction and by no other authority. On this ground, it was urged that until the Indian Independence Act came into force, an enquiry could only be ordered by the Secretary of State, whereas, thereafter, until the enforcement of the Constitution, the enquiry could be ordered by the Central Government only, because, during these two periods, the Secretary of State and the Central Government were the appropriate authorities entitled to pass orders of dismissal or removal. This interpretation of Rule 55 urged on behalf of the appellant cannot be accepted. Rule 55 of the Rules of 1930 is as follows:—

"Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a Criminal Court or by a Court Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires or if the authority concerned so directs, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged
shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof”.

It is true that the first sentence of this rule purports to lay down the procedure where an order of dismissal, removal or reduction is sought to be passed. In the next sentence, the rule requires that the grounds on which it is proposed to take action must be reduced to the form of a definite charge or charges and they must be communicated to the person charged, together with other necessary material. The person charged is then required to put in a written statement of his defence within a reasonable time and to state whether he desires to be heard in person. After this stage comes the mention of the authority who is to take action by laying down that, if the person charged so desires or if the authority concerned so directs an oral inquiry shall be held. The argument was that the authority concerned referred to in this sentence must necessarily mean the authority entitled to pass the order of dismissal, removal or reduction. It was held that this submission cannot be accepted.

The language used in Rule 55 shows that that rule was only concerned with the holding of an inquiry and laid down the procedure for the enquiry. It did not at all deal with the question of passing an actual order of dismissal, removal or reduction. At the time when the appellant was appointed to the Indian Police, the provision which prescribed the authority who could pass an order of dismissal in respect of the appellant was contained in sub-section (2) of Section 240 of the Government of India Act, 1935, as a result of which the appellant could only be dismissed from service by the Secretary of State who had appointed him. Rule 55 of the Rules of 1930, which then applied to him, did not, however, require that the enquiry under that rule must he initiated by the Secretary of State. In fact, that rule make no mention at all of the authority who was empowered to pass the order of dismissal. On the face of it, it is clear that rule was confined to making provision for an enquiry whereafter, if an order of dismissal had to be made, the appropriate authority under section 240 (2) of the Government of India Act, 1935 had to take up the proceedings and pass the final order. The expression “authority concerned” in Rule 55,
in these circumstances, must clearly be interpreted as referring to the authority under which the officer concerned happens to be serving at the relevant time. If the officer was serving under the Government of India, the Government of India, or such officer thereof, as may be competent in that behalf would be the authority to take proceedings under rule 55, and, in doing so, to initiate the proceedings also. If the officer happened to be serving under a provincial Government, that Government or such officer thereof as may be competent in that behalf would be the authority concerned for initiating and holding the enquiry. Thereafter, of course, if the officer happened to be a member of the Secretary of State Service, neither the Government of India nor the Provincial Government could pass an order of dismissal, and, on conclusion of the enquiry, the report necessarily would have to be submitted to the Secretary of State who alone could pass the order of dismissal. At that stage, the officer was entitled to a fresh show-cause notice under section 240(3) of the Government of India Act, 1935 as held by the Privy Council in the case of High Commr. for India and High Commr. for Pakistan v. I. M. Lall, [75 Ind. App. 225: AIR 1948 P.C. 121]. It was clear in these circumstances that the preliminary enquiry under rule 55 of the Rules of 1930, was not required to be initiated or to be held by the Secretary of State in the case of a member of an All-India Service, and it was only at the subsequent stage when the order of dismissal had to be passed that the Secretary of State was required to give an opportunity of showing cause to the officer concerned under section 240(3) of the Government of India Act. In this connection, notice of the fact may be taken that the High Court has held that as a matter of fact also, prior to the Independence of India, whenever an enquiry was initiated in the conduct of a member of one of the Secretary of State's Services, the order was made by the Government of India and not by the Secretary of State, so that even at that time the Secretary of State, as well as the Government proceeded on this very interpretation of Rule 55 which can be accepted.

It was further held that under Article 314 of the Constitution, the right that continued to ensure to the benefit of the appellant was that the enquiry to be held in his conduct must comply with the requirements of Rule 55 of the Rules of 1930. It has been found that an enquiry ordered under the Rules of 1955 was in no way detrimental to the interest of the person against whom the enquiry was held as compared with an enquiry under rule 55 of the Rules of 1930. The Rules of 1955 laid down the same type of opportunity to be given as did Rule 55 of the Rules of 1930. Under both sets of Rules, the enquiry could be ordered by the authority under whom the
person concerned happened to be serving, so that, in the case of the
appellant, the order made by the Government of Bihar for enquiry did not
in any way violate the rights which the appellant possessed under rule 55
of the Rules of 1930 and which were preserved to him by Article 314 of the
Constitution. The second ground of attack also, therefore, fails. [Taraknath
PART II

Private Employees
CHAPTER I

GENERAL LAW OF MASTER AND SERVANT

In Part I of the book, we have considered law with reference to Statutes and Constitution. As already pointed out in Part I of this book, the Government servants on the Civil Side hold office during pleasure. But this pleasure is controlled by the statutory provisions or by a special contract. The pleasure of the President would still be there but it has to be exercised in accordance with the requirement of Article 311 of the Constitution and not whimsically or capriciously. The Government servant can, therefore, be rightly said to serve the Government under a “Statutory tenure”.

There are, however, no restrictions on the exercise of pleasure in respect of servants of private employees. A servant is ordinarily at the pleasure of the master unless that pleasure is curtailed by any contract or by any statutory provisions and that the remedy of a servant who has been dismissed illegally lies not in filing a suit for reinstatement or for a declaration or for an injunction because such relief cannot be granted to him because of the provisions of Section 21 (1) (b), Section 42 and Section 56 of the Specific Relief Act, and his only remedy lies in filing a suit for damages.

There are observations in the judgment of their Lordships of the Supreme Court in the case of Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, where their Lordships held that in case where the provisions of Article 311 of the Constitution did not apply the remedy of the dismissed servant was only by way of a suit for wrongful dismissal. The exact words in which their Lordships had expressed themselves are as follows:

“In other words, and, broadly speaking, Article 311 (2) will apply to those cases where the Government servant had been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank.”

The position might be different in a case where the dismissal order has been passed in violation of the constitutional provisions. The reason being that the Constitution is supreme and the other laws are subordinate to it. In a case where Article 311 of the Constitution is infringed a dismissed servant may obtain relief of declaration that the dismissal is illegal and void and he still continues in service. The cases of the High Commissioner for India v. I. M. Lall, AIR 1948 PC 121 and that of North-West Frontier Province v. Suraj Narain Anand, AIR 1949 PC 112, are illustrative of this principle but it must be borne in mind that these cases proceed on the assumption that the right of the master to terminate the service of the servant at pleasure stands curtailed by constitutional provisions.

Another example of cases where the general law of master and servant stands modified are those which are covered by the Industrial Disputes Act. In that case it was held by the Federal Court that an Industrial Tribunal is not fettered like ordinary courts to enforce a contract and may create obligations or modify contracts in the interest of the workmen to protect and prevent the unfair practice of victimisation and those courts can direct reinstatement of dismissed employees because the discretion is not fettered.
in any way by the limitations which are placed on regular courts to direct
the reinstatement of a dismissed employee.

In other words, the general law of master and servant to the effect
that the servant is at the pleasure of the master will stand in every case
except in those where the same has been abrogated either by a statutory
provision or by a special contract. In the case of Government servants to
whom Article 311 of the Constitution is applicable and in those cases where
the provisions of the Industrial Disputes Act are applicable the general
law that a servant is at the pleasure of the master stands abrogated to
the extent to which the provisions of the Constitution or the Industrial
Disputes Act provide.
CHAPTER II
RELATIONSHIP OF MASTER AND SERVANT

SYNOPSIS
1. General.
2. Master and Servant: Scope and test to determine.
3. Independent contractor and servant.

1. General

The relationship of master and servant is essentially contractual. It is created and continued with mutual consent. Just as the master cannot force the servant to continue to serve him, so also a servant cannot force his services upon the master. There is a body of general law relating to masters and servants and the source of general law is still the English Common Law to a large extent.

2. Master and Servant: Scope and test to determine

The question if the relationship of master and servant exists between an employer and an employee, has never been an easy one. Test after test have been invented and applied and later on given up as not to be the deciding factor; sometimes some of these have been combined, and the relationship determined. These tests have been both affirmative and negative tests. Other conditions existing, the power of the employer to issue directions to the employee as to the manner in which he should do his work was for long considered to be the deciding factor in treating the relationship of master and servant. But this test has also since been found to be insufficient or inadequate, and a new test has been developed to meet cases of negligence of the hospital staff. The test now is to find out if the employee is part and parcel of the organisation.

The role of master in a contract of service may be assumed by any "person" not incapacitated from making a contract by any law to which he is subject, and may be filled by a statutory body—indeed by any organisation of people whether, as an association it is unincorporated, registered, or unregistered; by a partnership firm registered or unregistered, and by executors or trustees. In each instance it is a mixed question of law and fact which has to be faced when the problem posed is—to whom is the service to be rendered and by whom are the duties of a master to his servant to be performed—Law of Service in India by Barwell and Kar, Vol. I, page 37.


The relationship of master and servant as pointed out in Smith v. G. M. C., 1911 AC 118, is characterised by a contract of service, express or
implied between the master and the servant. In general, the relationship implies the existence of power in the employer not only to direct what work the servant is to do but also the manner in which the work is to be done—Stagecraft v. Minister of National Insurance, AIR 1952 SC 289.

Master's power of selection of the servant, master's right to control the method of doing the work, payment of wages or the remuneration to the servant and master's right of dismissal or suspension are the important features from which a contract of service can be inferred—See Chiranjit Lal v. Union of India, AIR 1951 SC 41; Lakshmanan v. Hyderabad Government, AIR 1954 SC 364.

Although the authorities have frequently enumerated various elements the presence of which tend to indicate that a given relationship is that of master and servant, it has been pointed out that no one fact or circumstance is necessarily conclusive. Hence, whether an individual is an employee is a question of fact to be determined from all the facts and circumstances of the case. The relationship between parties may be that of employer and employee for one purpose. Mere rendition of services by one person to another does not of itself establish the master and servant relationship between them. However, the fact that the agreement of an employee requires other labour than his own for its performance does not prevent him from being an employee where the contract includes his personal services to the full extent thereof. It is not essential that one who has entered into a personal contract of employment with another and given the latter the right to regard him as the actual employer should intend to receive or should have received the benefit of the services of such an employee; the relation of master may be assumed by one who employs another, even though he is an agent merely for the purpose of supervising the work. A person may be held to be in the employ of another, even though while performing certain services for the employer, he also performs services for himself, thus occupying a dual role.

The servant must be under the duty of rendering personal services to the master or to others in his behalf and the master must have the right to control the servant's work either personally or by another servant or agent—Raja Bahadur K. C. Deo Bhanj v. Raghumeth Misra, 1959 (Sup) 1 SCR 952 : 1559 SCA 168 : 1959 SCJ 512 : AIR 1959 SC 589. Whether or not a particular contract is a contract of service and whether or not in any given case the relationship of master and servant exists are questions of fact depending upon the terms of engagement, the payment of remuneration and the power of controlling and dismissing the worker. But none of these factors is by itself exclusive—Stagecraft v. Minister of National Insurance, AIR 1952 SC 288.

In other words the criterion to judge whether a person is the servant of the master is whether the alleged servant was under the control of, and bound to obey the orders of, the alleged master or that the servant was under the command of his master as to the manner in which he should do his work. A servant is a person who voluntarily agrees during the period of his services to obey the lawful orders and discretion of another in respect of the work to be done by him. A master is the person who is legally entitled to give such orders and to have them obeyed. The test is the right to control. Thus the essence of the relation lies in the rendering of services by the servant to, or for the use of, or on behalf of the master; but the power of control which the master enjoys over the work of his servant is the
decisive factor distinguishing a servant from an independent contractor. The real test, therefore, is whether the alleged servant is under the control and bound to obey the lawful orders of the master; if he is, then there exists between them the relationship of master and servant: Francis Raleigh Batt. L. L. M. in his book "The Law of Master and Servant" (Third Edition) at p. 3 observes:

"It is thus right of control or interference of being entitled to tell the servant when to work (within the hours of service) or when not to work, and what work to do and how to do it (within the terms of such service), which is the dominant characteristic in this relation and marks off the servant from an independent contractor, or from one employed merely to give to his employer the fruits or results of his labour. In the later case, the contrac-
tor or performer is not under his employer's control in doing the work or effecting the service; he has to shape and manage his work so as to give the result he has contracted to effect."

The provisions of the Indian Contract Act lay down the legal requisites for bringing in a contract. The contract may be express or implied. The Indian Contract Act is not a complete Code dealing with all matters and covering all principles relating to contract. This makes it necessary for one in some cases where the point in question cannot be resolved by reference to the provisions of the Contract Act to fall back to English Common law.

In D. C. Works Limited v. State of Saurashtra: AIR 1957 SC 264, 1957 SCR 152: 1957 SCJ 208, the Supreme Court observed that the *prima facie* test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work.

A person is said to be a servant where by agreement, express or implied, he places himself under the control of another—the master. A person is under the control of another if he is bound to obey the orders of that other not only as to the work which he shall execute but also as to the details of the work and the manner of its execution.

The following passage from Mansfield Coopers: Outlines of Industrial Law, 2nd Edn., page 4, explains the point:

"Whenever, therefore, it is necessary to discover whether or not one man is a servant of another the chief inquiry must be directed towards finding who has the power to control. Other factors may help. It may be material to know how and by whom a person is paid; by whom and in what circumstances he may be dismissed. But these things, though helpful, are not conclusive. For a man may be the servant of another though he receives no payment, as often happens in family enterprises, and someone other than his legal master may have power to dismiss him, whilst the number of places in which a man may, work, will, in many cases, furnish little aid in tracing his master."

A servant must be obedient to, and amenable to the directions of the master and if the master has no hand in the appointment of the servant or has no control over him or has no power to dismiss or discharge him, there
cannot be a relationship of master and servant between them—Chiranjit Lal v. Union of India, AIR 1951 SC 41.

The position was explained further in Lakshmi Narayanan v. Hyderabad Government, AIR 1954 SC 364, as follows:

"The difference between the relationship of master and servant and of principal and agent may be said to be thus: a principal has the right to direct what work the agent has to do: but a master has the further right to direct how the work is to be done. An agent is to be distinguished on the one hand, from a servant and the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise in direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."

3. Independent contractor and servant

As already stated above, the *prima facie* test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work.

Now a person who agrees himself to work and does so work and is, therefore, a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status. D. C. Works Limited v. State of Saurashtra, AIR 1957 SC 264 : 1957 SCJ 208.

If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their feudality and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party. The question as to whose employee a particular person is, has to be determined with reference to the facts and circumstances of each individual case.—Shivnandan Sharma v. The Punjab National Bank Ltd., 1955 SCR 1427 : 1955 SCJ 407 : AIR 1955 SC 409 : 1955 SCA 818.

In Pyare Lal Adhashwar Lal v. C. I. T., AIR 1960 SC 404, the Supreme Court examined the question whether the treasurer of a bank was a servant. The treasurer was appointed by the Bank and was given the power to control or dismiss the staff at his pleasure subject to Bank's approval. He
was paid a salary and was bound to carry out the directions issued by the Bank from time to time. He was also to make good any loss caused to the Bank. His services could be terminated by notice. The Supreme Court was of the view that the treasurer was a servant of the Bank.

In Shivnandan Sharma v. The Punjab National Bank Ltd., 1955 SCR 1427 : 1955 SG J 407 : AIR 1955 SC 404 : 1955 SCA 818, the court examined the question whether the Government Treasurer employing a Tahvildar is an employee of the State Government or not and observed:

"The treasurers themselves are under the control of the State Government.

"It is not stated in the counter-affidavit that the treasurers are not employees of the State Government. If they are employees and are not in the position of independent contractors, any person employed by them in order to carry out the work entrusted to the treasurers by the Government cannot be different from the treasurers themselves and they also cannot be anything but employees of the State Government, merely, on account of the fact that they are directly appointed by the treasurer."

The difference between the relations of master and servant and of principal and agent is this: a principal has the right to direct what work the agent has to do; but a master has the further right to direct how the work is to be done. An agent has to be distinguished on the one hand from a servant and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given in the course of his work. An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal,—Qamar Shaffi Tyabji v. Commissioner, Excess Profits Tax, Hyderabad, (1960) 3 SCR 546 : (1960) 39 ITR 611 : (1960) 1 SCJ 133 : AIR 1960 SC 1269 ; Lakshminarayan Ram Gopal and Son, Ltd. v. Government of Hyderabad, (1955) 1 S. C. R. 393 : A. I. R. 1954 SC 364.

The Government Treasurer is a civil servant of the State holding a specific post, and he is authorised by the terms of his employment to employ Tahvildars to assist him in discharging his duties. Payment of remuneration to the Tahvildars is for services rendered in the "cashier department of the District Treasury" of the State. The Tahvildars receive their remunerations directly from the State, and are subject to the control of the District Officers in the matter of transfer, removal and disciplinary action. Employment of Tahvildars being for the purpose of carrying out the work of the State, even though a degree of control is exercised by the Government Treasurer and the appointment is in the first instance made by the Treasurer subject to the approval of the District Officers, it must be held that the Tahvildar is entitled to the protection of Article 311 of the Constitution.

In S. Ram v. Punjab National Bank, AIR 1960 SC 404, the Supreme Court held:

"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their
fiudelity and efficiency for a cash consideration, the employees appointed by the servant would become equally with the employer servants of the master. It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party. The question as to whose employee a particular person was, has to be determined with reference to facts and circumstances of each individual case."

4. Agent and employee: Difference

An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given to him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference, and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent as such, is not a servant but a servant is generally for some purposes his master's agent, the extent of the agency depending upon the duties or position of the servant, and in some cases an independent contractor may also be an agent.—Halsbury's Laws of England, Second Edn. Vol. I, pp. 145—146.

In another case—Qamar Shaffi Tyabji v. Commissioner of Excess Tax, AIR 1960 SC 1269 a managing agent appointed on a fixed remuneration plus commission was held to be not a servant as he was undertaking business of his own in accepting the duties and responsibilities of a managing agent.
CHAPTER III

DURATION OF CONTRACT OF SERVICE

A tenure of service is usually a matter of agreement between the parties where the duration of contract or tenure of service is not specified in the contract itself, the matter has to be decided with reference to the circumstances and presumptions. The following passage at page 524 of the "Services and Dismissals", 2nd Edn. summarises the principles which may be taken into consideration in ascertaining the duration of a contract of service:

“(1) Where the nature of the work, such as in the case of an agricultural labourer, is such that the servant normally serves for one year at a time, it would, therefore, be evidence of yearly hiring.

(2) If the remuneration is payable at the end of each year and is a certain sum per annum, normally the contract will be yearly.

(3) If the wage is paid weekly or monthly and it is the only circumstance from which duration is to be gathered, the presumption is that the duration is weekly or monthly.

(4) Conversely, the mere fact that the remuneration is paid on a weekly basis or a monthly basis does not destroy the presumption of yearly hiring because it might be only an indication of the method of payment."

The author has further pointed out at page 525 that a presumption as to the duration of the contract can be rebutted by proving the following:

(1) that the contract for service is at the will of the master;
(2) that it is for so long as the master needs him;
(3) that it enables the servant to leave service at any time; and
(4) that it is a contract whereby the servant is to work until a particular piece of work is done.
CHAPTER IV

TERMINATION OF SERVICE

SYNOPSIS

1. Termination of service.
2. Dismissal.
3. Grounds of dismissal.

1. Termination of service

In the absence of a contract or statute to the contrary, a master has the right to terminate the services of his servant at any time without giving him any reasons or any opportunity to show cause against the action.

A contract of service can be terminated in one of the following ways:

1. A contract of service is terminated if the performance is complete on both sides.
2. Where the service is for a definite period, it comes to an end on the expiry of the period.
3. It can be terminated by mutual agreement, i.e., by the same process which created it.
4. It can be terminated by operation of law. This arises when the contract becomes unlawful by new legislation or by the compulsory transfer of service on nationalisation etc.
5. It is terminated by resignation of the servant unless prohibited by the terms of contract.
6. It comes to an end by death of one of the parties.
7. It comes to an end when the master dismisses the servant.
8. It comes to an end by the performance having become impossible. When a contract is put an end to and becomes impossible of being carried out thereafter by the happening of subsequent events, which was in contemplation of either party when the contract was entered into, the doctrine of frustration would apply. In other words, the very basis on which parties contemplated the carrying into of the contract had ceased to exist and, therefore, the doctrine of frustration will apply and as laid down by Section 50 of the Contract Act, the parties would be relieved of the obligation arising under contract.
9. It can be terminated before the stipulated period by means of notice for a specific period or by payment of salary for such period of notice as may be provided in the provisions of contract.

2. Dismissal

The law relating to master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none.
But if he does so in a manner not warranted by the contract, he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial proved breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which he can make with its servants or the grounds on which it can dismiss them.

A master has the power to discharge a servant for misconduct, notwithstanding that the conduct or agreement between them is for a fixed period and if the master can show that he has a good cause for dismissing his servant, he may dismiss him, without going through the form of suing for the cancelment of the engagement. But where the terms of employment provide that the master can dismiss his servant only after an enquiry, the question may arise whether the case comes under "dismissal" and in such a case provisions applicable to Government servants can be invoked.

In Delhi Cloth and General Mills v. Kushal Babu, AIR 1960 SC 806, an employee of the bank was charge-sheeted for having stolen a bicycle. The employee did not participate in the enquiry and he was dismissed from service. Meanwhile, a criminal prosecution was launched against him, but the case was not established and he was acquitted. The employee challenged his dismissal as invalid and the Supreme Court laid down the law as under:

"It is true that very often employers stay inquiries pending the decision of criminal Court but we cannot say that the principles of industrial disputes require that an employer, must await for the decision at least of the criminal trial Court before taking action against an employee. If the case is of a grave nature and involves questions of fact or law which are not simple, it would be advisable for the employer to await the decision of the trial Court so that the defence of the employee in criminal case may not be prejudiced."

3. Grounds of dismissal

The following are inter alia the grounds when dismissal would not be wrongful:

(i) Infidelity.
(ii) Incompetency.
(iii) Disobedience.
(iv) Negligence.
(v) Misconduct.
(vi) Dissatisfaction of the master.

A master has an undoubted right to dismiss a servant or terminate his services if he is guilty of any of the above acts or commits breach of an express term of the contract.

(i) Infidelity.—Where a person has entered into the position of a servant, if he does anything incompatible with the due or faithful discharge
of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner it is impossible to enumerate. But if a servant is guilty of such a crime outside his service so as to make it unsafe for master to keep him in his employ, the servant may be dismissed by the master; and if the servant's conduct is so grossly immoral that all reasonable men would say he cannot be trusted, the master may dismiss him—Lord M. R. Esher in *Pearce v. Foster*, (1886) 17 QBD 536.

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to prejudice to the interest or to the reputation of the master—Lopes L.J. in *Pearce v. Foster*, (1886) 17 QBD 536.

(ii) Incompetency—Incompetency is always a valid reason for dismissal and the failure of a servant to provide the skill which, by accepting the employment, he has held himself out as possessing, is a breach of duty entitling the master summarily to discharge him—*Vide Harmer v. Corne*, 1854 9 QBD (NS) 236. Indeed, the right to discharge might well become a duty and would be so in those cases where the incompetence of a servant created danger to his fellow servants. To that situation the words of *Park J.*, in a case involving dismissal for theft, might well be adapted:

"... If he is negligent in his business and injures his master, I am not prepared to say that the master may not dismiss him, as if he were kept, it might be very injurious, as he might do the business very carelessly when he knew he was not to be kept longer—*Cunningham v. Fonblanque*."—Mannsfield Cooper's Outlines of Industrial Law, page 69.

(iii) Disobedience.—There is an implied duty on the servant to be obedient to the master. Wilful disobedience to the lawful and reasonable orders of the master justifies dismissal. The duty to be obedient, however, does not extend to unlawful, illegal or unreasonable orders.—*Calcutta Jute Manufacturing Co. v. C. J. Workers*, AIR 1966 SC 1731.

Angry word spoken under provocation or a disrespectful expression or action apologised for, will not be held sufficient to sanction a dissolution of the contract; *dictum ant factum per iram ant fereorum non est resum, nisi quis misidem persistans*—Lord Frasters :—Law Of Master And Servant, p. 405.

It would be a perversion of justice if a master, who had done his utmost to irritate a servant to whom wages were accruing, could take advantage of his own wrong and escape the obligation to pay anything by driving or successfully inciting a servant to an act of disobedience—*Macdonrec*.

(iv) Negligence.—A sample act of negligence on the part of the employee would not ordinarily be sufficient to justify a summary dismissal. It is a strong measure and must be justified only when a strong case is made out. There is abundant authority for the view that where conduct consists
of an accumulation of acts, which occurring simply would not in themselves justify dismissal, dismissal may be justified. The test to be applied varies with the nature of the business and the position held by the employee, and decisions in other cases are of little value. In the case of the business of life insurance a mistake in accepting a risk may lead to a very considerable loss, and repetition of such mistakes may lead to disaster. If an officer of a life insurance company, whatever his motive may be, withholds from his superiors information which will in all probability lead them to refuse a risk and a fortiori if it is one of exceptional character and magnitude, his superiors will not be confident that he will in future properly carry out the important duties entrusted to him. If a person in charge of the life insurance department subject to the supervision of superior officers shows by his conduct or his negligence that he can no longer command their confidence, and if when an explanation is called for he refuses apology or amendment, his immediate dismissal is justifiable.

Negligence is a term of art, but has distinct meanings in different jurisdictions. In Torts, damage is an essential ingredient but that element is not necessary in the law of master and servant. In Law of Crimes there are a series of offences based on negligence in which loss or injury is not material. It is enough if the act is negligence in which loss or injury is not material. It is enough if the act is likely to cause injury or endanger life. Sections 279, 285, 290 and 297 of the I. P. C. are illustrative examples. For criminal breach of trust under Section 405, I. P. C. dishonesty, that is, wrongful loss or gain, has to be established.

Apart from the question of loss, another ingredient which runs through every branch of the law of negligence is that there must be a duty to take care. The nature of the duty and the standard of care will vary according to the nature of the office or the contract and the circumstances. Generally speaking, the standard that the law enforces is governed by the knowledge and skill that the office or occupation requires, by the magnitude of the task and by the gravity of the consequences that are likely to ensue if the requisite degree of care is not exercised.

Good faith imports the exercise of due care and attention. A person can be excused for having committed an error of judgment only if he exercised due care and attention and his conduct makes it clear that there was not negligence according to reasonable standards. The standard of care required is that of a reasonably prudent man who acts with the care and caution required of a person in his position dealing with a matter of similar importance. If such a person could have acted in a similar way, then only could the accused be excused for what he calls a mere error of judgment or innocent dereliction of duty.

(v) Misconduct.—It is the duty of the servant to be loyal, diligent, faithful and obedient. The liability to respect and the recognition of a subordinate role on the part of an employee also flows from the nature of contract. Thus disobedience, in subordination and acts subversive of discipline are the recognised misconducts because these acts are contrary to the obligations imposed on an employee by the nature of contract itself and can freely be treated as implied. The foremost implied obligation of a servant is obedience, fidelity and faithfulness being other implied conditions of employment. It would be open to the employer to consider reasonably what conduct can be properly treated as misconduct. It would be difficult to lay down any general rule in respect of this problem. Acts
which are subversive of discipline amongst the employees would constitute misconduct; rowdy conduct in the course of working hours would constitute misconduct; misbehaviour committed even outside working hours but within the precincts of the concern and directed towards the employees of the said concern may, in some cases, constitute misconduct; if the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. What is misconduct will naturally depend upon the circumstances of each case. It may, however, be relevant to observe that it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral or ethical tone of his employees' conduct in relation to strangers not employed in his concern by the use of the coercive process of disciplinary jurisdiction—Agnani v. Badri Das and others, 1969 (1) LLJ 684 (SC).

Every breach of discipline may amount to misconduct, the penalty for the same varying with the gravity thereof. It would not be possible to lay down exhaustively as to what would constitute misconduct and indiscipline. The conclusion would depend on the examination of facts in each case. It would at the same time depend on the nature of the services the employee was engaged to perform.

(i) Where the act or conduct of the servant is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master; (ii) where the act of conduct of a servant is inconsistent or incompatible with the due or peaceful discharge of his duties to his master; (iii) where the act or conduct of a servant makes it unsafe for the employer to retain him in service; (iv) where the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted; (v) where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee; (vi) where the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly; (vii) where the servant is abusive or he disturbs the peace at the place of his employment; (viii) where the servant is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant; (ix) where the servant is habitually negligent in respect of the duties for which he is engaged; and (x) where the neglect of the servant, though isolated, tends to cause serious consequences, it would constitute misconduct. This enumeration is not exhaustive.

In order to enable a master to take disciplinary action against his servant it is not a condition precedent that the misconduct on the part of the servant must arise within his employment and not outside his employment. The test in each case will be whether the servant is conducting himself in a way inconsistent with the faithful discharge of his obligations undertaken by him either expressly or impliedly in accepting the service. The inconsistency may arise on account of any act of the servant, either in the course of his employment or outside it, which injures or has the tendency to injure his master's business or reputation.

It is not necessary that a member of the service should have committed the alleged act or omission in the course or discharge of his duties as a servant in order that it may form the subject-matter of disciplinary proceedings. The point arose in the case of an officer, who was appointed as a Commissioner and was under the statute Corporation Sole. It was held
that the existence of relationship of master and servant is not necessary for taking disciplinary action against a person in service.

It is difficult to lay down any general rules as to what causes will justify the discharge of a servant, which shall comprise and be applicable to all cases; since whether or not a servant in any particular case was rightly discharged must of course often depend upon the nature of the service which he was engaged to perform and the terms of his engagement. It would seem, however, that the cause of discharge must be somehow connected with the duties of the service. It is conceived, however, that, according to the decisions upon the subject, the discharge of a servant without motive may be justified for the following causes:

(i) Wilful disobedience of any lawful order of his master;

(ii) Gross moral misconduct, whether pecuniary or otherwise, which is inconsistent with the fulfilment of his conditions of service;

(iii) Negligence in business or conduct calculated seriously to injure his master’s business.

The broad principle, constantly stated in the relative case-law, as always justifying the summary dismissal of a servant is either such incapacity as prevents the servant from fulfilling his contract, or conduct on his part incompatible with the faithful discharge of his duty. To this may be added the principle, which is applied in case where a servant's conduct, though not in direct relation to those duties, is such as might bring his master's concerns into disrepute.

Barwell and Kar observes in his book "Master and servant", Vol. I, at page 367 that any breach of an express or implied duty on the part of a servant, unless it be of a trifling nature, affords justification for dismissal.

(vi) Dis-satisfaction of the Master.—The law casts a duty on the servant to work to the satisfaction of the master.
CHAPTER V

REMEDIES FOR WRONGFUL DISMISSAL

SYNOPSIS

1. General
2. Remedies for wrongful dismissal and the Specific Relief Act
3. Measure of damages: Servant's duty to minimise damages

1. General

Every master and employer has undoubted right to dismiss his servants and agents at any time. There is no law which compels a master to retain in his service a person who has ceased to possess his confidence or whose services he no longer required. After the dismissal, whether wrongful or not, the servant cannot claim wages which become due only for service actually rendered. His remedy for a wrongful dismissal is by an action for damages he may have sustained in consequence of the breach of the master's contract to employ him.

A remedy for wrongful dismissal of a private servant whose tenure of service is not governed by statutory provisions is by an action for damages in contract and not in tort. The action in tort is, however, maintainable when following test laid down by Grear L. J. in Jarvis v. May Davies & Co., (1936) 1 KB 399, is answered:

"The distinctions in the modern view for this purpose between contract and tort may be put thus: where the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by the contract, it is tort, and it may be a tort, even though there may happen to be a contract between the parties, if the duty in fact arises independently of that contract. Breach of contract occurs where that which is complained of is a breach of duty arising out of the obligations undertaken by the contract"—Law of Wrongful Dismissals, 5th Edition, p. 522.

Mayne has differentiated between the two different forms of action as under:

"In cases of contract damages are only a compensation, and frequently a very inadequate one. In cases of tort to property where there are no circumstances of aggravation, they are generally the same, as will be seen hereafter—(Livingstone v. Rawyards Goal Co., (1880) 5 App Cas 25; Registrar of Titles v. Spencer, (1909) 9 CLR 641; Nagy v. Vienne, (1916) 34 WCR 413; Porteous v. Chotem, (1920) 2 WWR 1] where, however, the injury is to the person, or character, or feeling and the facts disclose fraud, malice, violence, cruelty, or the like, they operate as a punishment, for the benefit of the community, and as restraint to the transgressor. The numberless cases in which damages, totally disproportioned to the actual harm inflicted, have been given and sanctioned where the act was of a grossly unconstitutional nature, or attended with studied insult, can only be accounted
for on this principle. Accordingly we find Wilmot, C. J., saying in a case of reduction: 'Actions of this sort are brought for example's sake; and although the plaintiff's loss in this case may not really amount to the value of 20 s. yet the jury have done right in giving liberal damages.'"

2. Remedies for wrongful dismissal and the Specific Relief Act

As already pointed out above, the position of private employee is entirely different from that of Government employee. A private servant can only claim damages for wrongful dismissal and is not entitled to a declaration that the dismissal was void. In view of Section 21 of the Specific Relief Act (old) and decisions of the Courts, it is now well settled that a contract of personal service cannot be specifically enforced and no court will, therefore, issue writ directing a master to reinstate a dismissed servant.

A servant is ordinarily at the pleasure of the master unless that pleasure is curtailed by any contract or by any statutory provisions and that the remedy of a servant who has been dismissed illegally lies not in filing a suit for reinstatement or for a declaration or for an injunction because such relief cannot be granted to him because of the provisions of Section 21 (1) (b), Section 42 and Section 56 of the Specific Relief Act, and his only remedy lies in filing a suit for damages.

Their Lordships of the Supreme Court held in the case of Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, that in case where the provisions of Article 311 of the Constitution did not apply the remedy of the dismissed servant was only by way of a suit for wrongful dismissal. Their Lordships expressed themselves as follows:

"In other words, and, broadly speaking, Article 311 (2) will apply to those cases where the Government servant had he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank."

In Dr. S. Dutt v. University of Delhi, AIR 1958 SC 1050, a question arose whether an award made in respect of the dispute between Dr. S. Dutt, a professor in the Delhi University, and the said University, which declared the dismissal of Dr. Dutt to have no effect on his status and further declared that he still continued to be a professor in the University was valid or not? The Supreme Court held that the said award disclosed a legal error on the face of the said award because it was in violation of the provisions of Section 21 (b) of the Specific Relief Act.

3. Measure of damages: Servant's duty to minimise damages

A wrongful dismissal from service resulting in a breach of that agreement will not entitle the plaintiff to get the total amount of salary which he would have got had he continued in service for the whole of the expected period, by way of damages. The possibility of continuance in service for the whole of such period cannot be asserted with certainty. The possibility of the termination of service at any time during that period, on account of death, or of physical or mental disability or on account of other justifiable causes, cannot be ruled out.
A servant complaining for wrongful dismissal from service cannot rest content by merely putting forward a claim for recovery in a lump and in advance, the entire amount of anticipated salary covering the whole period for which he expected to continue in service so as to utilise such amounts for safe investment and thus to convert the very injury complained of into a blessing in disguise. The common law which recognises his right to recover damages for wrongful dismissal imposes a corresponding duty on him to do all that is possible to mitigate such damages. The possible chances of obtaining a suitable employment elsewhere has to be taken into account in assessing the measure of damages to be awarded to the plaintiff.
PART III
Industrial Workers
CHAPTER I

SYNOPSIS

1. General:
   (a) Classification of workmen.
   (b) Person doing clerical job.
   (c) Disputes over standing orders.
   (d) Accountant.
   (e) Supervisory staff when deemed to
       be workman.

2. Industry—Meaning:
   (a) Attributes necessary to make an
       undertaking fall under Section 2 (j)
   (b) Municipalities.
   (c) Hospitals.
   (d) Agricultural operation.
   (e) Whether the Union sponsoring dispute
       must be "Union of Workmen an establish-
       ment in which workman concerned
       is employed.
   (f) Educational institutions.

3. Workmen—Meaning:
   (a) Gardner.
   (b) When dispute becomes industrial
       disputes.
   (c) Industrial dispute when can be
       raised—Essentials.

4. General

The position of an industrial worker is some what midway between
the Government servants and private servants of private individuals. In
the Government servants, the conditions of service are regulated by
the constitution, statutes, rule and orders, etc., while the relationship between
employee and private employees other than industrial workers is essentially
contractual and the conditions of service are governed by the terms of
contract, express or implied.

Barring domestic servants and private servants of private individuals.
all other persons working in firms, institutions and companies, etc., are
governed by the social legislation. The advent of the doctrine of a
Welfare State is based on notions of progressive social philosophy which have
rendered the old doctrine of *laissez faire* obsolete. In the nineteenth century
the relation between employers and employees were usually governed by the
economic principle of supply and demand, and the employers thought that
they were entitled to hire labour on their terms and to dismiss the same at
their choice subject to the specific terms of contract between them, if any.
The theory of ‘hire and fire’ as well as the theory of ‘supply and demand’
which were, allowed free scope under the doctrine of *laissez faire* no longer
holds the field. In constructing a wage-structure in a given case industrial
adjudication does take into account, to some extent, considerations of right
and wrong, propriety and impropriety, fairness and unfairness. As the
social conscience of the general community becomes more alive and active,
as the welfare policy of the State takes a more dynamic form, as the national
economy progresses from stage to stage, and as under the growing of the trade
union movement, collective bargaining enters the field, wage structure ceases
to be a purely arithmetical problem. Considerations of the financial position
of the employer and the state of national economy have their say, and
the requirements of a workman living in a civilised and progressive society
also come to be recognised. It is in that sense, and no doubt, to a limited
extent, that the social philosophy of the age supplies the background for
the decision of industrial disputes as to wage structure. As Mrs. Barbara
Wootton has pointed out, the social and ethical implications of the arithmetic

(183)
and the economics of wages cannot be ignored in the present age—Standard Vacuum Refining Co. v. Its Workmen, AIR 1961 SC 895.

The principles of natural justice require that a worker in an industry should not be victimised on account of the whims and fancies of the employer, but that he should be sent out only for justifiable reasons. He has a right to be told of the action proposed to be taken in regard to him and to be heard in his defence. The entire process of dismissal is to be carried out fairly, honestly and judicially in accordance with the rules of service.

Till 1946, an industrial worker, except to the extent to which the matter was regulated by Statute or by Statutory Rules or by service agreement, if any, had no proper knowledge of the conditions which regulated his service. To remedy this state of affairs, the legislature passed the Industrial Employment (Standing Orders) Act, 1946 the object of which was to require industrial establishment to define with precision, the conditions of employment under them to make the said conditions known to their workmen.

The scope and object of the Act was considered by the Supreme Court in Rohtak and Hissar Districts Electric Supply Co., Ltd. v. State of U. P., AIR 1966 SC 1471 : 1966 (2) LLJ 33, as follows:

"The Act purports to secure to industrial employees clear and unambiguous conditions of their employment. The obvious object of the Act is to avoid any confusion in the minds of the employers or the employees in respect of their rights and obligations concerning the terms and conditions of employment and thereby avoid unnecessary industrial disputes. The result of the Standing Orders which are certified under the Act is to make it clear to both the parties on what terms and conditions the workmen are offering to work and the employer is offering to engage them. The scheme of the U. P. Act, on the other hand, is to deal with the problem posed by industrial disputes which have actually arisen or are apprehended, and naturally the nature of the industrial disputes which may arise or which may be apprehended relates to items larger in number than the items covered by the Act. It is true that some of the items are common to both the Acts; but as we have just indicated, the scopes of the provisions of the two respective Acts and the fields covered by them from that point of view are not the same."

It is relevant at this stage to consider the scheme and effect of the relevant provisions of the Act. The Act came into force on 23rd April, 1946 and it was intended to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The matters which had to be provided in Standing Orders are enumerated under 11 items in the Schedule to the Act. The expression 'Standing Orders' as used in the Act means rules relating to matters set out in the Schedule. When the draft Standing Orders are submitted to the Certifying Officer, the said officer has to satisfy himself that they make provision for every matter set out in the Schedule and that they are otherwise in conformity with the provisions of the Act. It is significant that originally under Section 4 it was not competent to the
Certifying Officer to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders. The same disability was imposed on the appellate authority. This section has, however, been subsequently amended by Act 36 of 1956, and the effect of the amendment is that it has now been made the function of the Certifying Officer or the appellate authority to adjudicate upon the fairness or the reasonableness of the provisions of the Standing Orders. Prior to this amendment, however, all that the Certifying Officer had to do before certifying the said Standing Orders was to see that all the matters in the Schedule are covered and that they are not otherwise inconsistent with the provisions of the Act. Under Section 7, Standing Orders when certified come into operation subject to its other provisions. Section 10 lays down that Standing Orders finally certified shall not, except an agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation. Sub-section (2) of Section 10 prior to its amendment in 1956 authorised only the employer to apply for the modification of the Standing Orders. Subsequent to the said amendment, workmen also have been given the right to apply for such modification. It is thus clear that the scope of the enquiry before the Certifying Officer and the appellate authority under the original Act was extremely limited, and the right to claim a modification of the Standing Orders was not given to the employees prior to the amendment of Section 19 (2). Nevertheless the Standing Orders when they were certified became operative and bound the employer and all his employees.

There can be no doubt that before the amendment of 1956 if the employees wanted to challenge the reasonableness or fairness of any of the Standing Orders the only course open to them was to raise an industrial dispute in that matter. This position has been substantially altered by the two amendments to which we have just referred; but we are concerned in the present appeal with the state of the law as it prevailed prior to the said amendments, and so it cannot be denied that the employees had a right to claim a modification of the Standing Orders on the ground that they were unreasonable or unfair by raising an industrial dispute in that behalf. Subsequent to the amendment of the Act the employees can raise the same dispute before the Certifying Officer or before the Appellate Tribunal and may in a proper case apply for its modification under Sec. 10 (2) of the Act. The position then is that though the relevant Standing Order about the age of superannuation came into operation under Section 7 and was binding thereafter upon the employer and all his employees the right of the respondent to challenge the validity or propriety of the Standing Order and to claim a suitable modification in it cannot be disputed. The Standing Orders certified under the Act no doubt become part of the terms of employment by operation of Section 7; but if an industrial dispute arises in respect of such orders and it is referred to the Tribunal by the appropriate Government, the Tribunal has jurisdiction to deal with it on the merits. This position cannot be disputed—Guest Keen Williams (Private) Ltd. v. P. J. Sterling, AIR 1959 SC 1279.

The Act, even in its original form, was intended to require the employers to define with sufficient precision the conditions of employment under them. In pursuance of the said object, the Schedule enumerated 10 items in respect of which Standing Orders had to be drafted by the employers and submitted for certification. Item 11 in the Schedule refers
to any other matter which may be prescribed. When the appropriate Government adds any item to the Schedule, the relevant question to ask would be whether it refers to the conditions of employment or not. If it does, it would be within the competence of the appropriate Government to add such an item. Having regard to the development of industrial law in this country during recent years, it cannot be said that gratuity or provident fund is not a term of conditions of employment in industrial establishments. Similarly, it would be difficult to sustain the argument that the age of superannuation or retirement is not a matter relating to the conditions of employment. Hence the addition by the appropriate Government to the Schedule of the Industrial Employment (Standing Orders) Act, 1946, of Item 11-B which has reference to welfare schemes, such as provident fund, gratuities, etc., as well as Item 11-C which has reference to the age of superannuation or retirement, rate of pension or any other facility which the employers may like to extend or may be agreed upon between the parties is valid—Rohtak and Hissar Districts Electric Supply Co. Ltd. v. State of Uttar Pradesh, (1966) 12 ILR 290 : (1966) 2 LLJ 330 : (1965-66) 29 FJR 290 : AIR 1966 SC 1471.

(a) Classification of workmen.

The model standing orders framed by the Department of the Central Government classify workmen as under:

1. Permanent.
2. Probationers.
4. Temporary.
5. Casual.
6. Apprentices.

The model Standing Order then defines the above expressions as under:

1. A "permanent" workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness, accident leave, lockout, strike (not being an illegal strike) or involuntary closure of the establishment.

2. A "probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his old permanent post.

3. A "badli" is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

4. A "temporary" workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

5. A "casual" workman is a workman whose employment is of a casual nature.
(6) An "apprentice" is a learner who is paid an allowance during the period of his training.

In *Jaswant Sugar Mills v. Badri Prasad*, AIR 1967 SC 513, a "probationer" is defined as under:

"A probationer is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months' service therein. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of three months, be reverted to his old permanent post."

The other matters to be provided for in the Standing Orders are as under:

*Publication of working times.*—The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on notice-boards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

*Publication of holidays and pay days.*—Notices specifying (a) the days observed by the establishment as holidays, and (b) pay days shall be posted on the said notice-boards.

*Publication of wage rates.*—Notices specifying the rates of wages payable to all classes of workmen and for all classes of work shall be displayed on the said notice-board.

*Shift working.*—More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workman shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance, provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workman effected. If as a result of the discontinuance of the shift working, and workmen are to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Disputes Act, 1947 (14 of 1947) and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and the said rules.

(1) Any person desiring to prefer an appeal in pursuance of subsection (1) of Section 6 of the Act shall draw up a memorandum of appeal setting out the grounds of appeal and forward it in quintuplicate to the appellate authority accompanied by a certified copy of the standing orders, amendments or modifications, as the case may be.

(2) The appellate authority shall, after giving the appellant an opportunity of being heard, confirm the standing orders, amendments or modifications as certified by the certifying officer unless it considers that there are reasons for giving the other
parties to the proceedings a hearing before a final decision is made in the appeal.

(3) Where the appellate authority does not confirm the standing orders, amendments or modifications it shall fix a date for the hearing of the appeal and direct notice thereof to be given—

(a) where the appeal is filed by the employer or a workman, to trade unions of the workmen of the industrial establishments, and where there are no such trade unions to the representatives of workmen elected under clause (b) of rule 6, or, as the case may be, to the employer;

(b) where the appeal is filed by a trade union, to the employer and all other trade unions of the workmen of the industrial establishment;

(c) where the appeal is filed by the representatives of the workmen, to the employer and any other workman whom the appellate authority joins as a party to the appeal.

(4) The appellant shall furnish each of the respondents with a copy of the memorandum of appeal.

(5) The appellate authority may at any stage call for any evidence it considers necessary for the disposal of the appeal.

(6) On the date fixed under sub-rule (3) for the hearing of the appeal, the appellate authority shall take such evidence as it may have called for or consider to be relevant.

Attendance and late coming.—All workmen shall be at work at the establishment at the times fixed and notified under paragraph 4. Workmen attending late will be liable to the deduction provided for in the Payment of Wages Act, 1936.

Leaves.—(1) Holidays with pay will be allowed as provided for in Chapter IV-A of the Factories Act, 1934, and other holidays in accordance with law, contract, custom and usage.

(2) A workman who desires to obtain leave of absence shall apply to the Manager, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier, provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the workman after proceeding on leave desires an extension thereof he shall apply to the Manager who shall send a written reply either granting or refusing extension of leave to the workman if his address is available and if such reply is likely or reach him before the expiry of the leave originally granted to him.
(3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of the leave, and (b) explains to the satisfaction of the Manager his inability to return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the badi list.

Casual leave.—A workman may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in the calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

Payment of wages.—(1) Any wages, due to the workman but not paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice-boards as aforesaid.

(2) All workmen shall be paid wages on a working day before the expiry of the seventh or the tenth day after the last day of the wage period in respect of which the wages are payable, according as the total number of workmen employed in the establishment does not or does exceed one thousand.

Stoppage of work.—(1) The employer may, at any time, in the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workmen affected shall be notified by notice put upon the notice-board in the departments concerned or at the office of the Manager, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour the workmen so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Whenever practicable, reasonable notice shall be given of resumption of normal work.
(3) In case where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.

(4) The employer may in the event of strike affecting either wholly or partially any section or department of the establishment close down either wholly or partially such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put up on the notice-board in the section or department concerned and in the time keeper's office, if any, as soon as practicable. The workmen concerned shall also be notified by a general notice, prior to resumption of work, as to when work will be resumed.

Termination of Employment.—(1) For terminating employment of a permanant workman, notice in writing shall be given either by the employer or the workman, one month's notice in the case of monthly-rated workmen and two weeks' notice in the case of other workmen: one month's or two weeks' pay, as the case may be, may be paid in lieu of notice.

(2) No temporary workman whether monthly-rated, weekly-rated or piece-rated and no probationer or bondi shall be entitled to any notice or pay in lieu thereof if his services are terminated, but the services of a temporary workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in paragraph 14.

(3) Where the employment of any workman is terminated the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

Disciplinary action for misconduct.—A workman may be fined up to two per cent. of his wages in a month for any of the following acts and omissions namely:—

Notes.—(1) Specify the acts and omissions which the employer may notify with the previous approval of the...Government or of the prescribed authority in pursuance of Section 8 of the Payment of Wages Act, 1936.

(2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty of misconduct.

(3) The following acts and omissions shall be treated as misconduct:—

(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
(b) theft, fraud, or dishonesty in connection with the employers' business or property,

c) wilful damage to or loss of employers' goods or property,

d) taking or giving bribes or any illegal gratification,

e) habitual absence without leave or absence without leave for more than 10 days,

(f) habitual late attendance,

(g) habitual breach of any law applicable to the establishment,

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline,

(i) habitual negligence or neglect of work,

(j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month,

(k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law.

(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the manager of the establishment or where there is no Manager of the employer is required in every case of dismissal and, when circumstances appear to warrant it, the Manager of the employer may institute independent enquiries before dealing with charges against a workman:

Provided that in the case of workman to whom the provisions of Cl. (2) of Article 311 of the Constitution of India apply, the provisions of that Article shall be complied with.

(5) An order of suspension shall be in writing and may take effect immediately on delivery to the workman. Such order shall set out in detail the alleged misconduct and the workman shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed, the workman shall be deemed to have been absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

(6) In awarding punishment under this standing order, the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the workmen and any other extenuating aggravating circumstances, that may exist. A copy of the order passed by the Manager shall be supplied to the workman concerned.

Complaints.—All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the
Manager or other person specified in this behalf with the right of appeal to the employer.

Certificate on termination of service.—Every permanent workman shall be entitled to a service certificate at the time of his dismissal, discharge or retirement from service.

Liability of Manager.—The Manager of the establishment shall personally be held responsible for the proper and faithful observance of the standing orders.

Exhibition of standing orders.—A copy of these orders in English and in Hindi shall be pasted at the Manager's office and on a notice-board maintained at or near the main entrance to the establishment and shall be kept in a legible condition.

(b) Dispute over standing orders.

In Guest Keen William (Private) Ltd. v. P. J. Sterling, AIR 1959 SC 1279, a question arose as to whether a worker can raise a dispute over a matter concerned by the Standing Order on the ground of acquiescence over a period of time. The Supreme Court observed:

“It is, however, contended that the delay made by the respondent in raising the present dispute shows that the respondent had acquiesced in the relevant Standing Orders and that in substance is pleaded as a bar to the validity of the present reference. We do not think that this contention can be upheld. In dealing with industrial disputes the application of technical legal principles should as far as is reasonably possible be avoided. Take the present argument of acquiescence which in ordinary civil litigation may justify a plea of estoppel. An industrial dispute has to be raised by the Union before it can be referred; and it is not unlikely that the Union may not be persuaded to raise a dispute though the grievance of a particular workman or a number of workmen may otherwise be well-founded; then again, even if the Union takes up a dispute the State Government may or may not refer it to the Industrial Tribunal. The discretion of the State Government under Section 10 of the Industrial Disputes Act is very wide. Thus, workmen affected by Standing Orders may not always and in every case succeed in obtaining a reference to the Industrial Tribunal on the relevant points. That is why the tribunals should be slow and circumspect in applying the technical principles of acquiescences and estoppel in the adjudication of industrial disputes. If a dispute is raised after considerable delay which is not reasonably explained, the Tribunal would undoubtedly take that fact into account in dealing with the merits of the dispute. But unless the relevant facts clearly justify such a course it would be in expedient to throw out the reference on preliminary technical objections of the kind raised by the appellant under the present contention. In the present case the relevant rule was certified in December, 1953 and came into operation in January, 1954. The present dispute was raised by the respondent as soon as the appellant sought to enforce it in May, 1954. That is why it is difficult to accept the argument that the respondent has been guilty of laches or acquiescence. We would, therefore, hold that the
respondent was entitled to raise the present industrial dispute and that the present reference does not suffer from any infirmity."

Now we shall proceed to examine the meanings of words "Industry", "Workmen" and "Industrial dispute".

2. Industry—Meaning

Section 2 (j) of the Industrial Disputes Act defines "Industry" as follows:

"Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or association of workmen".

A cursory examination of the definition of industry in Section 2 (j) without the assistance of the case-law would show that it has been divided into two parts; the first is, as meaning any business, trade, undertaking, manufacture or calling of employers and the second is, as including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The first part defines it in relation to the activities of the undertaking i.e. the employer while the second, in relation to the nature of the work done by the employees and gives an extended connotation though this part standing alone cannot define what an industry is. In either case the activity whether of the undertaking or the employees of that undertaking are to be determined in relation to its being a business, trade, undertaking, manufacture or calling of employers. In several cases decided by the Supreme Court, these definitions have been understood differently in their application to the facts and circumstances of each case which prompted Hidayatullah, J., as he then was, in The Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, (1968) 1 SCR 742: AIR 1968 SC 554, after pointing out that the definitions in the Act are borrowed from other statutes particularly the latter part of the definition of 'industry' was taken from Section 4 of the Commonwealth Conciliation and Arbitration Act, which had caused some trouble, to say, "Decisions rendered on these definitions (and some others very similar) have naturally influenced opinion making in this Court. The Australian cases in particular "have been subrosa all the time".

For the first time in The State of Bombay v. Hospital Mazdoor Sabha, (1960) 2 SCR 866: AIR 1960 SC 610, a hospital was held to be an industry within the meaning of Section 2 (j) of the Act. That was a case in which the hospital was run by the Government. A distinction was sought to be made between the activities of the Government in its Regal or sovereign sphere and other activities which are undertaken in the socio-economic progress of the country as beneficial measures. The former were held not to come within the ambit of Section 2 (j) while it was said that it would be incongruous and contradictory to suggest that the latter activities should be exempted from the operation of the Act which in substance is a very important beneficial measures in itself. This latter conclusion was sought to be supported by a reference to the definition of employer in Section 2 (g) (i) as meaning "in relation to an industry carried on by or under the authority of any Department of the Central Government or
State Government authority prescribed in this behalf, or where no authority is prescribed the Head of the Department*. This definition *Gajendragadkar, J., as he then was, said “clearly indicates that the legislature intended the application of the Act to activities of the Government which fall within Section 2 (i). In considering the question as to whether the group of hospitals run undoubtedly for the purpose of ‘giving medical relief to the citizens and for helping to impart medical education’ are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not ‘essential for bringing an undertaking within Section 2 (i)’. Even where no profits are earned or even where it is run without charging fees it was considered to be an undertaking because it is the character of the activities involved in running the Hospital which brings the institution of the Hospital within the meaning of Section 2 (j). The several attributes which are necessary to constitute the activity into an undertaking analogous to trade or business have been stated though the difficulty of setting out all the possible attributes definitely or exhaustively was recognised, and as a working principle it was stated that (a) an activity is systematically or habitually undertaken for the production or distribution of goods or for the rendering of material service to the community at large or a part of such community with the help of employees is an undertaking; (b) such an activity generally involves the cooperation of the employer and the employees with the object of satisfying material human needs; (c) it must be organised or arranged in a manner in which trade or business is generally organised or arranged; (d) it must not be casual, nor must it be for oneself nor for pleasure. After setting the aforesaid it was also observed that “the manner in which the activity in question is organised or arranged, the condition of the cooperation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2 (i) applies”. This decision also considered the question whether any *quid pro quo* was necessary for bringing an activity under Section 2 (j) and it was held that no such element was involved. This case was considered to be on the verge as taking an extremely high regard in the *The Gymkhana Club's case* (1968) 1 SCR 742: AIR 1963 SC 554, to which *Vaidialingam, J.*, was party.

reference of a dispute between employer and employee under Section 10(1) of the Act. Hidayatullah, J., as he then was, thought that the changes made in the meaning of the expression used in the definition of industry in the Act by the several decisions referred to therein 'disclosed a procrastinate approach to the problem,' and that "too much insistence upon partnership between employers and employees is evident in the Solicitor's case and too little in 'Association's case" (pages 751-752). In the Association's case which was a Research Association maintained by the Textile Industry and employing technical and other staff, the tests for determining whether the activities of the Association could be construed as an industry as laid down in the Hospital's case were repeated and applied. It was pointed out that for the first time in that case, namely the Association's case, a fresh test was added that as the employees had no rights in the results of their labour or in the nature of business and trade, the partnership is only association between the employer and employee". Further after setting out the various facts of the relationship of employers and employees and the need to correlate this to an industry it was observed at page 752:

"Stated broadly the definition of 'industrial dispute' contains two limitations. Firstly, the adjective 'industrial' relates the dispute to an industry as defined in the Act and, secondly, the definition expressly states that not disputes and differences of all sorts but only those which bear upon the relationship of employers and workmen and the terms of employment and conditions of labour are contemplated"

It was also pointed out at page 755 that:

"The principles so far settled come to this. Every human activity in which enters the relationship of employers and employees, is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative services of public officials, service in aid of occupations of professional men, such as doctors and lawyers, etc. . . . . must be excluded because they do not come within the denotation of the term 'industry'. Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expressions trade, business and manufacture."

Again at page 756, the principle was summed up thus:

"It is, therefore, clear that before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material service".

In this context the meaning of the word 'trade' was considered to bear the meaning given in the Halsbury's Laws of England as (a) exchange of goods for goods or goods for money; (b) any business carried on with a view to profit, whether manual or mercantile, as distinguished from pleasure. Manufacture is a kind of productive industry in which the making of articles or material (often on a large scale) is by physical labour
or mechanical power. Calling denotes the following of a profession or trade. The word ‘undertaking’ which is the most elastic was given as any business or any work or project which one engages in or attempt as an enterprise analogous to business or trade’. This test was said to have been laid down in Banerji’s case, and followed in the Baroda Borough Municipality’s case, and it was observed that “its extension in the Corporation case was unfortunate and contradicted the earlier cases”. Even where the activity is considered to be an industry the second question which arises is the nature of the work which the employees render. The work must be productive and workman must be following an employment, calling or industrial avocation and are not working in a managerial capacity nor are they highly paid supervisors. It is also not necessary that the workmen should receive a share though there may be occasions when he may receive a share of the produce as part of their wages or as bonus as a benefit.

Applying the aforesaid tests it was held that after the first part of the definition and the essential character of the Club is taken into consideration, the activity of the club cannot be described as a ‘trade’, ‘business’, or ‘manufacture’ and the running of the club or its managing committee; nor can the Club be said to exist for its members though occasionally strangers take benefit from its services. It was pointed out that even after the admission of guests the club remains the member’s self-serving institution, and while no doubt the material needs or wants of a section of the community is catered for, this is not enough, but that must be done as a part of trade or business or as an undertaking analogous to trade or business, which element was found to be completely missing in a ‘members’ club. In the end in answer to the contention that the case of the Club is indistinguishable from the Hospital case, it was said “That case is one which may be said to be on the verge. There are reasons to think that it took the extreme view of an industry and that the case of a ‘members’ club is beyond even the confines established by that case—See the Management of the Federation of Indian Chamber of Commerce and Industry v. Their Workmen, AIR 1972 SC 763.

Dealing with the definition of “industry”, the Supreme Court observed in Gymkhana Club Union v. Management, (1968) 1 SCR 742: AIR 1968 SC 534, as under:

“The definition of ‘industry’ is into parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine what an industry is and what the cognate expression ‘industrial’ is intended to convey. This is the denotation of the term or what the word “denotes”. We shall presently discuss what the words, ‘business, trade, undertaking, manufacture or calling’ comprehend. The second part views the matter from the auge of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of industry. This part gives the extended connotation. If the activity can be described as an industry with reference to the occupation of the employees, the ambit of the industry under the force of the second
part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define 'industry'. An industry is not to be found in every case of employment or service."

The Gymkhana's case, (1968) 1 SCR 742 : AIR 1968 SC 554 was referred to in The Cricket Club of India Ltd. v. The Bombay Labour Union, (1969) 1 SCR 600 : AIR 1969 SC 276. In that case a preliminary objection was taken on behalf of the Club that it was not an industry and the provisions of the Act were not applicable to it, and therefore a reference under Section 10 was not competent. The Tribunal rejected this objection against which the Club came in appeal before the Supreme Court. It may be noticed that the Appellant was registered under the Indian Companies Act, 1913 with the objects set out in paragraph 3, clauses (l), (e), (d), (g), (l), and (n(a) of the Memorandum of Association of the Club. The Gymkhana Club's case was sought to be distinguished on the ground that the activities of encouraging and promoting the game of Cricket in India and elsewhere mentioned in clause (a), financing and assisting in financing visits of foreign terms and of visits of Indian teams to foreign countries in Cl. (e), organising and promoting or assisting in the organisation or promotion of provisional Cricket Associations and Inter-Provincial Tournaments in Cl. (d), etc., are not activities which should form part of a social or recreational Club. The Supreme Court found that the Appellant was a club of members organised with the primary object of encouraging sports and games; that the income earned by the club from investments of immovable properties could not be held to be income that accrued to it with the aid and cooperation of the employees. From the evidence it was clear that in effect no employees of the Club were engaged in looking after the buildings which were let out for use as shops and offices; that the facility of residential accommodation provided by the Club could not be said to be in the nature of keeping Hotel as this facility was provided exclusively for members of the club at much lower charges than those prevailing in the city with comparable accommodation; that the catering provided in the refreshment room of the Club was also confined to the members of club only. No outsider is allowed to take advantage of this facility, and the by-laws of the Club lay down that even if a guest was introduced by a Member, the guest is not entitled to pay for any refreshment served to him; that although large parties were held at the Club where catering was provided by the club and non-members attended such parties, these facilities were in fact provided at the instance of the Members of the Club; nor was there any evidence that a large number of such parties were held for drawing an inference that holding such parties was a systematic arrangement by which the Club was attempting to make profits. The catering facilities to members and outsiders at the stalls at the time of tournament were so provided only twice a year and at concessional rates and could not therefore be said to be for the purpose of carrying on an activity for selling snacks and soft drinks to outsiders; but is really intended as provision of a facility to persons participating in or coming to watch the tournaments in order that these may run successfully. It appears that the test matches were held in the Stadium of the Club. It also appears that the Club was making a large income therefrom. Of the 17 matches held there during the period, each match netted nearly 2 lakhs. Even so, it was held that holding of test matches or the catering provided in the stalls at the time of these matches was a subsidiary purpose to the promotion and encouragement of the persons whose interest is the game.
of Cricket was not systematic and consequently was not in the nature of carrying on trade or business but were activities in the promotion of the game of cricket. The income derived from all these activities was incidental which income was later utilised for the purpose of fulfilling its other objects as incorporated in the Memorandum of Association.

After setting out and examining in detail the object and the purposes for which the Club came into existence and the Stadium was constructed and used, Bhargava, J., at page 613 observed on behalf of the Court:

"In these circumstances we are not inclined to accept the submission made on behalf of the workmen that this activity by the Club is an undertaking in the nature of trade or business. It is, in fact, an activity in the course of promotion of the game of cricket and it is incidental that the Club is able to make an income on these few occasions which income is later utilised for the purpose of fulfilling its other objects as incorporated in the Memorandum of Association".

It was also sought to be contended that the Club was registered under the Indian Companies Act, 1913, unlike the Madras Gymkhana Club and consequently the effect of this incorporation in law was that the Club became an entity separate and distinct from its Members so that, in providing catering facilities, the Club, as a separate legal entity, was entering into transactions with the Members who were distinct from the Club itself. This contention was not considered to be of importance even by the Tribunal itself with which the Supreme Court agreed on the ground that, what has to be seen is the nature of the activity in fact and in substance. In fact it was found that the club was not constituted for the purposes of carrying on business; there were no shareholders, no dividends were declared and no distribution of profits took place. The admission to the Club was by payment of admission fee and not by purchase of shares. Even this admission was subject to balloting. The membership was not transferable like the right of shareholders and the expulsion of the member under certain circumstances when he lost his right were features which never exist in the case of a shareholder holding shares in a Limited Company. In these circumstances the Club was not considered as a separate legal entity as a Limited Company carrying on business.

The Madras Gymkhana Club, (1968)—I SCR 742 : AIR 1968 SC 554, as well as The Cricket Club, of India Ltd. v. The Bombay Labour Union (1969) 1 SCR 600 : AIR 1969 SC 276, cases were again considered by a larger Bench of six Judges of the Supreme Court in Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1971) 1 SCR 177 : AIR 1970 SC 1407, when the previous case-law was also reviewed. In that case the Supreme Court was considering whether Safdarjung Hospital, the Tuberculosis Hospital and the Kurji Holy Family Hospital were industry for the purposes of reference under Section 10 (1) (d) of the Act.

In The Safdarjung Hospital's case, (1971) 1 SCR 177 : AIR 1970 SC 1407; The Hospital Mazdoor’s Sabha case, 1960 2 SCR 866 : AIR 1960 SC 610, again, loomed large because on the facts and the circumstances of that case the principles stated therein would have been applicable, if it was considered to be good law. But as earlier stated certain criteria and tests which were laid down in The Gymkhana' case, 1968 I SCR 742 : AIR 1968 SC 554), were logically extended to this case and in doing so the extreme view taken in the Hospital's case was held to be not justified. What was considered in the Safdarjung Hospital's case was "whether a hospital can be
considered to fall within the concept of industry in the Industrial Disputes Act and whether all hospitals of whatever description can be covered by the concept of only some hospitals under special conditions”.

We have earlier set out the relevant passages in The Gymkhana’s case, (1968) 1 SCR 742 : AIR 1968 SC 554, which laid down the criteria for determining the various activities which would determine whether the undertaking is an industry within the meaning of Sec. 2 (f), Hidayatullah, C. J., in the Gymkhana’s case, (1968) 1 SCR 742 : AIR 1968 SC 554, after referring to the two notions of the definition—the first part dealing with what it means and the second part with what it includes, summed up the conclusion in the following passage at pages 753-754:

“If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define ‘industry’...........

By the inclusive part of the definition the labour force employed in an industry is made an integral part the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake”.

The Chief Justice thought that the above observations in the Gymkhana Club’s case needed to be somewhat qualified. It was pointed out by a reference to the definition of industry in Section 4 of the Commonwealth Conciliation and Arbitration Act of Australia that the two definitions were worded differently though the purport of both is the same. It was, however, thought that it was not necessary to view each definition in two parts. At page 184 it was observed:

“The definition read as a whole denotes a collective enterprise in which employers and employees are associated. It does not exist either by employers alone or by employees alone. It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. The definition no doubt seeks to define ‘industry’ with reference to employers’ occupation but includes the employees, for without the two there can be no industry. An industry is only to be found when there are employers and employees, the former relying upon services of the latter to fulfil their own occupations”.

After setting out the passages to which references have been made while examining the Gymkhana’s case it was again pointed out that when Lord Wright said that ‘trade’ is a term of widest scope, it was true but “the word as used in the statute must be distinguished from professions although even professions have ‘trade-unions’. The word ‘trade’ includes persons in a line of business in which persons are employed as workmen”. Similarly it was pointed out that “Business too is a word of wide import. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions these terms have a definite
economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods or wealth and material services”.

What is meant by material services, was also explained thus at page 187:

“Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production, of a result. Such services being given individually and by individuals are services no doubt but not material services.............Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something............... but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable..............It is the production of this something which is described as the production of material services”.

A contention was, however, urged that the words ‘trade’ and ‘workmen’ ought not to be given a narrow meaning but it was pointed out that the reasons for some of the cases decided by this Court lay in the kind of establishment which were sought to be explained and elucidated. At page 188 the following observations are worthy of note:

“It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employees or between employees and employers in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers’ enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense”.

Though it was considered unnecessary to refer to the earlier cases as they were all referred to in the Gymkhana Club’s case, (1968) 1 SCR 742: AIR 1968 SC 554, the following propositions which were deduced from them have been summed up at page 189:

“..........before the work engaged in can be described as an industry, it must, bear the definite character of ‘trade’ or ‘business’ or ‘manufacture’ or ‘calling’ or must be capable of being described as an undertaking resulting in material goods or material services”.
Thereafter the Hospital Mazdoor Sabha's case [(1960) 2 SCR 866 : AIR1960 SC 610] was closely considered and while doing so it was said that:

"If a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business". It was further pointed out that in the Hospital Mazdoor Sabha's case, hospitals run by Government and even by a private association, not on commercial lines but on charitable lines or as part of the functions of Government Department of Health were held included in the definition of industry. The reason given was that the second part of the definition of industry contained an extension of the first part by including other items of industry. But this, the learned Chief Justice said was not correct because "the first and the second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry. The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit motive were considered unessential. It is an erroneous assumption that an economic activity must be related to capital and profit-making alone. An economic activity can exist without the presence of both. Having rejected the true test applied in other cases before, the test applied was 'can such activity be carried on by private individuals or group of individuals'? Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. With respect, we do not consider this to be the right test. That test was employed to distinguish between the administrative functions of Government but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive of goods or their distribution or for producing material services to the community at large or a part of it, there was no room for the other proposition that privately run hospitals may in certain circumstances be regarded as industries".

It may be noticed that in the Safdarjung Hospital case, (1971) I SCR 177 : AIR 1970 SC 1407], apart from the case of the Safdarjung Hospital two other appeals were being considered, namely one relating to Tuberculosis Hospital and the other to Kurji Holy Family Hospital. In so far Safdarjung Hospital is concerned, it was held that it was "not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the Hospital is run as a Department of Government. It cannot therefore, be said to be an industry". The Tuberculosis Hospital was said to be wholly charitable and a research institute the dominant purpose of which was research and training but as research and training cannot be given without beds in a hospital, the hospital was being run. The treatment was therefore, part of the research and trade. As such it was not considered to be an industry. The object of the Kurji Holy Family Hospital
was found to be entirely charitable. It also carries on work of training, research and treatment and the distribution of surplus profit, if any, was prohibited. That was also not considered to be an industry. These two cases are being referred particularly because it is often contended in support of the proposition that where the object of an institution is for a charitable purpose that would exclude its activity from coming within the definition of an industry under Section 2 (j); that in the two particular instances the Hospitals were charitable institutions and, therefore, it was contended that merely on that ground they were not an industry. In these three cases it was found that none of them carry on an economic activity analogous to trade or business. The criteria that in the two latter hospitals the object was charitable does not appear to have been the sole test for concluding that they were not industries. In one case the dominant activity was research and training which necessarily involved treatment also. In the other case though the activity it carried on was training, research and treatment, the distribution of surplus as profit was prohibited. The cumulative effect of these activities and the nature of such activities determined the question whether these institutions were an industry or not, not that because their respective objects were charitable, that alone was considered to be the criteria for not considering it as an industry.

In Management of the F. I. C. Of Commerce and Industry v. Their Workmen, AIR 1972 SC 763, Jagmohan Reddy J. observed:

"It appears to us that the tests for determining whether a dispute is an industrial dispute, or not have been enunciated and the principles crystallised as a result of the several decisions of this Court which is what are applicable to this case. There is, therefore, no warrant to allow any other element to be added to the criteria laid down for determining what an industry is. In our view the linch-pin of the definition of industry is to ascertain the systematic activity which the organisation is discharging, namely, whether it partakes the nature of a business or trade, or is an undertaking or manufacture or calling of employers. If it is that and there is co-operation of the employer and the employee resulting in the production of material services, it is an industry notwithstanding that its objects are charitable or that it does not make profit or even where profits are made, they are not distributed among members.

"It now remains to be seen whether the Federation is an industry within the meaning of Section 2 (j). The objects of the Federation are set out inter alia, in clause 3 (a) to (k) of the Memorandum of Association of which the more significant are clauses (a) and (e) to (k). These are to promote Indian business in matters of inland and foreign trade, transport, industry and manufacture, finance and all other economic subjects and to encourage Indian Banking, Shipping and Insurance; to promote support or oppose Legislation or other action affecting economic interests and in general to take the initiative to assist and promote trade, commerce and industry to provide for arbitration in respect of disputes arising in the course of trade, industry, or transport and to secure the services of trained technical and other men to that end, if necessary or desirable to conduct, undertake the conduct of and participate in national and international exhibitions, to set up museums or show-rooms, to exhibit products of
India in other countries and to participate in such activities, and to attain these advantages by united action which each member may not be able to accomplish in its separate capacity. In furtherance of these objects the Federation publishes a Fortnightly Review, organised two exhibitions in which huge profits were made, though no doubt in collaboration with the Government. It has constituted Tribunals for Arbitration. It is claimed in the Brochure issued by the Federation under the title 'Organisation and Functions' that the membership of Federation confers certain rights and privileges, such as for instance, it "endeavours to take up with the concerned authorities the specific difficulties experienced by members in their day to day business". It has entered into arbitration agreement with America, Russia, German Democratic Republic, Poland and Hungary for the purposes of having the disputes or claims arising out of or relating to contracts between nationals of India and the country concerned for being settled by arbitration. It promotes India's exports and economic development. It undertakes publication of periodicals for the benefit of the businessmen, big or small; it brings out Fortnightly Review in which there is a Section for Trade, enquiries of special interest to importers and exporters. This facility is also thrown open to the non-members who can subscribe to the Bulletin though it is sent free to all the constituents of the Federation. A cyclostyled publication entitled "Export News" is also issued every fortnight and gives general hints to the exporters as to how to promote their exports. It appears from the report of proceedings of the Executive Committee for the year 1965, that more specific issues were taken up—direct with the Department of Government concerned relating to export performance and shortages of imported raw materials, components and machinery with a view to alleviate difficulties in the case of specific products. It also takes up matter relating to the grant for more facilities abroad, introduction of concessions such as Railway freight etc. Among important ad hoc matters taken up were Cargo seized by Pakistan in the course of hostilities during 1965. It also facilities the resolution of various difficulties in respect of foreign exchange and export promotion which are being experienced by the trade in respect of foreign exchange allocation for export promotion purposes and made several suggestions regarding granting of foreign exchange for business facilities abroad and the need to avoid delay in sanctioning foreign exchange, increase in existing scales of allowances, liberal allocation of the after sales service. It took up the case of the established exporters other than manufacturers who were barred from entering into export trade in ground-nut oil cakes. It sponsored the cause of the exporters of precious stones to allow reasonable time for submission of their reports and calling back the consignments if, there was no sale. In company Law matters also it sponsored the cause of the various Companies and the difficulties that they were encountering. It would appear that on the request of Goa Mineral Ore Exporters' Association, the Committee requested the Government to give the matter sympathetic consideration. It also took up cases of the contractor's bills where there was inordinate delay in
payment of contractors’ bills for lack of funds. In the report for 1964 it was stated that wherein certain cases import licences were issued subject to the condition that the validity of the licences depended on the production of the Income tax Clearance Certificate in spite of the fact that the applicant had quoted the registered number in his income-tax verification, the Federation requested the Chief Controller of Imports & Exports to discontinue the practice in future. Where the import policy for the year 1964-65 allowed 5% quota for Silk bolting cloth to established importers, representation to the Chief Controller of Imports & Exports was made for this cloth to be granted to flour millers direct whenever they apply for it, if necessary on an ad hoc basis. The case for freight concession for iron ore exported from Rajasthan for extending it to high grade ore as well, was also taken up. It was further pointed out that the company management and other concerned with the Company law have frequently complained of many practical difficulties in complying with the provisions of the Company Act, rules, etc. In order to help the Federation constituents in such matters and provide necessary service to them the Federation has been maintaining a separate division, namely the Company Division to which members were requested to forward their problems and difficulties. Principal bodies were also requested to advice their constituents in regard to the services offered by the Federation. These extracts have been given in some extenso to show that the Federation carries on systematic activities to assist members and other businessmen and industrialists and even the non-members as for instance in giving them the right to subscribe to their bulletin; in taking up their cases and solving their difficulties and in obtaining concessions and facilities for them from the Government. These activities are business activities, are material services which are not necessarily confined to the illustrations given by Hidayatullah, C. J., in the Gymkhana case, [(1968) 1 SCR 742: AIR 1968 SC 554,] by way of illustration only, rendered to businessmen traders and industrialists who are members of the constituents of the Federation. There can in our view be no doubt that the Federation is an industry within the meaning of Section 2 (j) of the Act."

(a) Attributes necessary to make an undertaking fall under Section 2(j) :

The question is what attributes would make an activity and undertaking under Section 2 (j). It is difficult to state these attributes definitely or exhaustively but as working principle it can be said that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees would be an undertaking within the meaning of the Act provided it was carried on in an organised manner like trade or business.

If an association is carrying on an activity which clearly comes within the definition of the word ‘industry’ in Section 2 (j) and which cannot be assimilated to purely educational institution, and a dispute arises between it and some of its employees, it is an industrial dispute and can be properly referred for adjudication under the Act—The Ahmedabad Textile

(b) Municipalities:

The Supreme Court examined the meaning of “industry” in a very important and exhaustive judgment reported as—D. N. Banerjee v. P. R. Mukerjee, AIR 1953 SC 58, and held that the municipality was an industry within the meaning of the Industrial Disputes Act. It is worthwhile to quote the following passage from the judgment:

“In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools, etc. and for making profits. The concept of industry in this ordinary sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of master and servant, or of a Government and its secretariat, or members of the medical profession working in a hospital. It would be regarded as absurd to think so; at any rate, the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing, however, to prevent a statute from giving the word ‘industry’ and the words ‘industrial dispute’ a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised government has thought of the machinery of conciliation officers, boards and tribunals for the effective settlement of disputes”.

In B. B. Municipality v. Its workmen, AIR 1957 SC 110, the Supreme Court observed:

“It is now finally settled by a decision of this Court in D. N. Banerjee v. P. R. Mukerjee (S pra), that a municipal undertaking is an industry within the meaning of the definition of that word in
Section 2 (j) of the Industrial Disputes Act, 1947, and that
the expression 'industrial dispute' in the Act includes a dispute
between a municipality and its employees in branches of work
that can be regarded as analogous to the carrying on of trade
or business."

In Corporation of the City of Nagpur v. Its employees, (1960-61)
18 FJR. 28 : (1960) 1 LLJ 523: AIR 1960 SC 675, the question that arose for
consideration was whether all the departments of a municipality would be
"industry". In that case the dispute that arose under C. P. and Berar
Industrial Disputes Settlement Act, 1947 was mainly concerned with the
question whether the Act would apply to employers in certain departments
of the municipality. The Supreme Court examined and analysed the duties
assigned to each of the department and held the following seventeen departments
as being covered by the definition of "industry":

(1) Assesment Department.
(2) Building Department.
(3) City Engineers Department.
(4) Education Department.
(5) Electrical Department.
(6) Estate Department.
(7) Enforcement Department.
(8) Fire Brigade Department.
(9) Health Department.
(10) Market Department.
(11) Printing Works Department.
(12) Public Conveyance Department.
(13) Public Gardens Department.
(14) Public Works Department.
(15) Sewage Department.
(16) Tax Department,
(17) Water Works Department.

The parts of the General administration which deal with the 17 depart-
ments referred to above were, however, held as being included in the
definition.

The departments which were held as not being covered by the defini-
tion were as under:

(1) Assessment and levy of house-tax.
(2) Assessment and levy of octroi.
(3) Maintenance of cattle pounds.
(4) Prevention and control of adulteration.
(5) Removal of encroachment and dilapidated houses.

While confirming its decision in **D. N. Bauerjee v. P. R. Mukerjee** AIR 1953 SC 58, the Supreme Court laid down the following propositions:

(1) It is well settled that a municipal undertaking is an industry within the meaning of that word in Section 2(j) of the Industrial Disputes Act.

(2) Service rendered by a municipal corporation; if it complies with the conditions implicit in the definition of industry in Section 2 (14), C. P. and Berar Industrial Disputes Settlement Act, will be an ‘industry’ with the meaning of the definition. Monetary consideration for service is not essential characteristic of industry in modern State.

(3) The definition of industry in Section 2 (14) of the C. P. and Berar Industrial Disputes Settlement Act is in two parts: one part defines it from the standpoint of view of the employer and the other from the standpoint of the employee. This definition is very comprehensive and an activity failing under either part will be an industry.

(4) The history of industrial disputes and legislation recognises the basic concept that such activity should be an organised one and not that which pertains to private or personal employment.

(5) The functions described as the primary and inalienable functions of a State, even though delegated statutorily to municipal corporation, are excluded from the purview of the definition.

(6) If a service rendered by a municipal corporation is an ‘industry’ the employees in the department connected with that service whether financial administrative or executive, would be entitled to the benefits of the Act.

(7) If a department of a municipality discharged many functions, some falling within and others not falling within the definition of ‘industry’, the predominant functions of the department should be the criterion for the purposes of the Act.

**c) Hospitals.**

**In State of Bombay v. Hospital Mazdoor Sabha,** (1960) 2 SCR 866; AIR 1960 SC 610; (1959-60) 17 FJR 423; (1960) 1 LLJ 251, the services of two ward servants in a hospital run by the State Government were dispensed with, but no compensation under Section 25-F of the Industrial Disputes Act was paid to them. The matter was challenged in a Writ petition before the Bombay High Court which held that the hospital was an industry. The Supreme Court upheld the view of the High Court and observed:

“Section 2 (j) provides that ‘industry’ means by any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. It would be noticed that the words used in the definition are very wide in their import and even so its latter part purports to provide an inclusive definition. The word ‘undertaking’ according to Webster means ‘anything undertaken; any business, work or project which one engages in or attempts,
an enterprise'. Similarly, 'trade' according to Halsbury, in its primary meaning, is 'exchange of goods for goods or goods for money', and in its secondary meaning it is 'any business carried on with a view to profit of learned professions and from agriculture'; whereas 'business' is a wider term not synonymous with trade and means practically 'anything which is an occupation as distinguished from a pleasure'. The word 'calling' again is very wide; it means 'one's usual occupation, vocation, business or trade'; so is the word 'service' very wider in its import. *Prima facie*, if the definition has deliberately used words of such wide import, it would be necessary to read those words in their wide denotation; and so read, hospitals cannot be excluded from the definition.

"The conventional meaning attributed to the words 'trade and business' has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of socio-economic thought around; it must recognise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to solve industrial disputes, industrial adjudication does not and should not adopt a doctrinaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisations. Nevertheless, it cannot harp back to old-age notions about the relations between employer and employee or to the doctrine of *laissez faire* which then governed the regulation of the said relation. That is why, we think, in construing the wide words used in Section 2 (j) it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by.

"In considering the question as to whether the group of hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of alike nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within Section 2 (j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under Section (j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section 2 (j). Does it make any difference that the hospital is run by the Government in the interpretation of the word 'undertaking' in Section 2 (j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides
the question as to whether the activity in question attracts the provision of Section 2 (j) ; who conducts the activity and whether it is conducted for profit or not, do not make a material difference.

"We have yet to decide which are the attributes, the presence of which makes an activity an undertaking within Section 2 (j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively as a working principle it may be stated that an activity systematically or habitually undertaken for the production of distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2 (j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question."

"If the absence of profit motive is immaterial why should an activity be excluded from Section 2 (j) merely because the person responsible for the conduct of the activity expects no consideration, does not want any quid pro quo and is actuated by philanthropic or charitable motive? In our opinion, in deciding the question as to whether any activity in question is an undertaking under Section 2 (j) the doctrine of quid pro quo can have no application."

In the Management of Safdarjung Hospital, New Delhi v. Kuldeep Singh Sethi, (1970) 1 SCC 735, the question for consideration was whether hospital can be considered to fall within the concept of industry in the Industrial Disputes Act and whether all hospitals of whatever description can be covered by the concept or only some hospitals under special conditions.

The Supreme Court made the observations as follows:

"If a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business. In the Hospital Mazdoor Sabha case, hospitals run by Government and even by a private association, not on commercial lines but on charitable lines or as part of the functions of Government Department of Health were held included in the
definition of industry. The reason given was that the second part of the definition of industry contained an extension of the first part by including other items of industry. But the first and the second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry. The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit motive were considered unessential. Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. This is not the right test. The test was employed to distinguish between the administrative functions of Government and local authorities and their functions analogous to business but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive of goods or their distribution or for producing material services to the community at large or a part of it, there was no room for the other proposition that privately run hospitals may in certain circumstances be regarded as industries.

"It is argued that after the amendment of the Industrial Disputes Act by which "service in hospitals and dispensaries" is included in public utility services, there is no scope for saying that hospitals are not industries. It was said that Parliament has accepted that the definition is suited to include a hospital. A public utility service is defined in the Act by merely naming certain services. The intention behind this provision is obviously to classify certain services as public utility services with special protection for the continuance of those services. The named services in the definition answer the test of an industry run on commercial lines to produce something which the community can use. These are brought into existence in a commercial way and are analogous to business in which material goods are produced and distributed for consumption. When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore, it said that an industry could be declared to be a public utility service. But what could be so declared had to be an industry in the first place. It is hardly to be thought that notifications can issue in respect of enterprises which are not industries to start with. It is only industries which may be declared to be public utility services.

"Therefore to apply the notification, the condition precedent of the existence of an industry has to be satisfied. If there is an industry which falls within the items named in the First Schedule, then alone can it be notified to be classed as a public utility service. The law does not work the other way round that every activity connected with coal becomes an industry and, therefore, on notification that activity becomes a public utility service. The same is true of all items including all the
services mentioned. They must first be demonstrated to be industries and then the notification will apply to them. To hold otherwise would largely render useless all the definitions in the Act regarding industry, industrial disputes, etc., in relation to the scheduled items. Parliament has not attempted to declare that notwithstanding the definitions of "industry", "industrial disputes", "workman" and "employer", every hospital is to be regarded as an industry. All that has been provided is that an "industry" may be notified as a public utility service. That is insufficient to convert non-industries under the Act to industries.

"It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the hospital is run as a Department of Government. It cannot, therefore, be said to be an industry. The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances, the Tuberculosis Hospital cannot be described as an industry. The objects of the Kurji Holy Family Hospital are entirely charitable. It carries on work of training, research and treatment. Its income is mostly from donations and distribution of surplus as profit is prohibited. It is, therefore, clear that it is not an industry as laid down in the Act."

(d) Agricultural Operation:

In Harinagar Cane Farm and another v. State of Bihar and others, (1963) 1 LLJ 692 : 24 FJR 485 : (1963) 6 FLR 431 (SC) the Supreme Court without deciding the large question whether all agricultural operations concerned with it are included within the definition of Section (2) (j), held that:

"When a company is formed for the purpose of carrying on an agricultural operation, it is carrying on trade or business and a plea raised by it that this organised trade or business does not fall within Section (2) (j) simply and solely for the reason that it is an agricultural operation, cannot be sustained."

(e) Educational institutions:

Teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen under Section 2 (s); and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2 (s), and any dispute between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under Section 2 (j) the bulk of the employees being outside the purview of the Act, the only dispute which
can fall within the scope of the Act, are those which arise between such institutions and their subordinate staff, the members of which may fall under Section 2 (s). Having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the omission of the whole class of teachers from the definition prescribed by Section 2 (s) has an important bearing and significance in relation to the problem which are being considered here. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading section 2 (g), (j) and (s) together, it can be said that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

The Act has deliberately so defined workman under Section 2 (s) as to exclude teachers, from its scope. Any problems connected with teachers, and their salaries are outside the purview of the Act, and since the teachers form the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not within its scope.

It is true that like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff does the work assigned to it; but in the main scheme of imparting education, this subordinate staff plays such a minor, subsidiary and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. The work of promoting education is carried on by the University and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidentl work may seem to partake of the character of service which may fall under Section 2 (j)—University of Delhi and another v. Ram Nath, etc., 1963 2 LLJ 335 : 1963 S.C. 1873 : 24 FJR 509 : (1963) 7 FLR 177 (SC).

(f) Ahmedabad Textile Research Association:

The activities of the Ahmedabad Textile Industry Research Association have little in common with the activities what may be called a purely educational institution. It is true that the employees who have raised the industrial dispute in the instant case do not actually contribute to the research, which is carried on under the Association; but the manner in which the Association is organised and the fact that the technical personnel who carry on research are also employees who have no rights in the result of the research clearly show that the undertaking as a whole is in the nature of the business and trade organised with the object of discovering ways and means by which the member mills may obtain large profits in connection with their industries. Hence it must be held that the Association is carrying on an activity which clearly comes within the definition of the word "industry" in Section 2 (j) and which cannot be assimilated to a purely educational institution. Any dispute between the Association and its employees could be referred for adjudication under the Act—Ahmedabad Textile Industry Research Association v. State of Bombay (1960) 2 LLJ 720 (SC).
3. Workman—Meaning

The word “workman” is defined under Section 2 (s) of the U. P. Industrial Disputes Act, 1947 as under:

“Workmen” means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment express or implied, and for the purpose of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Army Act, 1950, or Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a person; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who being employed in a supervisory capacity, draws wages exceeding Rs. 500 per mensem or exercises either by the nature of the duties attached to the officer or by the reason of the power vested in him, functions mainly of a managerial nature.”

What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then is a workman and the fact that he takes assistance from other persons would not affect his status. Dharangadhra Chemical Works Ltd. v. State of Saurashtra, (1957) 1 LLJ 477 : (1956-57) 11 FJR 439 : AIR 1957 SC 264.

The essential condition of a person being a workman within the terms of the definition in Section 2 (s) is that he should be employed to do the work in the industry, that there should be, in other words, an employment of him by the employer, that there should be the relationship between the employer and him as between employer and employee or master and servant. The prima facie test for the determination of relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. A person can be a workman even though he is paid not per day but by the job.

In Dharangadhra Chemical Works Ltd. v. State of Saurashtra, (1957) 1 LLJ 477 : (1956-57) 11 FJR 439 : AIR 1957 SC 264, it was held that on the evidence in the case of Aghiaras working in the salt works in Saurashtra under the lessees of the salt works, supervision and control was exercised by the lessees extending to all stages of the manufacture of salt and, therefore, Aghiaras were not independent contractors but ‘workmen’
as defined in the Act, notwithstanding that they were paid according to
the quantity of salt produced by them or that they were free to engage
others to assist them in their work.

It is worthwhile to produce the following passage from the judgment
in Dharangadhra Chemical Works Ltd. v. State of Saurashtra (Supra):

"The proper test is whether or not the hirer had authority to con-
trol the manner of execution of the act in question.

"The nature or extent of control which is requisite to establish
the relationship of employer and employee must necessarily
vary from business to business and is by its very nature incapable
of precise definition. As has been noted above, recent pro-
nouncements of the Court of Appeal in England have even
expressed the view that it is not necessary for holding that a
person is an employee, that the employer should be proved to
have exercised control over his work, that the test of control
was not one of universal application and that there were
many contracts in which the master could not control the
manner in which the work was done.

"The correct method of approach, therefore, would be to consider
whether having regard to the nature of the work there was due
control and supervision by the employer.

"The question whether the relationship between the parties is one
as between employer and employee or between master and
servant is a pure question of fact. Learned counsel for the
appellants relied upon a passage from Batt's Law of Master
and Servant, 4th Ed., at p. 10:

"The line between an independent contractor and a servant is
often a very fine one, it is mixed question of fact and law,
and the Judge has to find and select the facts which govern
the true relation between the parties as to the control
of the work, and then he or the jury has to say whether the
person employed is a servant or a contractor.'

"This statement, however, rests upon a passing observation of
McCardie, J., in Performing Right Society Ltd. v. Mitchel
and Booker (Palais De Dause) Ltd., (1924) 1 KB 762, and is
contrary to the catena of authorities which lays down that
whether or not in any given case the relation of master and
servant exists is purely one of fact (vide Huslbury's Laws of
is equally well settled that the decision of the Tribunal on a
question of fact which it has jurisdiction to determine is not
liable to be questioned in proceedings under Article 226 of the
Constitution unless at the least it is shown to be fully un-
supported by evidence.

"Learned counsel for the appellants laid particular stress on two
features in this case which, in his submission, were consistent
only with the position that the Aghiaras are independent
contractors. One is that they do piece-work and the other
that they employ their own labour and pay for it. In our
opinion neither of these two circumstances is decisive of the question.

"There are no doubt considerable difficulties that may arise if the Aghiarias were held to be workmen within the meaning of Section 2 (s) of the Act. Rules regarding hours of work, etc., applicable to other workmen may not be conveniently applied to them and the nature as well as the manner and method of their work would be such as cannot be regulated by any directions given by the Industrial Tribunals. These difficulties, however, are no deterrent against holding the Aghiarias to be workmen within the meaning of the definition if they fulfil its requirements.

"The broad distinction between a workman and an independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is, therefore, a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status. The position is thus summarised in *Halsbury's Laws of England*, Vol. 14, pp. 651-52:

"The workman must have consented to give his personal services and not merely to get the work done, but if he is bound under his contract to work personally he is not excluded from the definition, simply because he has assistance from others, who work under him."

(a) Gardner:

Wherever it is shown that the industry has employed an employee to assist one or the other operation incidental to the main industrial operation, it would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main work or operation of the industry.

In the large and expansive colony of the mills, the factory of the mills was inside a compound. Outside this compound of the factory, but within the colony of the mills were situated the bungalows occupied by the officers of the mills and the director. It is the gardens attached to these bungalows that were looked after by the 10 Malis. The Malis who look after the gardens must, therefore, be held to be engaged in operations which are incidentally connected with the main industry carried on by the employer—M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. The Labour Appellate Tribunal of India, (1964) 3 SCR 724; (1968) 7 Fac. LR 289; (1963) 2 LLJ 436; (1963-64) 25 FJR 93; ILR (1964) 1 All 17; AIR 1964 SC 737.
(b) Person doing clerical work:


(c) Accountant:

There is a distinction between accountants who are really officers and accountants who are merely senior clerks with supervisory duties. The accountants of latter type do not cease to be workmen—South Indian Bank, v. A.R. Chacko, (1964) 5 SCR 625 : (1964) 1 LLJ 19 : 1964 Ker LJ 277 : (1964-65) 26 FJR 64 : (1964) 2 Fac LR 128 : AIR 1964 SC 1522.

(d) Supervisory staff when deemed to be workmen:

The definition of workman in Section 2 (e), Industrial Disputes Act, 1947, as amended in 1956 includes *inter alia* an employee employed as a supervisor. There are only two circumstances in which such a person ceases to be a workman. One is when he draws wages in excess of Rs 500/- per month and the other is when he performs managerial functions by reason of a power vested in him or by the nature of duties attached to his office. The word 'supervise' and its derivatives are not of precise import. The word must often be construed in the light of the context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with a power of inspection and superintendence of the manual work of others.

The question whether a particular workman is a supervisor within or without the definition of workman is ultimately one of fact, at best one of mixed fact and law. The work in a Bank involves checking. Where however, there is a power of assigning duties and distribution of work there is supervision. Mere checking of the work of others is not enough because this checking is a part of accounting and not of supervision. The work done in the audit department of a bank is not supervision.

In exercise of its powers under Section 10 (1-A), Industrial Disputes Act, the Central Government referred to the National Industrial Tribunal an industrial dispute between the Reserve Bank, Bombay and its workmen in class II, class III, and class IV. The dispute embraced several items bearing upon the conditions of service of the three classes. The National Tribunal made no award in regard to supervisory staff in class II. On the date of coming into force of the award, viz., 1-1-1962 the Reserve Bank revised the scales of pay of class III employees so that each of the employee of that class would get total wages above Rs. 500. On appeal by special leave the Supreme Court held:

"(i) That the reference under Section 10 (1-A) to the National Tribunal was a valid reference at the time it was made. The National Tribunal was *wrong* in holding that if at a future time an incumbent would draw wage in the time scale in excess of Rs. 500, the matter must be taken to be withdrawn from the jurisdiction of the Central Government to make a reference in respect of him and the National Tribunal to be ousted of the jurisdiction to decide the dispute if referred;

(‡) that if the dispute is regarding employment, non-employment, terms of employment or conditionst of labour of non-workmen in which workmen are themselfe vitally interested, the workmen may be able to raise an industrial dispute. Workmen
may, for example, raise a dispute that a class of employees not within the definition of workmen should be recruited by promotion from workmen. In such a case they would be raising a dispute about the terms of their own employment though incidentally the terms of employment of those who are not workmen are involved. But a dispute in respect of a class of employees who are not workmen and in whose terms of employment the workmen have no direct interest of their own, cannot be taken up by workman. What direct interest suffices is a question of fact. Consequently the National Tribunal was in error in not considering the claims of class II employees whether at the instance of members drawing less than Rs. 500/- as wages or at the instance of those lower down in the scale of employment. It also committed an error in thinking that scales of wages in excess of Rs. 50/- per month at an stage were not within its jurisdiction or that the Government could not make a reference in such a contingency; (iii) that employees in class II except the Personal Assistants, were rightly classed by the National Tribunal as employed on supervisory and not on clerical or checking duties. In view of the fact that all of them received even at the start ‘wages’ in excess of Rs. 500/- per month, there was really no issue left concerning them once it was held that, they are working in a supervisory capacity—All India Reserve Bank Employees Association v. Reserve Bank of India, (1965) 2 Lab LJ 175 : (1965) 11 Fac. LR 137 : (1965) 2 SCA 733 : AIR 1966 SC 305.

4. Industrial Dispute

Section 2 (e) defines a ‘industrial dispute’ as meaning ‘any dispute or difference between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of ‘labour, or any person’. This definition shows that before any dispute raised by any person can be said to be an industrial dispute, it must be shown that it is connected with the employment or non-employment of that person.

A dispute between an employer and a single employee—cannot, by itself, be treated as an industrial dispute, unless it is sponsored or espoused by the union of workmen or by a number of workmen. In other words, if a workman is dismissed by his employer and the dismissed workman’s case is that his dismissal is wrongful, he can legitimately have the said dispute referred for adjudication before an Industrial Tribunal under Section 10 (1) of the Act, provided a claim for such a reference is supported either by the union to which he belongs or by a number of workmen.

If an employer illegally dismisses all the workmen employed by him, it cannot be suggested that the dispute about the dismissal of these employees would not become an industrial dispute because there is no union to support them and the dismissed employees themselves can not convert their individual dispute into an industrial dispute.

Considerations which would be relevant in dealing with a dispute relating to an individual employee’s dismissal would not be material in dealing with a case where a large number of employees have been dismissed on the same day. It is not disputed that a union of workmen may validly raise a dispute as to dismissal even though it may be a union of the minority of the workmen employed in any establishment. The minority union, of course, can raise a dispute, and if a reference is made under Section
10 (1) of the Act at its instance, the reference is valid. Similarly, if there is no union of workmen in any establishment, a group of employees can raise the dispute and the dispute then becomes an industrial dispute, though it may relate to the dismissal of an individual employee.

It is well known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial dispute has necessarily to be pragmatic, and the test which it applies and the consideration on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of the Supreme Court in interpreting the effect of the definition prescribed by Section 2 (k) of the Act were based on such pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the union of workmen in a place away from Delhi, that would clearly not make the dispute an industrial dispute. Section 36 of the Act which deals with the representation of parties, incidentally suggests that the union which can raise an individual dispute as to a dismissal validly, should be a union of the same industry. Generally, it is the union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no union of their own, and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the cause of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute, because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. "Industry" has been defined by Section 2 (j) of the Act and it seems that in some cases the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to same industry where workmen in such an establishment have no union of their own, and an appreciable number of such workmen had joined such other union before their dismissal. In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on healthy and proper trade union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred under Section 10 (1) of the Act, it should receive the report of the union consisting exclusively of the workmen working in the establishment concerned.

Besides, there is another way in which this question can be concerned. If 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by the Supreme Court on the denotation of the words 'industrial dispute' as defined by Section 2 (k) of the Act."—Workmen

Dealing with the expression "industrial dispute" in the Industrial Disputes Act, the Supreme Court observed in Gymkhana Club Union v. Management, (1968) 1 SCR 742 : AIR 1968 SC 554 :

"......the words are 'industrial dispute' and not 'trade dispute'. Trade is only one aspect of industrial activity, business and manufacture are two others. The word also is not industry in the abstract which means diligence or assiduity in any task or effort but a branch of productive labour. This requires cooperation in some form between employers and workmen and the result is directly the product of this association but not necessarily commercial".

(a) When dispute becomes industrial disputes.

Section 2 (k) of the Act defines an 'industrial dispute'. This definition may include within its scope a dispute between a single workman and his employer, because the plural in the context, will include the singular. However, having regard to the broad policy which underlies the Act and in order to safeguard the interests of the working class in this country, the Supreme Court and indeed majority of Industrial Tribunals are inclined to take the view that a dispute raised by a dismissed employee, unless it is supported either by his Union or, in the absence of a Union by a number of workmen, cannot become an industrial dispute not introduced, claims for reference may be made frivolously and unreasonably by dismissed employees, and that would be undesirable. However, the employees can raise a dispute by themselves in a formal manner [AIR 1957 SC 104 and AIR 1957 SC 532, Rel. on].

If the dismissal of an individual employee working in an establishment in Delhi is taken up by the Union of workmen in a place away from Delhi, that would clearly not make the dispute an industrial dispute. Section 36 of the Act dealing with the representation of parties incidentally suggests that the Union which can raise an individual dispute as to a dismissal validly, should be a Union of the same industry. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the Union which has sponsored the case can fairly claim a representative character in such a manner that its support to the cause would make the dispute an industrial dispute.

'Industry' has been defined by Section 2 (k) of the Act and in some cases, the Union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no Union of their own, and an appreciable number of such workmen had joined such other Union before their dismissal.

A firm carrying on business as perfumers and tobacconists dismissed the services of its 18 employees on the same day. On the date of dismissal, it had in its employment 45 employees. The cause of dismissed employees was represented by a registered Trade Union, viz., Mercantile Employees' Association, of which they and none others, were members, at all relevant time. The conciliation proceedings failed and reference under Section 10
was made at the instance of the Association. It was held that dispute was an industrial dispute and not an individual one and reference at the Association was valid (AIR 1963 SC 318, Expl. and Disting.)—Workmen of M/s. Dharampal Premchand v. Dharampal Premchand, (1966) 1 Lab LJ 668 : (1964-65) 27 FJR 354 : (1965) 11 Fac. LR 53 : (1965) 2 SCJ 818 : (1965) 2 SCA 811 : AIR. 1966 SC 182.

An individual dispute arising from an alleged wrongful dismissal of an employee can be validly referred under Section 10 of the Industrial Disputes Act only if it is supported by the union of the workmen to which the dismissed employee belongs or by a group of his co-employees. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal for an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the cause can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. If the dismissal of an individual employee working in an establishment in Delhi is taken up by the union of workmen in a place away from Delhi that would clearly not make the dispute an industrial dispute. Section 36 of the Industrial Disputes Act suggests that the union which can raise an individual dispute as to a dismissal validly, should be a union of the same industry. Generally it is the union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of another establishment have no union of their own and some or all of them join the union of another establishment belonging to the same industry. In such a case if the said union takes up the cause of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In some cases, the Union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no union of their own and an appreciable number of such workmen had joined such other union before the dismissal. In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on healthy and proper trade union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred under Section 10 (1) of the Industrial Disputes Act, it should receive the support of the union consisting exclusively of the workmen working in the establishment concerned. If 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the case of one another. Such mutual support would convert the individual dispute arising from their alleged wrongful dismissal into an industrial dispute justifying a reference of such a dispute under Section 10 (1) of the Industrial Dispute Act. It is well known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial disputes has necessarily to be pragmatic and the tests which it applies and the considerations on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decision of the Supreme Court in interpreting the effect
of the definition prescribed by Section 2 (k) of the Industrial Disputes Act were based on such pragmatic considerations—Workmen of M/s. Dharampal Premchand v. M/s. Dharampal Prem Chand, (1965) 2 SCJ 818 : (1966) 1 Lab LJ 668 : (1965) 2 SCA 811 : AIR 1966 SC 182.

Having regard to the scheme and object of the Act and its other provisions the expression ‘any person’ in Section 2 (k) of the Act must be read subject to such limitations and qualifications as arise from the context. The two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement of adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest.

Where the person was not a workman as he belonged to the medical or technical staff, a different category altogether from workmen, and the workmen of the establishment had no direct, or substantial interest in his employment or non-employment, it cannot be said, even assuming that he was a member of the same Trade Union, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2 (k) of the Act—Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate, 1958 SCJ 637 : (1963) 14 FJR 41 : 1958 SCA 602 : (1958) 1 LLJ 500 : AIR 1958 SC 353.

The definition of the expression ‘industrial dispute’ is wide enough to cover a dispute raised by the employer’s workmen in regard to the non-employment of others who may not be his workmen at the material time—Kays Constructions Co. (Private) Ltd. v. Its Workmen, (1958) 2 LLJ 660 : (1958-59) 15 FJR 231 : AIR 1959 SC 208.

Notwithstanding that the language of Section 2 (k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes, which involve the rights of workmen as a class and that a dispute touching the individual rights of workman was not intended to be a subject of an adjudication under the Act, when the same had not been taken up by the Union or number of workmen—C. P. Transport Services Ltd. v. R. G. Patwardhan, AIR 1957 SC 104.

In New India Motors Private Ltd. v. Morris, AIR 1960 SC the Supreme Court observed:

“It is well settled that before any dispute between the employer and his employee or employees can be said to be an industrial dispute under the Act it must be by a number of workmen or a union representing them. It is necessary that the number of workmen of the Union that sponsors the dispute should represent the majority of workmen. Even so, an individual dispute cannot be an industrial dispute at the instance of the aggrieved individual himself. It must be a dispute between the employer on the one hand and his employees acting collectively on the other.”
In another case reported as, *Newspapers Ltd. v. State Industrial Tribunal, U. P.*, AIR 1957 SC 532, the third respondent was employed as a Lino typist by the appellant-company. On an allegation of incompetence he was dismissed from service. His case was not taken up by any union of workers of the appellant company, nor by any of the unions of workmen employed in similar or allied trades. But the U. P. Working Journalists Union, Lucknow, with which the third respondent had no concern, took the matter to the Conciliation Board. On a reference being made to the Industrial Tribunal by the Government the legality of that reference was challenged by the appellant-company on the ground that the said dispute could not be treated as an industrial dispute under the U. P. Industrial Disputes Act, 1947 which defined by Section 2 an industrial dispute as having the same meaning assigned to it in Section 2 (k) of the Central Act. The Supreme Court upheld the contention observing that the notification referring the said dispute proceeded on an assumption that a dispute existed between the employer and "his workmen", that Tajamul Hussain, the workman concerned, could not be described as "workmen", nor could the U. P. Working Journalists Union be called "his workmen" nor was there any evidence to show that a dispute had got transformed into an industrial dispute. The Court’s observations are as under:

"The provisions of the U. P. Industrial Act show that the machinery of the Act has been devised with the object of maintaining industrial peace so as to prevent interference with public safety or public order or with the maintenance of supplies and services essential to the life of the community or of employment. The Act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Act is the prevention of industrial strike, strikes and lockouts and the promotion of industrial peace and not to take the place of the ordinary tribunals of the land for the enforcement of contracts between an employer and an individual workman. Thus viewed, the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, viz. the workmen as a body or a considerable section of them make common cause with the individual workman and thus create conditions contemplated by Section 3 of the U. P. Act which is the foundation of State governmental action under that Act. The other provisions which follow that section only subserve the carrying out of the objects of the Acts specified therein. The use of the words 'workmen' and 'workman' in the above rule is indicative of the intention of the Act being applicable to collective disputes and not to individual ones, and this is fortified by the finality and the binding effect to awards by rule 28 and more specially by Section 18 of the Central Act which makes awards binding not only on the individuals prevent or presented but on all the workmen employed in the establishment and even on future entrants."

In *Workmen of Indian Express Newspaper Private Ltd. v. The Management of Indian Express Newspaper Private Ltd.*, AIR 1970 SC 797; 1970 Lab IC 574, a dispute relating to two workmen in a newspaper establishment in Delhi arose in July, 1959. Thereafter the dispute
was espoused by the Delhi Union of Journalists, an outside Union, whose membership was open to the members of the newspaper establishment concerned. The dispute was referred to the Industrial Tribunal in August, 1961. The question arose whether the dispute was an industrial dispute (and not an individual dispute) as the Delhi Union of Journalists not being exclusively a Union of the workmen employed in the newspaper establishment concerned, had espoused the said cause. It was found that about 25 per cent of the working journalists of the newspaper establishment concerned at least were members of the Delhi Union of Journalists. It was clear from the evidence that at the material time there was no union of working journalists employed by the newspaper establishment concerned. It was held that the Delhi Union of Journalists could be said to have a representative character qua the working journalists employed in the newspaper establishment concerned, and the dispute was transformed into an "industrial dispute".

In M/s. Western India Watch Co. Ltd. v. The Western India Watch Co. Workers' Union, AIR 1970 SC 1205 : 1970 Lab IC 1033, the Supreme Court observed:

"After the decision by this court in Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate, 1956 SCR 1156 AIR 1953 SC 353, there can be no doubt that though the words "any person" in the definition of an industrial dispute in Section 2 (k) of the Central Act are very wide and would on a mere literal interpretation include a dispute relating to any person, considering the scheme and the objects of the Act all disputes are not industrial disputes and that a dispute becomes an industrial dispute where the person in respect of whom it is raised is one in whose employment, unemployment, terms of employment or conditions of labour the parties to the dispute have a direct or substantial interest. The question, therefore, which would arise in cases where the existence of the industrial dispute is challenged, is whether there was between the parties to the reference, i.e. the employer and his workmen, an industrial dispute. The parties to the industrial dispute are obviously the parties to the reference and therefore the dispute must be an industrial dispute between such parties. It follows, therefore, that though a dispute may initially to an individual dispute, the workmen may make that dispute as their own, that is to say, espouse it on the ground that they have a community of interest and are directly and substantially interested in the employment, non-employment, or conditions of work of the concerned workman. This premise presupposes that though at the date when the cause of the dispute arises that dispute is an individual dispute, such a dispute can become an industrial dispute if it is espoused by the workmen or a substantial section of them after the cause of the dispute e.g. dismissal has taken place. It may be that at the date of such dismissal there is no union or that the workmen are not sufficiently organised to take up the cause of the concerned workman and no espousal for that or any other reason takes place at the time when such cause occurs. But that cannot mean that because there was no such union in existence on that date, the dispute cannot
become an industrial one if it is taken up later on by the Union or by a substantial section of the workmen.

"The only condition for an individual dispute turning into an industrial dispute, as laid down in the case of Dimakachi Tea Estate. (1958 SCR 1156 : AIR 1958 SC 353), is the necessity of a community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal. The parties to the reference being the employer and his employees, the list must necessarily be whether the dispute referred to adjudication is one in which the workmen or a substantial section of them have a direct and substantial interest even though such a dispute relates to a single workman. It must follow that the existence of such an interest, evidenced by the espousal by them of the cause, must be at the date when the reference is made and not necessarily at the date when the cause occurs, otherwise, as aforesaid, in some cases a dispute which was originally an individual one cannot become an industrial dispute. Further, the community of interest does not depend on whether the concerned workman was a member or not at the date when the cause occurred. For, without his being a member the dispute may be such that other workmen having a common interest therein would be justified in taking up the dispute as their own and espousing it.

"Any controversy on the question as to whether it is necessary for a concerned workman to be a member of the Union which has espoused his cause at the time when that cause arose has been finally set at rest by the decision in The Bombay Union of Journalists v. The "Hindu" Bombay, AIR 1963 SC 318 where this Court laid down that the test whether an individual dispute got converted into an industrial dispute defended on, whether at the date of the reference the dispute was taken up and supported by the Union of workmen of the employer against whom the dispute was raised by an individual workman or by an applicable member of such workmen."

(b) Industrial dispute when can by raised—Essential conditions.

The term "industrial dispute" is defined by Section 2 (k) of the Act. The definition discloses that disputes of particular kinds alone are regarded as industrial disputes. It may be noticed that this definition does not refer to an industry. But the dispute, on the grammar of the expression itself, means dispute in an industry and one must, therefore, turn to the definition of 'industry' in the Act. That word is defined in clause (j) of Section 2. This definition is in two parts. The first part says that it means any business, trade, undertaking, manufacture or calling of employers and then goes on to say that it includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. Although the two definitions are worded differently, the purport of both is the same. The definition read as a whole denotes a collective enterprise in which employers and employees are associated. It does not exist either by employers alone or by employees alone. It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking services, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen who
follow one of the avocations detailed for workmen. The definition no doubt seeks to define 'industry' with reference to employers' occupation but includes the employees for without the two there can be no industry. An industry is only to be found when there are employers and employees, the former relying upon the services of the latter to fulfil their own occupations.

But every case of employment is not necessarily productive of an industry. Domestic employment, administrative services of public officials, service in aid of occupations of professional men, also disclose relationship of employers and employees but they cannot be regarded as in the course of "workman" in clause (s) of Section 2 of the Act must take its colour from the definition and discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocations mentioned in relation to the employers. Therefore, as industry is to be found when the employers are carrying on any business, trade, undertakings, manufacture or calling of employers. If they are not, there is no industry as such.

It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employees or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense—The Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, (1970 1 SCC 735).

(c) Whether the Union sponsoring dispute must be Union of workmen in establishment in which workman concerned is employed.

Such a question arose for the first time in the case of The Bombay Union of Journalists v. The "Hindu" Bombay, (1962) 3 SCR 893 : AIR 1963 SC 318. The decision in that case laid down (1) that the Industrial Disputes Act excluded its application to an individual dispute as distinguished from a dispute involving a group of workmen unless such a dispute is made a common cause by a body or a considerable section of workmen, and (2) the members of a union who are not workmen of the employer against whom the dispute is sought to be raised cannot by their support convert an individual dispute into an industrial dispute. Persons who seek to support the cause must themselves be directly and substantially interested in the dispute and persons who are not the employees of the same employer cannot be regarded as so interested. The Court held that the dispute there being prima facie an individual dispute it was necessary in order to convert it into an industrial dispute that it should be taken up by a union of the employees or by an appreciable number of employees of 'Hindu', Bombay. The Bombay Union of Journalists not being a union of employees of the 'Hindu', Bombay, but a union of all employees in the industry of journalism in Bombay, its support of the
cause of the workmen concerned would not convert the individual dispute into an industrial dispute. The members of such a union cannot be said to be persons substantially and directly interested in the dispute between the workman concerned and his employer, the 'Hindu', Bombay. But in Workmen of M/s. Dharampal Premchaud v. M/s. Dharampal Premchand, (1965) 3 SCR 394 : AIR 1966 SC 182, this Court, after reviewing the previous decisions, distinguish the case of 'Hindu'. Bombay and held that notwithstanding the width of the words used in Section 2 (k) of the Act a dispute raised by an individual workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by a number of workmen, that a union may validly raise a dispute though it may be a minority union of the workmen employed in an establishment, that if there was no union of workmen in an establishment a group of employees can raise the dispute which becomes an industrial dispute even though it is a dispute relating to an individual workman, and lastly, that where the workmen of an establishment have no union of their own and some or all of them have joined a union of another establishment belonging to the same industry, if such a union takes up the cause of the workman working in an establishment which has no union of its own, the dispute would become an industrial dispute if such a union can claim a representative character in a way that its support would make the dispute an industrial dispute.
CHAPTER II

DISCIPLINARY ACTION

SYNOPSIS

1. Principles of Natural justice.
18. Who should be the Enquiry Officer.
2. Enquiry against industrial worker and enquiry against public servant : Difference.
5. Correct procedure if charge-sheet not served by post.
6. Domestic enquiry : Manner.
7. Procedure under standing Order must be followed even if worker withdraws from enquiry.
8. Test for proper enquiry.
9. A workman has no right to be represented by a representative of the union.
9b. Whether Evidence Act has application to domestic enquiries.
10. Right of Enquiry Officer to refuse to cross-examine a witness or to allow a question.
12. Examination of witness and workman in absence of each other—Effect.
13. Enquiry by employer—Test of bona fides.
15. Enquiry Officer should record his findings and give brief reasons.
16. Defective enquiry—Employer should have evidence and tribunal should reach its conclusion.
17. Taking into consideration past record—Effect.
18. Enquiry if to be stayed pending decision of Criminal Court against employee.
19. Whether enquiry can be held against any employee after his acquittal in Criminal Court.
20. Findings of Enquiry Officer—Interference by Labour Court.

1. Principles of natural justice to be followed

The Industrial Disputes Act does not prescribe any procedure for the management to follow in domestic enquiries for investigating into the misconduct of its employees. Independent of the statute, it cannot be said that the management is under an obligation to record depositions of witnesses at the domestic enquiry and adopt the procedure which a court of law adopts in the trial of cases.

In all cases where an employer wishes to take disciplinary action against an employee, the only obligation on the part of the former is to have a proper enquiry into the alleged misconduct of the employee; such enquiry must begin with the supply of specific charge-sheet to the employee. The guiding principle is that the enquiry should be conducted with due adherence to the principles of natural justice, that is, without any bias, giving the employee an opportunity for adequately representing his case, etc. If, in the course of enquiry, the management chooses to record evidence, and at later stage an industrial dispute is raised in regard to the conclusion arrived at the enquiry, the Industrial Tribunal can refer to the record of the depositions made by the employer coming to the conclusion that the enquiry was held on proper lines. But, if there is any reason to suspect the correctness of the record, it would be open to the Tribunal to reject it, and insist upon evidence being given before it to ascertain whether there had been proper enquiry, and whether the punishment meted out by the employer was justified. So long as the evidence recorded by the employer in the domestic enquiry has not been challenged as incorrect or that the portions thereof have been fraudulently inserted, the Tribunal cannot reject the record as not affording proper basis for the management's action.

(227)
The only requirement is that no one should be condemned or punished without being given an opportunity to explain the circumstances against him.

Care should be taken to see that the enquiry does not become an empty formality—A. C. Co. v. Their Workmen, (1963) II LLJ 396 SC.

The rules of natural justice require that the workman, proceeded against, should be informed clearly of the charges levelled against him; witnesses should be normally examined in the presence of the employee, in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair opportunity to cross-examine witnesses; he should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the Enquiry Officer should record his findings, based upon the evidence so adduced.

If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the management to let in evidence about the allegations only be an empty formality.

In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.

Without intending to be exhaustive, it may be observed that the rules of natural justice require that a party should have the opportunity of adding 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 that party, and that no material should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack—See Union of India v. T. R. Verma, AIR 1957 SC 632.

When two separate enquiries are held against the workman evidence recorded in one enquiry cannot be relied upon by the Enquiry Officer to arrive at a finding in the other domestic enquiry, because he would have no opportunity to test the evidence by cross-examination—A. C. C. (Associated Cement Companies) Ltd. v. Their Workmen, (1964) 3 SCR 652; (1963) II LLJ 396.

The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights.
These rules are intended to prevent such authority from doing injustice. These principles are now well-settled and are four in number:

1. That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.

2. That he must have reasonable opportunity of being heard in his defence.

3. That the hearing must be by an impartial tribunal i.e., a person who is neither directly nor indirectly a party to the case "Nemo debet esse judex in propria causa", or who has an interest in the litigation, or who is already biased against the party concerned.

4. That the authority must act in good faith, and not arbitrarily but reasonably.

Under the Indian law the principles of natural justice, so far as I can see, can be invoked generally in three classes of cases:

(a) When it is alleged that a certain person or class of persons have been unreasonably discriminated against, and that the law violates the provisions of Article 14, or that the restrictions imposed upon the freedoms guaranteed under Article 19 are unreasonable.

(b) when a rule or regulation or order made in the exercise of a statutory power is attacked on the ground that it is unreasonable, and

(c) When the procedure adopted by judicial or quasi-judicial authority not being one prescribed by law is challenged on the ground that it is unfair and unjust.

Of those the first case alone implies a restriction on the power of the Legislature. The other two are restrictions on subordinate legislative or administrative or judicial or quasi-judicial bodies. Under the Indian Constitution except as provided in Article 14 of the Constitution there is no general limitation on the power of the Legislature that it will not enact a law contrary to the principles of natural justice. If a certain procedure is prescribed by law then unless it contravenes the provisions of Articles 14, it cannot be challenged as invalid upon any supposed principles of natural justice. In this respect it departs from the American Constitution under which the Union and the State Legislatures are forbidden to enact laws affecting the life, liberty or property of individuals except in accordance with the due process of law. Due process of law includes principles of natural justice.

By natural justice is meant that which is founded in equity, honesty and right and its principles are:

(1) A person must not be a judge in his own causes.

(2) A person must not be condemned unheard.

(3) The decision must be made in good faith.

The expression "Rules of natural justice" has not been completely or absolutely defined although some principles have been laid down, which
have been treated as misconduct which may provide an occasion for disciplinary proceedings:

(a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

(b) theft, fraud, or dishonesty in connection with the employers' business or property;

(c) wilful damage to or loss of employers' goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave or absence without leave for more than ten days;

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent or the wages, in a month;

(k) striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct, its judgment cannot be questioned provided the abovementioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above, its position is untenable—M/s. G. Mackenzie & Co. Ltd., v. Its Workmen, 1959 (Sup.) 1 SCR 222 : (1958-59) 15 FJR 258 : 1959 SCJ 670 : 1959 LLJ 285 : 1959 MLJ (Cr.) 461 : AIR 1959 SC 389.

"Misconduct"—Meaning and scope of...

The expression "misconduct" covers large area of human conduct. On the one hand, are the habitual late attendance, habitual negligence and neglect of work, on the other hand, are riotous disorderly behaviour during working hours at the establishment or any act subversive of discipline, wilful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer, but would render the functioning of the establishment impossible or extremely hazardous,
For instance, assault on the Manager of an establishment may not directly involve the employer in any loss or damage which could be equated in terms of money, but it would render the working of the establishment impossible. One may also envisage several acts of misconduct not directly involving the establishment in any loss, but which are destructive of discipline and cannot be tolerated. A distinction should be made between technical misconduct which leaves no trial of indiscipline, misconduct resulting in damages to the employer’s property, which may be compensated by forfeiture of gratuity or part thereof, and serious misconduct which though not directly causing damage, such as acts of violence against the management or other employees or riotous or disorderly behaviour, in or near the place of employment, is conducive to grave indiscipline. The first should involve no forfeiture, the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct, and the third may entail forfeiture of gratuity due to workmen—The Delhi Cloth and General Mills Co., Ltd. v. The Workmen and others, (1970) 1 SCJ 765.

In law even acts done by a servant outside working hours and outside the course of his employment might amount to misconduct if it is shown that the disorderly riotous behaviour has some rational connection with the employment of the assailant and the victim.—Central India Coalfields Ltd. v. Ram Bilas Shobnath, (1961) 1 LLJ 546 (SC).

4. Charge-sheet

The disciplinary proceedings start with the charge-sheet. The charge-sheet must be specific and must set out all the necessary particulars. It is no excuse to say that regard being had to the previous proceedings, the delinquent should be taken to have known all about the charge. Whether he knew it or not he must again be told of the charges to which he is called upon to show cause and these charges must be specific and all particulars must be stated without which a man cannot defend himself.

The object of furnishing a charge-sheet is to give an opportunity to the person who is charged with misconduct to give an explanation to defend himself. The rule of natural justice requires that the person charged should know the nature of offence with which he is charged and should be given an opportunity to defend himself and to give a proper explanation.

A person must be told in the clearest terms and with full particulars what his alleged faults are. It should not be left to the servant to find out what the specific charges against him are. The facts in the charge-sheet must disclose misconduct. The charge-sheet must be in writing and shall not be vague.

The charge-sheet must be issued in the name of the punishing authority and must consist of the particulars of the alleged offence, with the object of affording to delinquent an opportunity of meeting them. There is no question of the alleged offences having been “tentatively proved” and the delinquent called upon to disprove them. Until the charges have been proved, the punishing authority must keep an open mind. A charge which merely calls upon the delinquent to deal with the proposed punishment is bad because the delinquent is entitled to show cause against the charge as well as punishment.
In Laxmi Devi Sugar Mills Ltd. v. Nand Kishore, AIR 1957 SC 7, the Supreme Court observed that the charge-sheet which was furnished by the management to the employee formed the basis of the enquiry which was held by the General Manager and that the management could not be allowed to justify its action on any other ground than those contained in the charge-sheet. The Court further held that the employees not having been charged with the acts of insubordination the management could not take advantage of the same even though these acts could be brought home to him.

In Burn and Co. v. Their Employees, 1956 SCR 781 : (1956-57) 11 FJR 217 : 1957 SCJ 28 : 1956 SCA 1175 : AIR 1957 SC 38, where the ground of discharge was the continued absence of the employee, and his inability to do work, it was held that it was difficult to see what purpose would be served by a formal charge being delivered to him and what conceivable answer he could give thereto. In that case it was contended that in the absence of a charge and an enquiry, the termination of service was illegal. The Supreme Court repelled the contention and observed:

"It is true that no charge-sheet was formally drawn up against him. But that would not vitiate the order of dismissal if he knew what the charge against him was and had an opportunity of giving his explanation. It appears from the order of the Tribunal that subsequent to the order of dismissal by the company there were conciliation proceedings and an enquiry by the Labour Minister as a result of which he recommended the reinstatement of seven out of the fourteen who had been dismissed leaving the order in operation as regards the other seven of whom Banerjee was one. In the face of these facts it is idle for him to contend that he had been dismissed without a hearing or an enquiry".

In another case reported as N. Kalindi v. Messrs. Tata Locomotive Engineering Co., Ltd., AIR 1960 SC 914, the Supreme Court was of the view that where the final order of dismissal included additional item not mentioned in the charge-sheet, the order of dismissal is not bad provided the circumstances show that the management would have passed the order of dismissal even without the additional item not covered by the charge-sheet.

5. Correct procedure if charge-sheet not served by post

All that the standing orders of the employer provide is that the workmen charged with an offence shall receive a copy of such charge. It is also provided that a workman who refuses to accept the charge-sheet shall be deemed to have admitted the charge made against him. There is no provision in the Standing Orders for affixing such charge-sheets on the notice-board of the company. The charge-sheets were sent to the eleven workmen by registered post and returned unserved, because they were not found in their villages. On the same day on which the charge-sheets were sent by registered post, it appears that notices were issued in certain newspapers to the effect that a group of workmen under a common understanding had engaged in an illegal strike and that all such workmen were liable to strong disciplinary action and that in consequence they had been charged under the Standing Orders and Rules of the company and such charge-sheets had been sent to them individually by registered post acknowledgment due and had also been displayed on the notice-boards inside and outside the factory gate.
In the circumstances it can hardly be said that those eleven workmen would have notice that they were among those to whom charge-sheets had been sent or about whom charge-sheets had been displayed on the notice-boards. The proper course in our view was when the registered notices came back unserved in the case of these eleven workmen to publish notices in their names in some newspaper in the regional language with a wide circulation along with the charges framed against them—The Bata Shoe Co., (P) Ltd. v. D. N. Ganguly, (1961) 3 SCR 308 : (1961) 1 LLJ 303 : (1962) 1 SCJ 8 (1961-62) 20 FJR 91 : AIR 1961 SC 1158.

6. Domestic enquiry : Manner

It is elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the instant case no opportunity was given to the workman to cross-examine the witnesses proving the charge of misconduct. On the other hand, the persons charged were cross-examined. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman de novo before it—Meenglas Tea Estate v. The Workmen, (1964) 2 SCR 163 : (1963) 7 Fac LR 106 : (1963) 2 LLJ 392 : (1963-64) 25 FJR 150 : (1964) 1 SCJ 98 : AIR 1963 SC 1719.

In domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any evidence is led against him. In dealing with domestic enquiries, one cannot overlook, the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination—A. C. C. (Associated Cement Companies) Ltd. v. Their Workmen, (1964) 3 SCR 652 : (1963) 2 LLJ 396.

In conducting domestic enquiries in industrial matters, the proper course for the employer would be to examine the witnesses from the beginning to the end on the presence of the workman at the enquiry itself. In exceptional cases it may be permissible to give to the accused workman copies of statements of witnesses which are to be used at the enquiry well in advance before the enquiry begins. If this is not done and yet the witnesses are not examined-in-chief fully at the enquiry, it cannot be said that principles of natural justice have been followed—Resoram Cotton Mills Ltd. v. Gangadhar, (1964) 2 SCR 839 : (1963) 2 LLJ 371.
7. Procedure under Standing Order must be followed even if worker withdraws from enquiry

Under the Standing Orders of the company an elaborate procedure is provided for inquiries into charges of misconduct. The charge has to be read out to the employees and all witnesses in support of the charge are to be examined in his presence unless he deliberately absents himself, in which case a note to that effect has to be recorded. The employee charged is allowed to cross-examine the witnesses; if he declines to do so a note to that effect has to be recorded. After the evidence is over, the management has to make a brief appraisal of the evidence recorded and has to record his conclusion and the punishment, if any, intended to be imposed by him in writing. In doing so, he has to take into consideration the service record of the employee concerned and has to record what such employee has to say against the intended punishment. He then passes the order of punishment in writing, recording the misconduct proved and the punishment imposed in the service record of the employee concerned. The procedure under the Standing Orders should be followed even if, at any stage of the inquiry, the worker withdraws himself—The Imperial Tobacco Co. of India, Ltd. v. Its Workmen, AIR 1962 SC 1348 : (1961-62) 20 FJR 427 : (1961) 2 LLJ 414; Brooke Bond India (Private) Ltd. v. S. Subba Raman, (1961) 2 LLJ 417 (SC).

8. Test for proper enquiry

An enquiry cannot be said to have been properly held unless,—

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined, ordinarily in the presence of the employee, in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(v) the enquiry officer records his findings with reasons for the same in his report—Sur Enamal and Stamping Works Ltd. v. The Workmen, AIR 1963 SC 1914 : (1963) 7 Fac LR 236 : (1963) 2 LLJ 367 : (1963-64) 25 FJR 88.

9. A workman has no right to be represented by a representative of the Union

A workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his union; though of course an employer in his discretion can and may allow his employee to avail himself of such assistance—N. Kalindi v. Messrs. Tata Locomotive & Engineering Co. Ltd., (1960) 3 SCR 407; (1960-61) 18 FJR 124: (1960) 2 SCA 203: (1960) 2 LLJ 228: (1961) 1 SCJ 47: AIR 1960 SC 914.

In a domestic enquiry a workman cannot claim as of right to be represented by counsel or an outsider [(1960) 2 LLJ 228]. Where after the
refusal by the management to be so represented the workmen withdraw from the enquiry, the enquiry officer proceeded _ex parte_, examined a large number of witnesses and found the workman guilty of the charges, the enquiry cannot be held to be not full and fair, and the dismissal cannot be held to be unjustified. Hence approval of, the action taken must be granted—*Brooke Bond India (Private) Ltd. v. S. Subba Raman*, (1961) 3 FLR 526 : (1961) 2 LLJ 417 (SC).

A similar view was taken by the Supreme Court in *Dunlop Rubber Co. v. Workmen*, AIR 1965 SC 1392, where it was held that a workman had no right to be represented at an enquiry by a representative of his union unless permitted under the Standing Orders.

9-A. Whether Evidence Act has application to enquiries conducted by domestic tribunal

The Evidence Act does not apply to enquiries conducted by domestic tribunal even though they may be judicial in character. Their decisions are not liable to be impeached on the ground that the procedure laid down in the evidence was not strictly followed. The law requires that such tribunal should observe rules of natural justice—*Union of India v. Varma*, 1958 (2) LLJ 259 (SC); *State of Orissa v. Murali-Ihar Jena*, AIR 1963 SC 404.

10. Right of Enquiry Officer to refuse to examine a witness or to allow a question

There can be no doubt that at the domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he _bona fide_ comes to the conclusion that the said witness would be irrelevant or immaterial. If the refusal to examine such a witness, or to allow other evidence to be led appears to be the result of the desire on the part of the enquiry officer to deprive the person charged of an opportunity to establish his innocence, that, of course, would be a very serious matter. Even if the Labour Court took the view that some questions which were disallowed were relevant, that would not necessarily make the enquiry unfair or improper unless, of course, in disallowing the relevant questions, it can be shown that the enquiry officer acting _mala fide_—*Ananda Bazar Patrika (P) Ltd. v. Their Employees*, (1964) 3 SGR 610 : (1963) 7 Fac LR 240 : (1963) 2 LLJ 429 : (1963) 2 SCWR 241 : (1964-65) 26 FJR 168 : (1965) 1 SCJ 146 : AIR 1964 SC 339.

11. Oral examination of witnesses—Natural justice

The question that arose for consideration in *Khardah & Co. v. The Workmen*, AIR 1964 SC 719 : (1964) 3 SGR 506 : (1963) 7 Fac. LR 274 : (1963) 2 LLJ 452 : (1963) 2 SCWR 252, was whether the witnesses should be examined in the presence of the workman. The Supreme Court examined the matter as under :

"Normally evidence in which the changes are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in *The State of Maysore v. Shivabasappa Shivappa*, that if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is
given to him, and an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded that would conform to the requirements of natural justice; but as has been emphasised by this Court in *Kosoram Cotton Mills Ltd. v. Gangadhar*, [(1964) 2 SCR 839] these observations must be applied with caution to enquiries held by domestic tribunals against the industrial employees. In such enquiries it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence.

"Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and, therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses *ex parte* and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements even though the witnesses concerned make a general statement on the latter occasion that their statement already recorded correctly represent what they stated. In our opinion, unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct."

The matter again came up before the Supreme Court in *Kosoram Cotton Mills Ltd. v. Gangadhar*, (1964) 2 SCR 839; (1963) 7 Fac LR 213; (1963) 2 LLJ 371; AIR 1964 SC 708, where the following observations were made:—

"It is urged on behalf of the appellant that rules of natural justice are the same whether they apply to inquiries under Art. 311 or to domestic inquiries by managements relating to misconduct by workmen. It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an enquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the enquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient; but where in a domestic
inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement, in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us, therefore, that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking, therefore, we would expect a domestic inquiry by the management to be of this kind. Even so, we recognize the force of the argument on behalf of the appellant that the main principle of natural justice cannot change from tribunal to tribunal and, therefore, it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule out the exception) and that is in the manner laid down in Shivabasappa's case. The minimum that we shall expect where witnesses not examined from the very beginning at the inquiry in the presence of the persons charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the enquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the Tribunal—though for different reasons—that the inquiry did not comply with the principles of natural justice. The order of the Tribunal, therefore, holding that the inquiries were vitiated by disregard of rules of natural justice is correct.

12. Examination of witness and workmen in absence of each other—Effect

A managerial enquiry into misconduct in which witnesses are examined in the absence of the workmen and the workman is examined in the absence of the witnesses would be vitiated by violation of the rules of
natural justice and an Industrial Tribunal to which the industrial dispute regarding the dismissal of the workman is referred can proceed to consider for itself whether the charges against the workmen are true—India General Navigation and Rly. Co., Ltd. v. Its Employees, (1966) 13 FLR 270: (1961) 2 LLJ 372: (1961: 62) 20 FJR 318 (SC).

13. Enquiry by employer—Bona fides and mala fides

There is no doubt that an employer cannot dispense with the services of a permanent employee by mere notice and claim that the Industrial Tribunal has no jurisdiction to inquire into the circumstances in which such termination of service took place. The requirement of *bona fides* is essential and if the termination of service is a colourable exercise of the power or as a result of victimisation or unfair labour practice the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. Where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer judged by normal standards of a reasonable man that may be cogent evidence of victimisation or unfair labour practice. This correctly lays down the scope of the power of the Tribunal to interfere where service is terminated *simpliciter* under the provisions of a contract or of Standing Orders or of some award like the Bank award. In order to judge this, the Tribunal will have to go into all the circumstances which led to the termination and an employer cannot say that it is not bound to disclose the circumstances before the Tribunal. The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, therefore, always open to the Tribunal to go behind the form and look at the substance and if it comes to the conclusion, for example, that though in form the order amounts to termination *simpliciter* it in reality cloaks a dismissal for misconduct, it will be open to it to set it aside as a colourable exercise of the power—The Chartered Bank, Bombay v. The Chartered Bank Employees' Union, (1960) 1 SCR 441: (1960-61) 18 FJR 354: (1961) 1 SCJ 70: (1960) 2 LLJ 222: AIR 1960 SC 919.

The decision to be *bona fide* must be honestly reached in the belief that it is a decision made in the best interest of the establishment, and not made for some wholly extraneous reason. When the material on record is such that no reasonable person could have come to the conclusion which the management has reached as regards the workman’s misconduct, the management cannot be said to have acted *bona fide*—Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Dasappa and others, (1960) 2 LLJ 39 (SC).

Mere error of the conclusion does not make the conclusion *mala fide*—Tata Oil Mills Co. Ltd. v. Its Workmen, (1967) 7 SCR 555: (1964) II LLJ 113.

*Mala fides* can be inferred from irrational and unreasonable discrimination—Northern Doobars Tea Company Ltd. v. Dem Demia Tea Estate, (1964) 1 LLJ 436 (SC).

Disallowing the relevant questions would not necessarily render the enquiry unfair or improper unless it is shown that the enquiry officer was acting *make fide*—Ananda Bazar Patrika (Private) Ltd. v. Their Employees, (1963) 2 LLJ 429: AIR 1964 SC 339: (1964) 3 SCR 610.
13-A. Findings when perverse

The finding recorded in the domestic enquiry can be condemned as perverse if it is shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence on records or before it—Hamdard Dawakhana (Wakf) v. Its Workmen, (1962) 2 LLJ 772 (SC).

14. Victimization

When termination of service is capricious, arbitrary or the unnecessarily harsh or the part of the employer judged by normal standards of a reasonable man, that may be cogent evidence of victimisation—Chartered Bank, Bombay, v. The Chartered Bank Employee's Union, (1960) 1 SCR 441 : AIR 1960 SC 919 : (1961) 1 SCJ 70.

There cannot be any question of victimisation where it is found that the employee is guilty of gross misconduct be cause it merits dismissal of itself—Bengal Bhatdee Coal Co., Ltd. v. Ram Prabesh Singh and others, (1963) I LLJ 291 (SC).

Though industrial adjudication can and must protect industrial employees from victimisation, a finding as to malafides or victimisation should be drawn only where evidence has been led to justify it; such a finding should not be made either in a causal manner or light-heartedly—Ananta Bazar Patrika (P), Ltd. v. Their Employees, (1964) 3 SCR 610 : (1965) 7 Fac. LR 240 : (1963) 2 LLJ 429 : (1963) 2 SCWR 241 : (1964-65) 26 FJR 168 : (1965) 1 SCJ 146 : AIR 1964 SC 339.

A finding in regard to victimisation based on no evidence stands vitiated in law—Madhuban Colliery v. Their workmen, (1966) 1 LLJ 738 (SC).

Where the workman admits the charges in the domestic enquiry there can be no question of victimisation—P. H. Kalyani v. Air France, Calcutta, (1963) I LLJ 679.

15. Enquiry Officer should record his findings and give brief reasons

If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of powers. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

It is said that this principle is not uniformly followed by appellate courts, for appeals and revisions are dismissed by appellate and revisional courts in limine without giving any reasons. There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed, cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties;
and the least they should do is to give reasons are given, except when they
dismiss an appeal or revision in limine and that is because the appellate
or revisional court agrees with the reasoned judgment of the subordinate
Court or there are no legally permissible grounds to interfere with it. But
the same reasoning cannot apply to an appellate tribunal, for as often as
not the order of the first tribunal is laconic and does not give any reasons.
That apart, when we insist upon reasons, we do not prescribe any particular
form or scale of the reason. The extent and the nature of the reasons
depend upon each case. Ordinarily, the appellate or revisional tribunal
shall give its own reasons succinctly; but in a case of affirmance where
the original tribunal gives adequate reasons, the appellate tribunal may
dismiss the appeal or the revision, as the case may be, agreeing with those
reasons. What is essential is that reasons shall be given by an appellate
or revisional tribunal expressly or by reference to those given by the original
tribunal. The nature and the elaboration of the reasons necessarily depend
upon the facts of each case.—**Madhya Pradesh Industries v. Union of
India**, AIR 1966 SC 671.

It is necessary to emphasise that domestic enquiries must conform to
the basic requirement of natural justice and one of the essential requisites
of a proceeding of this character is that when the enquiry is over the officer
must consider the evidence and record his conclusions and reasons therefor.
Where no such report is made by the enquiry officer, the labour court or
the tribunal can ignore the domestic enquiry and would be competent to
decide the issue after considering the evidence for itself—**Pawari Tea

One of the tests which the Industrial Tribunal is entitled to apply in
dealing with industrial disputes is whether the conclusion of the enquiry
officer was perverse or whether there was any basic error in the approach
adopted by him. The failure of the manager to record any findings after
holding the enquiry constitutes a serious infirmity in the enquiry itself.
The enquiry officer need not write a very long or elaborate report, but
since his findings are likely to lead to the dismissal of the employee, it is
his duty to record clearly any precisely his conclusions and to indicate
briefly his reasons for reaching the said conclusions, unless such a course
is adopted, it would be difficult for the Industrial Tribunal to decide
whether the approach adopted by the enquiry officer was basically erroneous
or whether his conclusions were perverse—**Mersrs. Khardah and Co. Ltd.
v. The Workmen**, (1964) 3 SCR 506; (1963) 7 Fac LR 274; (1963) 2 LLJ
452; (1963-64) 25 FJR 372; (1963) 2 SCWR 252; (1965) 1 SCJ 190: AIR
1964 SC 719.

**In Northern Dooars Tea Co. Ltd. v. Workmen of Dem Dima Tea
Estate**, (1965) 7 FLR 469; (1964) 1 LLJ 436 (SC) after a strike and lockout
six workers were charged with causing damage to property of the manage-
ment and were subsequently dismissed. At the enquiry, the Enquiry Officer
did not make a proper finding and record his conclusion at the end of the
enquiry. The Tribunal to which the dispute was referred to ordered reinsta-
tatement of six workers. The Supreme Court in appeal held as follows:

"The enquiry officer has not made a proper finding recording his
conclusion at the end of the enquiry. He had drawn some
notes in that behalf, but they cannot be treated as a finding
recorded in the enquiry as such. That is why the Tribunal
had to consider the merits of the dispute for itself. If has held
that on the evidence adduced at the domestic enquiry, there was nothing to show that any wilful damage had been caused by the six workmen to the property of the appellant. The Tribunal has elaborately considered the work which was assigned to each one of these six workmen and has given satisfactory reasons for holding that the charge of causing wilful damage to the property of the appellant cannot possibly be sustained against any one of them. Besides, it has taken notice of the fact that the appellant was unable to give any reasonable or rational explanation why these six workmen were chosen out of a large number of strikers and proceeded against. If the charge had been framed against them under clause 14 (c) (12) of the Standing Orders, it might perhaps have been a different matter. So, in the opinion of the Tribunal the action of the appellant in dismissing these six workmen was \textit{mala fide} inasmuch as it was based on irrational and unreasonable discrimination. In our opinion, this finding cannot be successfully challenged by the appellant in the present appeal. In view of the infirmity in the domestic enquiry resulting from the fact that a proper finding had not been recorded, coupled particularly with the conclusion of the Tribunal that no evidence whatever was led before the domestic enquiry to show wilful damage or loss caused by the six workmen, we do not see how it is possible to contend that the conclusion of the Tribunal about the invalidity of the order of dismissal is not right."

16. **Defective enquiry—Employer should leave evidence and Tribunal should reach its conclusion**

If the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee. The Tribunal will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. A defective enquiry stands on the footing as no enquiry. If the enquiry is good and the conduct of the management is not \textit{mala fide} or vindictive then, of course, the Tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer.

In dealing with industrial matters, the Tribunal cannot allow evidence to be led by one party in the absence of the other, and should not accept the request of either party to admit evidence after the case has been fully argued unless both the parties agree.—M/s Khardah & Co. v. Their Workmen, (1964) 3 SCR 506 ; (1963) 7 Fac LR 274 ; (1963) 2 LLJ 452 ; (1963-64) 25 FJR 372 ; (1963) 2 SGWR 252 ; (1965) 1 SCJ 97.—Workmen of Motipur Sugar Factory v. Motipur Sugar Factory, (1965) 3 SCR 588 ; Ritz Theatre (P) Ltd. v. Its workmen (1962) 2 LLJ 644 (SC) ; Punjab National Bank Ltd. v. Its workmen, (1959) 2 LLJ 666.

17. **Taking into consideration past record : Effect**

In India Marine Service (Private) Ltd. v. Their workmen, AIR 1963 SC 528 ; (1963) 2 SCJ 435 ; (1963) 1 LLJ 122, an employee was charge-sheeted...
for insubordination and his explanation was obtained. Subsequently a second charge-sheet was served on him by the employer. The employer held an enquiry into the charges contained in the first charge-sheet and on the basis of the findings the company dismissed the employee from his post but no separate report had been drawn by the Enquiry Officer but all material things were set out in the letter dismissing the employee.

No enquiry was held on the second charge-sheet. The dismissal order of the management showed that in taking the action to dismiss the employee the past record of the employee was also taken into consideration.

When the dispute was referred to the Tribunal, the Tribunal held that as no enquiry was held by the management the charge-sheet should be ruled out from consideration and that as the findings were based not merely on the charges set out in the first charge-sheet out on certain other charges which the employee was not given an opportunity to explain, the enquiry was vitiated and the dismissal could not be sustained. It, therefore, proceeded to consider the evidence adduced before the domestic tribunal and held that the allegation of insubordination against the employee has not been proved by convincing evidence. It, therefore, ordered the reinstatement of the employee with full back wages and allowances from the date of his dismissal up to the date on which he will be reinstated.

The Supreme Court on the appeal filed by the management held that the order of the tribunal was contrary to law and observed as follows:

"It is no doubt true that no enquiry was held on the charges contained in the second charge-sheet and, therefore, that charge-sheet was rightly kept out of consideration by the Managing Director and the tribunal. It is true that a reference is made to certain extraneous matters in the letter of the Managing Director, dated 29th October, 1958, addressed to Bose. But, considering the letter as a whole and particularly the last paragraph, it seems to us to be abundantly clear that the decision of the Managing Director to dismiss Bose was based only on the charge of insubordination. In this connection it will be useful to quote that paragraph:

'After giving your matter our very careful consideration, we have, therefore, painfully come to the decision that in the interest of discipline and business you should be forthwith dismissed from our service. Accordingly your service will no longer be required by us from today. In taking this action against you we have also taken into consideration your past record which is very much against.'

"It is true that the last sentence suggests that the past record of Bose has also been taken into consideration. But it does not follow from this that the effective reason for dismissing him. The Managing Director having arrived at the conclusion that Bose's services must be terminated in the interest of discipline, he added one sentence to give additional weight to the decision already arrived at. Upon this view it would follow that the Tribunal was not competent to go
behind the finding of the Managing Director and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal of Bose and directing his reinstatement is, therefore, set aside as being contrary to law."

18. Enquiry if to be stayed pending decision of Criminal Court against employee

It is true that very often employers stay enquiries pending the decision of the criminal courts and that is fair. The principles of natural justice require that an employer must wait for the decision at least of the criminal court before taking action against an employee. If the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.—*Delhi Cloth and General Mills, Ltd. v. Kushal Bhan*, (1960) 3 SCR 227 : 1960 MLJ (Cr) 461 : 1960 SCJ 711 : (1960) 1 LLJ 520 : (1960-61) 19 FJR 183 : AIR 1960 SC 806 ; *Tata Oil Mills Co., Ltd. v. Its workmen*, (1964) 2 LLJ 113 : (1964) 7 SCR 555.

In *J. K. Cotton Spinning and Weaving Co., Ltd. v. Its workmen*, (1965) 2 LLJ 153 (SC), it was, however, held that the principles of natural justice do not require that the employer must wait for the decision of a criminal case or an appeal before proceeding with a domestic enquiry.

19. Whether enquiry can be held against an employee after his acquittal in criminal case

The object of the department proceedings is to ascertain whether the employee concerned is a fit person to be retained in service. On the other hand, the object of the criminal prosecution is to find out whether the ingredients of the offence as defined in the penal statute have been made out. The area covered by the two proceedings is not exactly identical.

In *J. K. Cotton Spinning and Weaving Co. v. Its workmen*, (1965) 2 LLJ 153 (SC) an enquiry was conducted by the Company after the workman was convicted of the offence of theft by a criminal court. The workman refused to participate in the enquiry and the Enquiry Officer proceeded *ex parte*. The Enquiry Officer, after considering the evidence on record before him found the workman guilty of the charge levelled against him. The workman was subsequently acquitted in appeal. When the matter was brought before the Industrial Tribunal, it was held that the charge was not made out and that the domestic enquiry was based on the conviction of the workman by the criminal court which was set aside in appeal and hence no value could be attached to the finding of the Enquiry Officer in domestic enquiry. The award was confirmed by the Labour Appellate Tribunal. In appeal to the Supreme Court it was held that there was nothing in the report of the Enquiry Officer to show that he was influenced by the conviction by the criminal court.

20. Findings of Enquiry Officer—Interference by Labour Court

The Supreme Court in several cases while dealing with industrial disputes of this kind, had occasion to point out that industrial tribunal would not be justified in characterizing the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the
evidence adduced before it. In a domestic enquiry once a conclusion is
deduced from the evidence, it is not permissible to assail that conclusion
even though it is possible for some other authority to arrive at a different
conclusion on the same evidence—See M/s. The Benaras Light Electric &
Power Co. Ltd. v. The Labour Court II, Lucknow and others, AIR 1972
SC 2182 : 1972 Lab IC 939; Messrs. Khardah & Co. Ltd. v. The Workmen,

(For details please see Chapter III of this Part).
CHAPTER III

PUNISHMENTS

SYNOPSIS

1. Kinds of punishments
2. Warning or censure.
3. Withholding of increments.
4. Fine.
5. Reduction in rank.
6. Suspension—
   (a) Suspension—Effect.
   (b) Suspension pending enquiry.
   (c) Suspension with retrospective operation.
   (d) Wages for period of suspension.
7. Discharge—
   (a) Discharge—Meaning and applicability.
   (b) Payment of one month's wages in lieu of notice—Duty of employer.
8. Dismissal—
   (a) Dismissal without enquiry.
   (b) Power of Tribunal to interfere with order of dismissal.
   (c) Matters to be considered in testing the justification for punishment.
   (d) Dismissal illegal—Re-instatement claim cannot be disallowed on the ground that another workman has been employed in place of dismissed workman.
   (e) Taking part in illegal strike need not result in dismissal.
   (f) Pen-down strike—Reinstatement cannot be disallowed on hypothetical consideration.
9. Grounds of dismissal—
   (a) Wilful insubordination or disobedience (Misconduct).
   (b) Strikes—
      (i) Strike when justified.
      (ii) Mere participation in illegal strike—Whether justify dismissal.
      (iii) Illegal strike—Justification.
   (f) Pen-down strike—Participation in such strike—Effect.
   (e) Strike and lock-out—Relationship.
   (o) Strikes and lock-outs—Justification.
   (v) A strike when criminal trespass.
   (vi) Duration of strike.
   (ix) Strike held illegal if can be justified.
   (c) Criminal connection—Whether a person detained under Prevention Detention Act can be dismissed merely on ground of detention.
10. Dismissal and discharge during dispute—
    (a) General.
    (b) Nature and scope of Tribunal's jurisdiction.
    (c) Tribunal cannot substitute another punishment—No enquiry—Management can still adduce evidence before Tribunal.
    (d) Tribunal not an enquiring body—Tribunal only to be satisfied that management's action is bona fide and that a prima facie case has been made out.
    (e) Employer seeking permission to dismiss employee for misconduct as per clause 18 (b) (viii) of Standing Orders—Subsequent application by employer to discharge employee under clause 17 (a)—Tribunal allowing subsequent application—Tribunal's order not appealable.
    (f) Violation of principles of natural justice—By management—Duty of Tribunal.
    (g) Application by employer for approval of dismissal of employee survives decision of main industrial dispute.

1. Kinds of punishments

The following penalties may, for good and sufficient reasons, be imposed on a servant, namely:

(i) Warning or censure;
(ii) withholding of increments;
(ii) fine;
(iv) reduction in rank;
(v) suspension;
(vi) discharge;
(vii) dismissal.

2. Warning or censure

Censure is a sort of penalty that can be imposed on a servant as a formal punishment. It is treated as a minor penalty. The conditions for imposing the penalty are:

(a) that the person concerned has been held guilty of some blameworthy act or omission;
(b) that it is imposed for good and sufficient reason; and
(c) that the prescribed procedure has been followed.

There may be occasions when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e.g., pointing out negligence, carelessness, lack of thoroughness, delays, etc.,) or he may call for an explanation for some act or omission and taking all the circumstances into consideration, he might feel that, while the matter was not serious enough to justify the imposition of the formal punishment of “censure”, it called for some informal action, such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning, etc., in the officer’s confidential roll; however, the mere fact that it is so mentioned in the character roll does not convert the warning, etc., into a “censure”. Although such comments, remarks, warning, etc., also would have the effect of making it apparent or known to the person concerned that he had done something blameworthy and, to some extent, might also affect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of “censure” because it was not intended that any formal punishment should be inflicted.

An order of “censure” is a formal and public act intended to convey that the person concerned has been held guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment. And nothing can amount to a “censure” unless it is intended to be such a formal punishment and imposed for “good and sufficient reasons” after following the prescribed procedure. A record of the punishment so imposed is kept on the officer’s confidential roll and the fact that he has been “censured” will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

3. Withholding of increments

Withholding of increment in industrial law is a sort of penalty that can be imposed on a servant in graded scale of pay only by way of punishment for misconduct. Where there is no time-scale of wages, the management is at liberty to grant increments to some employees only on the basis of efficiency or conduct etc.

4. Fine

A fine is a deduction from the remuneration of the worker and can be imposed by way of punishment. No punishment of fine can be imposed unless the employer has been specifically empowered to do so either by the contract of employment or by the Standing Orders.
5. Reduction in rank

The expression "reduction in rank" has neither been defined in the Constitution nor in the statutory rules, but there can be little doubt that it means a transfer, without the consent of the incumbent, from a higher position to a lower position at a lower rate of salary. An order of reduction in rank is in substance and effect a consolidated order consisting of two parts—an order removing the incumbent from the position formerly held by him, and an order appointing him to a position of less dignity in the same service.

"Reduction" means demotion, that is, putting an employee in a lower grade or past or on lower scale of pay. It may even include a case where an employee in reduced to a lower stage of pay in the same scale, but by no stretch of imagination it is possible to conceive that when a man has not been allowed to go up by way of promotion as he was not found fit for the higher post there was a reduction in his rank.

Note.—The matter has already been dealt with at length in Part I of this book, and, therefore, no special discussion is needed in this Part.

6. Suspension

The word "suspension", according to Oxford Dictionary, means "action of debarring or state of being debarred, especially for a time, from a function or privilege; temporary deprivation of one's office or position", or again "state of being temporarily kept from doing or deprived of something". The meaning of the word "suspend" has been given in the dictionary as "to debar, usually for a time, from the exercise of a function or enjoyment of a privilege, specially to deprive temporarily of one's office"; or again "to interdict". Any contract between master and servant is a material obligation which requires each party to perform its part of the contract. A contract can, however, be suspended temporarily and during its period of suspension the contracting parties are absolved of all or some of their obligations. There is nothing novel in a contract being suspended. It merely amounts to a postponement of the actual performance of the contract and in the case of a continuing contract like the contract of service between master and servant suspension means, that the relationship of master and servant remains in abeyance for a certain period. Suspension, however, need not be complete and it cannot be argued that whenever a contract of service is suspended, the servant is free to go and seek employment elsewhere and the master is free to withhold the wages due to the servant and to employ some other servant to do his work. Such suspension would be equivalent to a total termination of the contract and suspending a contract is certainly not the same thing as terminating or rescinding it; and if suspension is something less than termination, then it must follow that a connection, however tenacious, continues between the master and the servant.

The servant perhaps cannot seek employment elsewhere though he does not perform his normal duties for his master. Similarly the master may be obliged to give a subsistence allowance to the servant though he may not be obliged to pay him his full wages which are to be paid for specific work done by the servant. By reason of suspension the person
suspended does not lose his office, nor does he suffer any degradation. He
ceases to exercise the powers and to discharge the duties of the office for
the time being. His rank remains the same and his pay does not suffer
any reduction. He cannot draw his salary during the period of suspension.
His powers, functions and privileges remain in abeyance but he con-
tinues to be subject to the same discipline and penalties and to the same
authorities.

The basic idea underlying the root word ‘suspend’ and all its deriva-
tives is that a person while holding an office and performing its functions
or holding a position or privilege should be interrupted in doing so and
debarred for the time being from further functioning in the office or hold-
ing the position or privilege. He is intercepted in the exercise of his
functions of his enjoyment of the privilege and put aside, as it were, for a
time, excluded during the period from his functions or privileges.

It is now well-settled that the power to suspend, in the sense of a
right to forbid a servant to work, is not an implied term in an ordinary
contract between master and servant and that such a power can only be
the creature either of a statute governing the contract, or of an express
term in the contract itself. Ordinarily, therefore, the absence of such
power either as an express term in the contract or in the rules framed
under some statute would mean that the master would have no power to
suspend a workman and even if he does so in the sense that he forbids
the employee to work, he will have to pay wages during the so-called
period of suspension. Where, however, there is power to suspend either
in contract of employment or in the statute or the rules framed thereunder,
the suspension has the effect of temporarily suspending the relation of
master and servant with the consequence that the servant is not bound to
render service and the master is not bound to pay. These principles of
the ordinary law of master and servant are well settled.

The ordinary law of master and servant as to suspension should be
held to be modified by Section 33 of the Industrial Disputes Act, 1947
and the term should be implied in the contract of employment. If the
master has held a proper enquiry and come to the conclusion that the ser-
vant should be dismissed and in consequence suspends him pending the
permission required under Section 33, the master has power to order
such suspension and there would be no obligation on the em-
ployer to pay wages and no obligation on the workman to work.
If the permission is granted by the Tribunal the suspended contract would
come to an end and there will be no further obligation to any wages after
the date of suspension. But if permission is refused, the suspension would
be wrong and the workman would be entitled to all his wages from the
date of suspension—Hotel Imperial, New Delhi v. Hotel Workers’ Union,

(a) Suspension—Effect:

When a man is placed under suspension, as a rule, his wages in-
cluding allowance, etc., are withheld for the time being. Therefore free
medical aid and medicines could also be withheld by the management—
LLJ 450 : AIR 1959 SC 529.

(b) Suspension pending enquiry:

Suspension is ordinarily of two kinds, namely, suspension as a punish-
ment and suspension pending enquiry.
If the suspension is punitive and amounts to a punishment, the same considerations which apply to a dismissal would apply to it unless the employer is able to make out misconduct, reasonable notice of the temporary termination of service would have to be given. For it cannot be that the employer who cannot put an end to the contract of service, except on reasonable notice can temporarily terminate the employment by unilateral action and withhold salary at his pleasure. Where there is a power of punitive suspension, unless the master is able to justify it on the ground of proved misconduct, he has no right to suspend or to withhold salary for the period of suspension.

Suspension without pay pending enquiry as also pending permission of the Tribunal under the relevant section cannot be considered a punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal had passed orders thereupon. Such suspension would of necessity be of an indefinite duration because to get a written permission of the Tribunal would mean delay and no Tribunal would like to issue any order without notice and without hearing all the parties concerned. Such orders for suspension are meant only as security measures or precautionary ones taken in the interest of the industry itself or its employees in general.

The suspension under such circumstances, therefore, cannot be a punishment even though it may be of an indefinite duration and would not attract the operation of Section 22 of the Industrial Dispute (Appellate Tribunal) Act, 1950, so as to require permission thereunder before it is meted out to the workmen—Lakshmi Devi Sugar Mills Ltd v. Pt. Ram Sarup, (1956-57) 11 F J R 273 : (1959) 1 LLJ 17 : AIR 1957 SC 82.

A suspension of workmen “pending further orders” must be treated as an interim measure pending enquiry and proceedings before the Industrial Tribunal. The suspension cannot be treated as a punishment—Sasamusa Sugar Works (Private) Ltd. v. Shobratki Khan, (1959-60) 17 FJR 1 : (1959) 2 LLJ 388 : AIR 1959 SC 923.

Where suspension pending enquiry is provided in the standing orders, there is also a provision prescribing a period for completing the enquiry. In Lunipur Colliery v. Bhuban Singh, AIR 1959 SC 837, the Supreme Court observed that “if the Standing Orders provide that suspension without pay will not be for more than a certain number of days, the enquiry must either be completed within that period and if suspension for any reason is considered necessary, pay cannot be withheld for more than the period prescribed under the Standing Orders.”

(c) Suspension with retrospective operation:

Suspension connotes temporary cessation of something like right, work or labour. This very concept of the word “suspension” rules out the possibility of a servant who is in service and who has in law performed the duties of his office during a certain period being placed subsequently under suspension for that period. When in law he has performed the duties, there can be no question of forbidding him from exercising the function of his office during that period, which is already passed. No doubt, a servant who has discharged the functions of his office during a certain
period can, by a legal fiction, be deemed as not to have performed the duties. But such legal function has to be created by an express rule. It cannot be derived from the ordinary meaning of the words “suspension” and “suspend”.

Where the order covers also future it is bad only to the extent of its past period—Jeevaratnam v. State, AIR 1966 SG 951.

(3) **Wages for period of suspension.**

Ordinarily the law is that a workman may be suspended pending enquiry and disciplinary action. If after the inquiry the misconduct is proved, the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquiry results in the reinstatement of the workman he is entitled to full wages for the suspension period also along with reinstatement, unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period—M/s. Kesoram Cotton Mills Ltd v. Ganganadhar and others, (1963) 7 FLR 213 : (1963) 2 LLJ 371 (SC).

In the Straw Board Mfg. Co. v. Govind, (1962) 4 FLR 403, the Supreme Court while considering what would happen where approval was granted or withheld on an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 pointed out that “if the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fail and thereupon the workmen would be deemed never to have been dismissed or discharged and would remain in the service of the employer.” It follows, therefore, that if a workman is fully exonerated after the enquiry, he would remain in the service of the employer and would be entitled to his full wages during the period of his suspension also. Therefore when an agreement between the employer and the employees envisages suspension pending enquiry and disciplinary action it also envisaged the consequence, namely, that if the inquiry results in dismissal, the workman would get no wages for the suspension period while if the inquiry results in the reinstatement of the workman he would be entitled to full wages for the suspension period, if he is fully exonerated or to such less wages as the employer may give in case the exoneration is not complete and some punishment less than dismissal can be inflicted—M/s. Kesoram Cotton Mills Ltd v. Ganganadhar, and others (1963) 7 FLR 213 : 1963 2 LLJ 371 (SC) : (1963-64) 25 FJR 353 ; AIR 1964 SG 708.

It is well settled that “under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract—(1960) 1 SCR 476, followed. But as held in Management of Hotel Imperial, New Delhi v. Hotel Worker's Union, 1960 SCR 476, whereunder Section 33 of the Act the right of the employer to dismiss an employee except with the permission of the industrial tribunal, was taken away, it would be open to the employer to suspend the workmen pending enquiry and permission of the tribunal. In such circumstances such a term in the contract of employment would be implied and the result would be that if the tribunal granted the permission, the suspended contract would come to an end and there would be no further obligation on the part of the employer to pay any wages after the date of suspension. If on the other hand, the permission was refused, the workmen would be entitled to all their wages from the date of
suspension. It follows, therefore, that in the case of those workmen who have been ordered to be reinstated there can be no justification for depriving them of their wages from the date of the suspension—M/s. Kesoram Cotton Mills Ltd v. Gangadhar, (1963) 7 FLR 214 : (1963) 2 LLJ 371 : (1963-64) 25 FJR 353 : AIR 1964 SC 708.

7. Discharge:

Under the common law governing the relation of the employers and employees, an employer is entitled to terminate the services of the his employee at any time subject to customary notice unless under a binding contract security of tenure of service is granted. An employer cannot normally be compelled to retain an employee whom he does not desire to retain in his employment. Certain statutory provisions have, however, been made which have considerably altered the common law rule governing the relations of an employer and employee. And under those statutory provisions the right of an employer in an industry to dismiss or discharge an employee has also been restricted by the Standing Orders.

There is no doubt that an employer cannot dispense with the services of permanent employee by mere notice and claim that the Industrial Tribunal has no jurisdiction to inquire into the circumstances in which such termination of service simpliciter took place. Many Standing Orders have provisions similar to paragraph 522 (1) of the Bank Award, and the scope of the power of the employer to act under such provisions has come up for consideration before labour tribunals many a time. In Buckingham & Carnatic Co., Ltd. v. Workers of the Company, (1951) 2 LLJ 314, the Labour Appellate Tribunal held occasion to consider this matter relating to discharge by notice or in lieu thereof by payment of wages for a certain period without assigning any reason. It was of opinion that even in case of this kind the requirement of bona fides, is essential and if the termination of service is a colourable exercise of the power or as a result of victimisation or unfair labour practice the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. Further it held that where the termination of service is capricious, arbitrary or unnecessarily harsh on the part of the employer adjudged by normal standards of a reasonable man that may be cogent evidence of victimisation or unfair labour practice. This correctly lays down the scope of the power of the Tribunal to interfere where service is terminated simpliciter under the provisions of a contract or of Standing Orders or of some award like the Bank Award. In order to judge this, the Tribunal will have to go into all the circumstances which led to the termination simpliciter and an employer cannot say that it is not bound to disclose the circumstances before the Tribunal. The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, therefore, always open to the Tribunal, to go behind the form and look at the substance; and if it comes to the conclusion, for example, that though in form the order amounts to termination simpliciter it in reality cloaks a dismissal for misconduct, it will be open to it to set it aside as a colourable exercise of the power—Chartered Bank v. Chartered Bank Employees' Union, AIR 1960 SC 922.

If it appears that the purported exercise of the power to terminate the services of the employee was in fact the result of the misconduct alleged
against him, then the Tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary the order of termination is ineffect an order of dismissal. The exercise of the power in question to be valid must always be bona fide.

Though ostensibly the termination of an employee’s services may be in conformity with the terms of employment on the relevant Standing Order, it may nevertheless transpire on investigation with the relevant facts and circumstances surrounding and leading to the termination of service, that it is mala fide or is made with ulterior motives, a practice or is arbitrary or is considered in any wise improper—Assam Oil Company v. Its Workmen, (1960) 1 LLJ 587 (SC). If the bona fides of the said exercise of power are successfully challenged, then the Industrial Tribunal would be entitled to interfere with the order in question. It is in this context that the Industrial Tribunal must consider whether the termination is mala fide or whether it amounts to victimisation or an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power conferred by the contract. In some cases the employer may disapprove of the Trade Union activities of his employee and may purport to terminate his services under the terms of the contract. In such cases, it appears that the real reason and motive for termination of service is that the Trade Union activities of the employee that would be a case where the Industrial Tribunal can justly hold that the termination is unjustified and has been made mala fide. It may also appear in some cases that though the order of termination is couched in words which do not impute any misconduct to the employee, in substance it is based on misconduct of which, according to the employer, the employee has been guilty; and that would accede the impugned termination punitive dismissal. In such a case fairplay and justice require that the employee should be given a chance to explain an allegation weighing in the mind of the employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case.

Where an order of discharge passed by an employer in such cases give rise to an industrial dispute, the form of the order by which the employee’s services are terminated would not be decisive. Industrial Court would be entitled to examine the substance of the matter and to decide whether the termination is in fact discharge simpliciter or it amounts to dismissal which has put on the cloak of a discharge simpliciter. If the Industrial court is satisfied that the order is punitive, that is mala fide or it amounts to victimisation or unfair labour practice, it is competent to set aside the order and direct reinstatement.

Even where the contract of service provides for termination of services after a month’s notice, it would be open to the Industrial Court, when that termination is challenged, to go into the question of bona fides.

The position of industrial employee stands on an entirely different footing from that of Government servant in the matter of dismissal, removal or termination of service. Articles 310 and 311 of the Constitution apply to Government servant. No such constitutional provision have to be considered when one is dealing with industrial employees—See Tata Oil Mills v. Workmen, AIR 1966 SC 1972.
There can be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired—except on the ground of misconduct or other sufficient reason in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer—Express Newspapers (Pvt). Ltd., Madurai v. Presiding Officer, L.C., Madurai, (1964) 8 FLR 289 : (1964) 1 LLJ 9 : (1964-65) 26 FJR 121 : AIR 1964 SC 806.

(a) Discharge—Meaning and applicability:

The provisions of the Industrial Disputes Act, 1947 applies to an existing industry and not a dead industry. Therefore the term ‘discharge’ applies only to discharge of a person in a running or continuing industry and not to the discharge of all workmen on the bona fide closure of the industry—Banaras Ice Factory Ltd. v. Its Workmen, (1956-57) 11 FJR 333 : (1957) 1 LLJ 253 : AIR 1957 SC 168.

(b) Payment of one month’s wages in lieu of notice—Duty of employer:

In National Iron & Steel Co., Ltd. v. State of West Bengal, AIR 1967 SC 1206 : (1967) 2 LLJ 23 : (1966-67) 31 FJR 425, where the services were terminated with effect from November 17 but the workman was asked to collect his dues from the cash office on November 20 or thereafter during the working hours. It was held that Section 25-F had not been complied with under which it was incumbent on the employer to pay the workman the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards.

8. Dismissal

In the law relating to master and servant the expression "dismissal" has acquired a limited meaning—determination of employment as a method of punishment for misconduct or other cause. It cannot include termination of employment simpliciter.

It may appear in some cases that though the order of discharge is couched in words which do not impute any misconduct to the employee in substance it is based on misconduct of which, according to the employer, the employee has been guilty and that would make the impugned discharge a punitive dismissal—Assam Oil Co. v. Its Workmen, (1963) 1 LLJ 587 (SC).

It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage on order of dismissal for misconduct, and it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of
the order. If the Court holds that the order though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee—S. R. Tewari v. District Board, Agra and another, (1964) 1 LLJ 1 (SC); AIR 1964 SC 168; (1964) 3 SCR 55.

It is now well settled by innumerable decisions that no employer can now claim an absolute right to "hire and fire" any of its employees in accordance with the terms of the contract of employment. The Labour Court has jurisdiction to examine whether the termination of service of an employee was a colourable exercise of the power, that is to say, whether, while purporting to exercise the employer's right of termination of service in accordance with the contract, the employer in substance removed the employee from service for misconduct without holding the necessary departmental enquiry and observing the rules of natural justice—(See in this connection Management of U. B. Dutt and Co. Ltd. v. Workmen of U. B. Dutta and Co., Ltd., AIR 1963 SC 411).

(a) Dismissal without enquiry:

If it is held that in case where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why the Supreme Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical consideration and with the object of avoiding delay in the disposal of industrial disputes. Therefore, no distinction can be made between cases where the enquiry has in fact been held but it is defective and cases where no enquiry has been held. The contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the Tribunal cannot be sustained—Workmen of Motipur Sugar Factory (Private) Ltd. v. Motipur Sugar Factory Private Ltd., 1965 2 LLJ 162 : 27 FJR 376 : (1965) 11+FLR 112 : AIR 1965 SC 1803.

In India Marine Service Ltd. v. Their Workmen, AIR 1963 SC 528 : (1962-63) FJR 86, an employee was charge-sheeted and his explanation obtained. Subsequently a second charge-sheet was served on him. The employer held an enquiry into the charges contained in the first charge-sheet and dismissed the employee. No enquiry was held on the second charge-sheet. In taking the action to dismiss the employee his record was also taken into consideration.
On the dispute being referred to the Tribunal the Tribunal held that as no enquiry was held on the second charge-sheet it should be ruled out of consideration and as the findings of the management were based not merely on the charges set out in the first charge-sheet but on certain other charges, which the employee was not given an opportunity to explain, the enquiry was vitiated and the dismissal could not be sustained. The Tribunal proceeded to consider evidence adduced before the domestic Tribunal and ordered reinstatement with full back wages and held that the allegation of insubordination had not been proved by evidence.

On appeal the Supreme Court held that the order of the Tribunal was contrary to law. It observed that as no enquiry was held on the second charge-sheet it was rightly kept out of consideration. It further observed that though the dismissal order suggested that past record of the employee was also taken into consideration but as it did not follow from that date, that was the effective reason for dismissing him, and his services were terminated in the interest of discipline, it would follow that the Tribunal was not competent to go behind the finding of the management and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal and directing reinstatement was, therefore, set aside as being contrary to law.

(b) **Powers of Tribunal to interfere with order of dismissal.**

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline but the power is not unlimited and when a dispute arises Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere—

(1) when there is a want of good faith.

(2) when there is victimisation or unfair labour practice.

(3) when the management has been guilty of a basic error or violation of a principle of natural justice; and


Thus the Tribunal would be justified in interfering with the order of dismissal when there is want of good faith, when there is victimisation or unfair labour practice, when the management has been guilty of basic error or violation of the principle of natural justice, or when on the materials the finding of the management is completely baseless or perverse.

When no enquiry has been made by the management the issue about the merits of the impugned order of dismissal is set at large before the Tribunal and on the evidence adduced before it the
Tribunal has to decide for itself whether the misconduct alleged is proved, and, if yes, what would be the proper order to make—**Punjab National Bank v. Their Workmen**, (1959-60) 17 FJR 199: (1959) 2 LLJ 66 : AIR 1960 SC 160.

The jurisdiction of the Industrial Tribunal to direct reinstatement of a discharged or dismissed employee is no longer in doubt. That being the nature and extent of the jurisdiction of the Industrial Tribunal it is too late now to contend that the contractual power of the employer to discharge his employee under the terms of the contract cannot be questioned in any case.

If the contract gives the employer the power to terminate the services of his employee after a month's notice or subject to some other condition it would be open to him to take recourse to the said term or condition and terminate the services of his employee; but when the validity of such termination is challenged in industrial adjudication it would be competent to the Industrial Tribunal to enquire whether the impugned discharge has been effected in the *bona fide* exercise of the power conferred by the contract. If the discharge has been ordered by the employer in *bona fide* exercise of his power then the Industrial Tribunal may not interfere with it—**Assam Oil Co., Ltd. v. Its Workmen**, (1960) 3 SCR 457 : (1960) 1 LLJ 587 : AIR 1960 SC 1264.

It is well established that in the case of victimisation or unfair labour practice it is open to the industrial tribunal to go into the merits of the case and to investigate whether the order of punishment is justified. And if the tribunal finds victimisation or unfair labour practice proved, the Supreme Court does not ordinarily examine the correctness or propriety of such a finding.

**In Howrah Municipality v. Mansa Des Day**, (1965) 2 LLJ 135 : (1965) 11 FLR 6 (SC), the Supreme Court declined to interfere under Article 136 with the order of the tribunal and observed as follows:

"But even assuming that there was no victimisation on the part of the municipality and the tribunal was erroneous in re-opening the findings of domestic enquiry, we are of opinion that it is not a proper case in which this Court ought to interfere under Article 136 of the Constitution. It is necessary to remember that wide as our powers are under Article 136 of the Constitution, the exercise of those powers is discretionary and we are satisfied that the order under appeal has done substantial justice to the parties and there is no case made out for interference by this Court."

It is true that in several cases, contracts of employment or provisions in Standing Orders authorise an industrial employer to terminate the services of his employees after giving notice for one month or paying salary for one month in lieu of notice and normally an employer may, in a proper case, be entitled to exercise the said power. But where an order of discharge passed by an employer gives rise to an industrial dispute, the form of the order by which the employee's services are terminated would not be decisive, industrial adjudication would be entitled to examine the substance of the matter and decide whether the termination is in fact discharge *simpliciter* or it amounts to dismissal which has put on the cloak of a discharge *simpliciter*. If the Industrial Court is satisfied that the order
of discharge is punitive, that it is *mala fide* or that it amounts to victimisation or unfair labour practice, it is competent to the Industrial Court to set aside the order and in a proper case, direct the reinstatement of the employee. In some cases, the termination of the employee’s services may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may legitimately and reasonably be drawn that in terminating the services, the employer was not acting *bona fide*. The test always has to be whether the act of the employer is *bona fide* or not. If the act is *mala fide*, or appears to be a colourable exercise of the powers conferred on the employer either by the terms of contract or by the Standing Orders, then notwithstanding the form of the order, industrial adjudication would examine the substance and would direct reinstatement in a fit case. This position was recognised by the Labour Appellate Tribunal as early as 1951 in *Buckingham and Carnatic Co., Ltd. v. Workers of the Company* etc. (1951) 2 I.L.J. 314, and since then, it has been consistently followed vide *Chartered Bank, Bombay v. Chartered Bank Employees’ Union and another*, (1960) 3 SCR 441 : (1960) 2 LLJ 222 (1960) 1 FLR 34 U. B. Dutt & Co (Private) Ltd. v. Its Workmen, (1962) 1 LLJ 374.—*Tata Oil Mills Co., Ltd. v. Their Workmen*, (1961) 1 SCJ 382 : 24 FJR 472 (SC).

If a domestic enquiry is properly held and the employer terminates the services of his employee, the industrial tribunal dealing the industrial disputes arising out of such dismissals is not authorised to sit in appeal over the findings of the enquiry committee, or to examine the propriety of the ultimate order of dismissal passed by the employer. This position is, of course, subject to the qualification that if it appears to the tribunal that the ultimate order is so disproportionately severe in relation to the misconduct to the proved that it may lead to an inference of victimisation; the tribunal would be justified in interfering with that order; *Agnani (W. M.) v. Badri Das and others*, (1963) 1 LLJ 684 : (1963) 6 FLR 440 (SC).

If the enquiry held by the employer is not defective, the labour court has only to see whether there was a *prima facie* case for dismissal, and whether the employer had come to the *bona fide* conclusion that the employee was guilty of misconduct. Thereafter, on coming to the conclusion that the employer had *bona fide* come to the conclusion that the employee was guilty i.e., there was no unfair labour practice and no victimisation, the labour court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the labour court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified, its approval of the order of dismissal made by the employer in a defective enquiry would still relate back to the date when the order was made. The observation in *Sasa Musa Sugar Companies’ case*, (1959) 2 LLJ 388 : AIR 1959 SC 923 apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made out. In that case the dismissal of the employee takes effect from the date of the award and so until then the relation of employee and employer continues in law and in fact—*Kalyani (P. H.) v. Air France*, Calcutta, (1963) 1 LLJ 679 : (1963) 6 FLR 435 : 24 FJR 464 : 1963 SC 1756 (SC).

Statement of the workman concerned in an inquiry into his misconduct was recorded. Disputes arose between the workman and the management
at that time and the workman refused to sign the statement on the ground that it was not correctly taken down. No evidence was recorded either before or after the statement. There was in fact no managerial inquiry worth the name: Hence the Appellate Tribunal had to decide for itself whether the dismissal of the employee was justified and to such a case, the principles laid down in (1958) 1 LLJ 260 as to the extent of the tribunal’s jurisdiction to interfere are not applicable—Anglo-American Direct Tea Trading Company Ltd. v. Workmen of Nahortotia Tea, (1962) 4 FLR 65 : (1961-62) 20 FJR 523 (SC).

It may be that participation in an illegal strike may not necessarily and in every case be punished with dismissal; but where an enquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strike, the Tribunal should not interfere unless it finds unfair labour practice or victimisation against the employee—The Bata Shoe Co. v. D. N. Ganguly, (1961) 3 SCR 308 : (1961) 1 LLJ 303 : (1962) 1 SCJ 8 : (1961-62) 20 FJR 91 : AIR 1961 SC 1158.

In Murgan Mills Ltd. v. Industrial Tribunal, Madras, (1965) 10 FLR 162 : (1965) 1 LLJ 422 ; (1965-66) 27 FJR 141 : AIR 1965 SC 1496, services of the worker concerned had been terminated under clause 17 (a) of the Standing Orders of the company which enabled the management to terminate the services of a worker by 14 days’ notice. The Standing Orders also provided that reasons for termination of service should be recorded and communicated to the workman if he so desired. It was held—

The right of the employer to terminate the services of his workman under a Standing Order, like clause 17 (a) in the instant case, which amounts to a claim ‘to hire and fire’ an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication, came up for consideration before the Labour Appellate Tribunal in Buckingham and Carnatic Co., Ltd. v. Workers of the Company etc., (1962) LAC 490. The matter then came up before the Supreme Court also in the Chartered Bank v. Chartered Bank Employees’ Union, and another, (1960) 1 FLR 34 and the Management of U. B. Dutt and Co. (P.) Ltd. v. Workmen of U. B. Dutt and Co. (P.) Ltd., (1962) (Supp.) 2 SCR 82 wherein the view taken by the Labour Appellate Tribunal was approved and it was held that even in a case like the present the requirement of bona fides was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice the Industrial Tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reasons which led to the order and then consider for itself whether termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice it would have the jurisdiction to intervene and set aside such termination.
The form, therefore, used in the present case for terminating respondent's services under clause 17 (a) is not conclusive and the tribunal was justified in enquiring into the reasons which led to such termination; even the Standing Orders provide that an employee can ask for reasons in such a case. Those reasons were given before the tribunal by the appellant viz., the respondent's services were terminated because he deliberately adopted go slow and was negligent in the discharge of his duty. His services were, therefore, terminated for dereliction of duty and go-slow in his work. This clearly amounted to punishment for misconduct and, therefore, to pass an order under clause 17 (a) of the Standing Orders in such circumstances was clearly a colourable exercise of the power to terminate the services of a workman under the provision of the Standing Orders. In those circumstances the tribunal would be justified in going behind the order and deciding for itself whether the termination of the respondent's services could be sustained.

(c) Matters to be considered in testing the justification for punishment.

Whether or not the termination of service in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case. In this connection it is important to remember that just as the employer's right to exercise his option in terms of the contract has to be recognised so is the employee's right to expect security of tenure to be taken into account.

It would not be open to an employer to dismiss his employee solely or principally for the reason that he or she had joined a trade union. That is a fundamental right guaranteed to every citizen in this country and it would be idle for anybody to contend that the mere exercise of the said right would incur dismissal from service in private employment—Assam Oil Co., Ltd., New Delhi v. Its Workmen, (1960) 3 SCR 457; (1960) 1 LLJ 507; (1961) 1 SCJ 137; (1960-61) 18 FJR 380: AIR 1960 SC 1264.

(d) Dismissal illegal—Reinstatement claim cannot be disallowed on the ground that another workman has been employed in place of dismissed workman.

Where the dismissal of an employee was illegal it is no answer that in the meanwhile the employer has engaged another workman—M. L. Bose and Co. v. Its Workmen, (1961) 2 LLJ 107: AIR 1961 SC 1198.

However, the tribunal would be justified in refusing the relief of reinstatement in a much delayed reference to avoid dislocation of the industry and that is the correct order to make—Shalimar Works Ltd. v. Their Workmen, (1959) 2 LLJ 26 (SC).

(e) Taking part in illegal strike need not result in dismissal.

It has been held by the Supreme Court in Indian General Navigation and Railway v. Their Workmen, AIR 1960 SC 219, that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the
workmen taking part in the strike—See also I. M. H. Press, Delhi v. Additional Industrial Tribunal, Delhi, AIR 1961 SC 1168: (1960-61) 19 FJR 225: (1961) 1 LLJ 499.

(f) Pen-down strike—Reinstatement cannot be disallowed on hypothetical consideration.

The general hypothetical consideration that pen-down strikes may in some cases lead to rowdy demonstrations or result in disturbances or violence or shake the credit of the Bank would not justify the conclusion that even if the strikers are peaceful and non-violent and have done nothing more than occupying their seats during office hours, their participation in the strike would by itself disqualify them from claiming reinstatement—Punjab National Bank Ltd. v. All India Punjab National Bank Employees’ Federation, (1960) 1 SCR 806: 1960 SCJ 999: (1960) 1 SCA 489: (1959) 2 LLJ 666: (1959-60) 17 FJR 199: AIR 1960 SC 160.

8. Grounds of dismissal

(a) Wilful insubordination or disobedience—(Misconduct)

There may undoubtedly be cases justifying a wilful disobedience of such an order as when the servant apprehends danger to life, or violence to person, from the master, or wherefrom an infectious disorder raging in the house, she must go out for the preservation of her life. But the general rule is obedience and wilful disobedience is sufficient ground for dismissal. The master is to be the judge of the circumstances under which the servant’s services are required subject to this that he is to give only lawful commands. A housemaid absented herself for one night to see her dying mother and the master discharged her without notice. Alderson, J. held that the dismissal was good as being for disobedience to lawful order of the master and the maid’s moral obligation to see her mother was no sufficient to excuse her legal obligation.

The Standing Order No. 14 (e) (4) contemplates two types of misconduct; one is wilful insubordination and the other is disobedience to any lawful and reasonable order of a superior. These two constitute different categories of misconduct. If insubordination, as the Tribunal held, was disobedience to the order of an officer directly under whom the workmen charged with misconduct worked, then the two categories mentioned in the Standing Order would have amounted to the same misconduct. This cannot be the proper reading of the Standing Order. Insubordination would include defiance of persons in authority whether such persons were the direct superiors of the workmen charged or not. It would also include riotous conduct which made it impossible for the higher officers to discharge their duties properly—M/s Calcutta Jute Manufacturing Co. Ltd., Calcutta v. Calcutta Jute Manufacturing Workers’ Union, Calcutta, (1966) 2 SCJ 260: 1962 (Sup.) 1 SCR 483: AIR 1966 SC 1731: (1961) 2 Lab LJ 686: (1961-62) 21 FJR 347: (1962) 4 Fac. LR 7.

In Laxmi Das Sugar Mills Ltd. v. Nand Kishore, AIR 1957 a Steno-typist who took a leading part in having a resolution passed by the Union demanding the removal of the General Manager adopted a truculent attitude, in the course of correspondence by using defamatory language and by refusing to participate in the enquiry. His conduct was held to be subversive of discipline and hence misconduct. The Court observed:
"He adopted a truculent attitude in the course of the correspondence and resorted to the fury of his dual personality in refusing to answer the queries addressed to him by the General Manager. This attitude was to say the least comprehensive."

"Even if he happened to occupy what he considered to be the august position of the Vice-President of the Union, he did not cease to be an employee of the appellant and the attempt to distinguish between his capacity as the stenographer and his capacity as the Vice-President of the Union was absolutely puerile. He ought to have realised that he was first and foremost an employee of the appellant and owed a duty to the appellant to answer all the queries which had been addressed to him by the General Manager......... If such insubordination and breach of discipline had been the subject-matter of the charges made against him, we do not see how the respondent could have escaped punishment of dismissal."

The Secretary of the trade union of workmen cannot claim immunity from punishment for breaking discipline any more than any other worker. Absence of a workman without permission and without any application for the same amounts to gross violation of discipline entailing a dismissal from service. And if such a workman is dismissed by his employer the Industrial Tribunal should not order his reinstatement. When such a Secretary was in the habit of loitering outside his place of work without the permission of his departmental head and did not desist from doing so even though warned, his services can be dispensed with. In such a case it cannot be said that the employer was actuated by any improper motive to victimise him for his Union activities—M/s Burn and Co. Ltd. v. Their Workmen, AIR 1959 SC 529 : (1958-59) 15 FJR 338 : (1959) 1 LLJ 450.

In law even acts done by a servant outside working hours and outside the course of his employment might amount to misconduct justifying dismissal if it is proved that the riotous behaviour has some rational connection with the employment of the assailant and the victim—Central India Coalfield Ltd. v. Ram Bilas Shobnath, (1961) 1 LLJ 546 (SC).

(b) Strikes.

Para 14 (2) (A) of the Model Standing Orders under the Industrial Employment (Standings Orders) Act, 1946, lays down that striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law would be treated as misconduct.

(i) Strike—When justified—Collective bargaining for securing improvement on matters like basic pay, dearness allowance bonus, provident fund and gratuity, leave and holidays is the primary object of a trade union and when demands like these are put forward and thereafter a strike is resorted to in an attempt to induce the company to agree to the demands or at least to open negotiations, the strike must prima-facie be considered justified—The Swaleshi Industries, Ltd. v. Its Workmen (1960-61) 16 FJR 81 : (1960) 2 LLJ 78 : AIR 1960 SG 1928.

It will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may, however, be cases where the demand is of such an urgent and serious
nature that it would not be reasonable to expect labour to wait till after
asking the Government to make a reference. In such cases, strike even if
such a request has been made may well be justified—Chandramalai

(iii) Mere participation in illegal strike—Whether justify dis-
missal—Mere taking part in an illegal strike without anything further would
not necessarily justify the dismissal of all the workmen taking part in the
strike.

Therefore, where the workmen were charged with having fomented
the strike and having induced other workmen to take part in an illegal
strike, but, they were found guilty of only taking part in the illegal strike,
their dismissal cannot be justified unless the standing orders of the
establishment provided specifically for dismissal for merely taking part in
an illegal strike—I.M.H. Press, Delhi, v. Additional Industrial Tribunal

In Messrs. Burn & Co. v. Their workmen, AIR 1959 SC 629, the
Supreme Court observed:

"The question, therefore, is whether erme participation in an
illegal strike would be a sufficient ground on which we should
reverse award of the Tribunal that the order of suspension
in the case of these persons could not be upheld. It is to be
remembered that although the strike was illegal, a very large
number of workmen had gone on strike. All of them had
been taken back when the works were re-opened, except the
seven persons covered by Item 18. On the findings, the evidence
was very weak to show that any overt action was taken by these
four persons apart from their joining in the strike along with
other workmen. The evidence did not specifically having borne
any charge of incitement against these persons."

(iv) Illegal strike—Justification—A strike which is illegal, in that
the requirement of Section 22 of the Industrial Disputes Act, 1947 is not
complied with, cannot be said to be justified on the ground that it was
provoked by the increase in the workload by the employer. Even
assuming that the action of the management in altering the conditions of
work is illegal, that will not justify the workers in contravening the
law themselves. One wrong never justifies another wrong—Shridharan
FJR 270 : (1959) 1 LLJ 380.

(iv) Pen-down strike—Participation in such strike—Effect—Pen-down
strike is a strike within the meaning of Section 2 (i) of the Industrial
Disputes Act, 1947 and so per as it cannot be treated as illegal. Such a
strike to become illegal should be commenced in contravention of Sec-
tion 23 (6) of that Act. Hence mere participation in such an illegal strike
cannot necessarily involve the rejection of the strikers claim for reinsta-
tement, even if civil trespass was involved in the conduct of the workmen
(1959) 1 LLJ 450, followed)—Punjab National Bank, Ltd. v. Their
(v) Strike and Lock-out—Relationship.—The Industrial Disputes Act treats strikes and lock-outs on the same basis. It treats one as the counterpart of the other. A strike is a weapon of the worker while a lock-out that of the employer. A strike does, not, of course, contemplate the severance of the relation of employer and employee; it would be strange in these circumstances if a lock-out did so—Feroz Din v. State of West Bengal, (1960) 2 SCR 319 : (1960) 1 LLJ 244 : 1960 MLJ (Cr) 194 : (1959-60) 17 FJR 370 : 1960 SCJ 248 : 1960 Cr LJ 527 : AIR 1960 SC 363.

(vi) Strikes and Lock-outs—Justification.—In a case where a strike is unjustified and is followed by a lock-out which has, because of its long duration, become unjustified it would not be a proper course for an Industrial Tribunal to direct the payment of the whole of the wages for the period of the lock-out. In a case where the strike is unjustified and the lock-out is justified the workmen would not be entitled to any wages at all. Similarly, where the strike is justified and the lock-out is unjustified the workmen would be entitled to the entire wages for the period of strike and lock-out. Where, however, a strike is unjustified and is followed by a lock-out which becomes unjustified a case for apportionment of blame arises—India Marine Service (Private) Ltd. v. Their Workmen, (1963) 1 LLJ 122 : 23 FJR 86 : AIR 1963 SC 528 : (1963) 2 SCJ 433 (SC).

(vii) A strike when criminal trespass.—The mere fact that the striking workmen know that their action would annoy or insult the employer would not make such a strike a criminal trespass within the meaning of Section 441 of the Indian Penal Code unless it was proved that the workmen intended to cause such annoyance or insult because there is a clear distinction between knowledge and intention—Punjab National Bank Ltd. v. Their Workmen, (1959-60) 17 FJR, 199 : (1959) 2 LLJ 666 : AIR 1960 SG 160.

(viii) Duration of strike.—Cessation of work even for a few hours by a body of workmen and their concerted refusal to resume work would amount to strike—Buckingham and Carnatic Mills Co. Ltd. v. Their Workmen, AIR 1953 SG 471, and a short duration of strike would not save the workmen from consequences of the illegal strike—Laxmi Devi Sugar Mills v. Pandit Ram Swarup, AIR 1957 SC 871.

(ix) Strike held illegal if can be justified.—It is a little difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be characterised ‘perfectly justified’. These two conclusions cannot in law co-exist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Everyone participating in an illegal strike is liable to be dealt with departmentally, of course, subject to the action of the department being questioned before an Industrial Tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment; and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be
illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers.—Indian General Navigation and Railway Co. Ltd. v. Their Workmen, AIR 1960 SC 219.

(c) Criminal conviction—Whether a person detained under Preventive Detention Act can be dismissed merely on ground of detention.

The workmen, who were registered dock-workers in the Reserve Pool, were detained under the Preventive Detention Act, 1950. After they were released from detention, they applied for allocation to registered dock employment, but instead of passing orders in favour of such allocation, the employer commenced disciplinary proceedings against them and notices were served on them to show cause why their services should not be terminated on 14 days' notice in terms of clause 36 (2) (d) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951 (hereinafter called "the Scheme"). The principal ground in these notices was that the respondents had been detained for acts prejudicial to the maintenance of public order and as such, their services were liable to be terminated. Accordingly, the workmen showed cause against the proposed order, but the Deputy Chairman of the Dock Labour Board was not satisfied with their representations, and so, he terminated their services on December 17, 1956. The workmen challenged this decision by preferring appeals to the Chairman of the Dock Labour Board but their appeals did not succeed and the orders passed by the Deputy Chairman were confirmed on April 4, 1957. Writ petitions in the High Court against the appellate orders were followed by appeals in which it was held that the Dock Labour Board had acted illegally because it acted merely on suspicion based on the fact that the workers have been detained and therefore the impugned orders were invalid and inoperative.

When the matter came before the Supreme Court, it was observed:

"There can be no doubt that when the employer purports to exercise its authority to terminate the employment of its employees such as the respondents in the present case, it is exercising authority and power of a quasi-judicial character. In cases where a statutory body or authority is empowered to terminate the employment of its employees, the authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice.

"If the view taken by the officers who tried the disciplinary proceedings is accepted, it would follow that if a citizen is detained and his detention is confirmed by the State Government, his services would be terminated merely and solely by reason of such detention. Such a position is obviously and demonstrably inconsistent with elementary concept of the rule of law on which our Constitution is founded. When a citizen is detained, he may not succeed in challenging the order of detention passed against him, unless he is able to adduce grounds permissible under the Act. But after such a citizen is released from detention, an employer, cannot immediately start disciplinary proceedings against him and tell him in substance that he was detained for prejudicial activities which amount to misconduct and that the detention order was confirmed
by the State Government after consultation with the Advisory Board, and so, he is liable to be dismissed from his employment. It is obvious that the Advisory Board does not try the question about the propriety or validity of the citizen's detention as a court of law would; indeed, its function is limited to consider the relevant material placed before it and the representation received from the detenu, and then submit its report to the State Government within the time specified by Section 10 (1) of the Act. It is not disputed that the Advisory Board considers evidence against the detenu which has not been tested in the normal way by cross-examination; its decision is essentially different in character from a judicial or quasi-judicial decision. In some cases, a detenu may be given a hearing; but such a hearing is often, if not always, likely to be ineffective, because the detenu is deprived of an opportunity to cross-examine the evidence on which the detaining authorities rely and may not be able to adduce evidence before the Advisory Board to rebuff the allegations made against him. Having regard to the nature of the enquiry which the Advisory Board is authorised or permitted to hold before expressing its approval to the detention of a detenu, it would be entirely erroneous and wholly unsafe to treat the opinion expressed by the Advisory Board as amounting to a judgment of a criminal court. The main infirmity which vitiated the impugned orders arises from the fact that the said orders equate detention of a detenu with his conviction by a criminal court. The Court of Appeal was right in taking the view that in a departmental enquiry which the employer held against the workers, it was not open to the appellant to act on suspicion, and inasmuch as the appellant's decision is clearly based upon the detention orders and nothing else, there can be little doubt that, in substance, the said conclusion is based on suspicion and nothing more.

"Even in regard to its employees who may have been detained under the Act, if after their release, the employer wanted to take disciplinary action against them on the ground that they were guilty of misconduct it was absolutely essential that the employer should have held a proper enquiry. At this enquiry, reasonable opportunity should have been given to the respondents to show cause and before reaching its conclusion, the employer was bound to lead evidence against the respondents, give them a reasonable chance to test the said evidence, allow them liberty to lead evidence in defence, and then come to a decision of its own. Such an enquiry is prescribed by the requirements of natural justice and an obligation to hold such an enquiry is also imposed on the employer by clause 36 (3) of the Scheme of 1951 and clause 45 (6) of the Scheme of 1956. It appears that in the present enquiry, the workers were not given notice of any specific allegations made against them, and the record clearly shows that no evidence was led in the enquiry at all. It is only the detention orders that were apparently produced and it is on the detention orders alone that the whole proceedings rest and the impugned orders are founded. The decision of the Court of Appeal was, therefore, right."
“The circumstance that the workers happened to be detained can afford no justification for not complying with the relevant statutory provision and not following the principles of natural justice. Any attempt to short, circuit the procedure must be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever”—Calcutta Dock Labour Board v. Jaffar Imam, (1965) 2 SGA 226 : (1965) 2 LLJ 112 : (1965) 11 Fac LR 72 : AIR 1966 SC 282.

10. Dismissal and discharge during dispute

(a) General:

The power of the employer to discharge or dismiss any employee in an industrial dispute during the pendency of dispute is controlled by Section 33 of the Industrial Disputes Act, which is reproduced below—

“33. (1) During the pendency of conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned in such dispute,—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2) no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute:—
(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise such protected workmen,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.—For the purposes of this sub-section, a "protected workman in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit."

The object of Section 33 is to provide for the continuance and termination of the pending proceedings in a peaceful atmosphere undisturbed by any cause of friction between the employer and his employees. It envisages the maintenance of the status quo pending disposal of the industrial dispute between the parties. But, at the same time, it also recognises that occasions may arise when the employer should have the power of taking disciplinary action against his employees. With a view to balance the two conflicting considerations set out above it allows the employer to take such disciplinary action as he proposes, subject to the condition that before he does so, he obtains the express permission, in writing, of the officer or tribunal specified in Section 33. Therefore, what Section 33 does, in the first instance, is to impose a ban on the management from altering the status quo in regard to the relationship between the management and the workers, who are concerned in the pending industrial dispute. That section then provides for lifting of the ban by the grant of permission or approval as the case may be, by the authorities specified in that section. For granting permission, that authority is concerned only to see whether the domestic enquiry which had been conducted by the management against the delinquent workers, is without any apparent defects and that the punishment proposed is prima facie just. Such a finding cannot obviously bind the industrial tribunal functioning under Section, if the validity of enquiry is impugned before it.
Section 33 of the Act was amended by Act 36 of 1955. Prior to its amendment by Act 36 of 1956 Section 33 applied generally to all cases where alteration in the conditions of service was intended to be made by the employer, or an order of discharge or dismissal was proposed to be passed against an employee without making a distinction as to whether the said alteration or the said order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. In other words, the effect of the unamended section was that pending an industrial dispute the employer could make no alteration in the conditions of service to the prejudice of workmen and could pass no order of discharge or dismissal against any of his employees even though the proposed alteration or the intended action had no connection whatever with the dispute pending between him and his employees. This led to a general complaint by the employers that several applications had to be made for obtaining the permission of the specified authorities in regard to matters which were not connected with the industrial dispute pending adjudication; and in many cases where alteration in conditions of service were urgently required to be made or immediate action against an offending workman was essential in the interest of discipline, the employers were powerless to do the needful and had to submit to the delay involved in the process of making an application for permission in that behalf and obtaining the consent of the Tribunal. That is why, by the amendment made in Section 33, in 1956 the Legislature has made a broad division between action proposed to be taken by the employer in regard to any matter connected with the dispute on the one hand, and action proposed to be taken in regard to a matter not connected with the dispute pending before the authority on the other—Lord Krishna Textile Mills v. Its Workmen, AIR 1961 SC 860.

The nature of restriction imposed by Section 33 of the Industrial Disputes Act has been discussed by the Supreme Court in Atherton West and Co., Ltd. v. Suti M.I.I. Mazdoor Union, AIR 1953 SC 241 : 1953 SCR 780, which was a decision under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. Section 22 corresponds to Section 33 of the Industrial Disputes Act. A passage from the judgement in the above said case is reproduced below:

"It is clear that clause 23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the Board or an appeal before the Industrial Court and the employer, his agent or manager could only discharge or dismiss the workman with the written permission of the Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned. Even if such written permission was forthcoming the employer, his agent or manager might or might not discharge or dismiss the workman and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workman during the pendency of these proceedings. The Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned would institute an enquiry and come to the conclusion whether there was a prima facie case made out for the discharge or dismissal of the workmen and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed
discharge or dismissal of the workman. But he was not entrusted, as the Board or the Industrial Court would be, with the duty of coming to the conclusion whether the discharge or dismissal of the workman during the pendency of the proceedings was within the right of the employer, his agent or manager. The enquiry to be conducted by the Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned was not an enquiry into an industrial dispute as to the non-employment of the workman who was sought to be discharged or dismissed, which industrial dispute would only arise after an employer, his agent or manager discharged or dismissed the workman in accordance with the written permission obtained from the officer concerned. This was the only scope of the enquiry before the Regional Conciliation Officer or the Assistant Conciliation Officer concerned and the effect of the written permission was not to validate the discharge or dismissal but merely to remove the ban on the powers of the employer, his agent or manager to discharge or dismiss the workman during the pendency of the proceedings."

The scope of the enquiry before the Labour Appellate Tribunal under Section 22 of the Act has also been the subject-matter of decisions by this Court in *Atherton West & Co., Ltd. v. Suti Mill Mazdoor Union AIR 1953 SC 241*, and *Automobile Products of India Ltd., v. Rukmaji Bala,* (1955) 1 SCR 1241 : AIR 1955 SC 253. The Tribunal before whom an application is made under that section has not to adjudication upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting *mala fide* or is not resorting to any unfair practice or victimisation. It cannot impose any condition on the employer before such permission is granted nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate Tribunal, the workman would be entitled to have all the circumstances of the case scrutinised by the Tribunal and would be entitled to get the appropriate relief at the hands of the Tribunal. If, on the other hand, such permission is refused, the parties would be relegated to the *status quo* and the employer would not be able to deal out the punishment which he intends to do to the workman. Even then an industrial dispute might arise between the employer and the workman if the workman was not paid his due wages and other benefits. Such industrial dispute also would have to be referred to the appropriate Tribunal by the Government and the Tribunal would award to the workman the appropriate relief having regard to all the circumstances of the case,
The Tribunal before whom such an application for permission is made under Section 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a *prima facie* case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was *bona fide* or was actuated by the motive of victimisation. If on the materials before it the Tribunal came to the conclusion that fair enquiry was held by the management in the circumstances of the case and it had *bona fide* come to the conclusion that the workman was guilty of misconduct with which he had been charged a *prima facie* case would be made out by the employer and the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case, dealing out of such punishment by the employer to the workman after such permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal under Section 22 of the Act would be to either grant the permission or to refuse it—\textit{Laxmi Devi Sugar Mills v. Pandit Ram Swarup, AIR (1957) SC 82 : (1956-57) 11 FJR 273 : 1957 SCJ 46 : (1957) 1 LLJ 17 : 1956 SCR 916 : 1957 SCA 10.}

The scope and effect of the provisions of Sections 22 and 23 of the Act have been considered by the Supreme Court in \textit{Automobile Products of India Ltd. v. Rukmaji Bala, (1955) 1 SCR 1241 ; AIR 1955 SG 258.} “The object of Section 22”, observes Das, J, as the then was, in his judgement “like that of Section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing proceedings.”

As the judgment points out, the grievance made by the employee under this section is two-fold. In the first place his grievance is that the employer has taken action against him without complying with Section 22; and in the second place he has also the grievance on merits “which may be of much more seriousness and gravity for him”, \textit{viz.}, that in point of fact he has been unfairly dealt with and his interest has really been prejudicially affected by the high-handed act of the employer. The right given to the workman to move the authority by lodging a complaint in this case is a distinct benefit given to him. Under the ordinary law of master and servant, a master would be entitled to dispense with the services of his servant without having to obtain permission in that behalf from any statutory authority. Section 22 of the Act, however, introduced restriction on the master’s right. So long as an industrial dispute is pending between the employer and his employees, the employer cannot discharge or punish whether by dismissal or otherwise any of his employees concerned in the said dispute, without the requisite permission from the Appellate Tribunal. If the employer contravenes the provisions of Section 22, the employee is entitled to make a complaint in writing in the prescribed manner to the Appellate Tribunal and, on receiving such
complaint, the Appellate Tribunal has to decide the complaint as if it is an appeal pending before it. The breach of the provisions of Section 22 by the employer is in a sense a condition precedent for the exercise of the jurisdiction conferred on the Labour Appellate Tribunal by Section 23. As soon as this condition precedent is satisfied the employee is given an additional right of making the employer’s conduct the subject-matter of an industrial dispute without having to follow the normal procedure laid down in the Industrial Disputes Act. In any enquiry held under Section 23, two questions fall to be considered: Is the fact of contravention by the employer of the provisions of Section 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? If both these questions are answered in favour of the employee, the Appellate Tribunal would no doubt be entitled to pass an appropriate order in favour of the employee. If the first point is answered in favour of the employee, but on the second point the finding is that, on the merits, the order passed by the employer against the employee is justified, then the breach of Section 22 proved against the employer may ordinarily be regarded as a technical breach and it may not, unless there are compelling facts in favour of the employee, justify any substantial order of compensation in favour of the employee. It is unnecessary to add that, if the first issue is answered against the employee, nothing further can be done under Section 23. What orders would meet the ends of justice in case of a technical breach of Section 22 would necessarily be a question of fact to be determined in the light of the circumstances of each case—Equitable Coal Co., Ltd. v. Algu Singh, (1958) 1 LLJ 793 : AIR 1958 SC 761.

(b) Nature and Scope of Tribunal’s jurisdiction:

Section 33 (1) provides that during the pendency of such industrial proceedings no employer shall (a) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings, or (b) for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman connected with such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Thus the original unamended section has now been confined to cases where the proposed action on the part of the employer is in regard to a matter connected with a dispute pending before an industrial authority. Under Section 33 (1) if an employer wants to change the conditions of service in regard to a matter connected with a pending dispute he can do so only with the express permission in writing of the appropriate authority. Similarly, if he wants to take any action against an employee on the ground of an alleged misconduct connected with the pending dispute he cannot do so unless he obtains previous permission in writing of the appropriate authority.

The object of placing this ban on the employer’s right to take action pending adjudication of an industrial dispute has been considered by the Supreme Court on several occasions. In the case of Punjab National Bank Ltd. v. Its Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160, the Supreme Court examined its earlier decisions on the point and considered the nature of the enquiry which the appropriate authority can hold when
an application is made before it by the employer under Section 33 (1) and the extent of the jurisdiction which it can exercise in such an enquiry. "The purpose the Legislature had in view in enacting Section 33", it was held, "was to maintain the status quo by placing a ban on any action by the employer pending adjudication"; and it was added:

"But the jurisdiction conferred on the Industrial Tribunal by Section 33 was a limited one. Where a proper enquiry had been held and no victimisation or unfair labour practice had been resorted to, nor esorted to, the Tribunal in granting permis. sion had only to satisfy itself that there was a prima facie case against the employee and not to consider the propriety or adequacy of the proposed action."

In Lord Krishna Textile Mills v. Its Workmen, AIR 1961 SC 860 : (1961) 3 SCR 204 : (1961) 1 LLJ 211, it was observed:

"It is significant that the Tribunal can impose no conditions and must either grant permission or refuse it. It is also significant that the effect of the permission when granted was only to remove the ban imposed by Section 33; it does not necessarily validate the dismissal or prevent the said dismissal from being challenged in an industrial dispute. This position is not disputed. What is in dispute before us is the nature of the enquiry and the extent of the authority's jurisdiction in holding such an enquiry under Section 33 (2).

"Section 33 (2) deals with the alterations in the conditions of service as well as discharge or dismissal of workmen concerned in any pending dispute where such alteration or such discharge or dismissal is in regard to a matter not connected with the said pending dispute. This class of cases where the matter giving rise to the proposed action is unconnect- ed with the pending industrial dispute has now been taken out of the scope of Section 33 (1) and dealt with separately by Section 33 (2) and the following sub-sections of Section 33.

"It would be noticed that even during the pendency of an industrial dispute the employer's right is now recognised to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant standing orders. In regard to such alteration no application is required to be made and no approval required to be obtained. When an employer, however, wants to dismiss or discharge a workman for alleged misconduct not connected with the dispute he can do so in accordance with the Standing Orders but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no such workman shall be discharged or dismissed unless two conditions are satisfied; the first is that the employee concerned should have been paid wages for one month, and the second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer. It is plain that whereas in cases falling under Section 33 (1) no action can be taken by the employer unless he has obtained previously the express permission of the appropriate authority
in writing, in cases falling under sub-section (2) the employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission indicates that the ban imposed by Section 33 (2) is not as rigid or rigorous as that imposed by Section 33 (1). The jurisdiction to give or withhold permission is _prima facie_ wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 33 (2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the Standing Orders, whether the employee concerned has been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under Section 33(2) (4) no such approval is required and the right of the employer remains unaffected by any ban. Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33 (2) (6) cannot be wider and is, if at all, more limited than that permitted under Section 33(1) and in exercising its powers under Section 33 (2) the appropriate authority must bear in mind the departure deliberately made by the Legislature in separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33 (5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33 (2) (b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order.

"Section 33 (3) deals with cases of protected workmen and it assimilates cases of alterations of conditions of service or orders of discharge or dismissal proposed to be made or passed in respect of them to cases falling under Section 33 (1); in other words, where an employer wants to alter conditions of service in regard to a protected workman, or to pass an order of discharge or dismissal against him, a ban is imposed on his rights to take such action in the same manner in which it has been imposed under Section 33 (1). Subsection (4) provides for the recognition of protected workmen, and limits their number as therein indicated; and subsection (5) requires that where an employer has made an application under the proviso to sub-section (2), the authority concerned shall without delay hear such application and pass as expeditiously as possible such orders in relation thereto as it deems fit. This provision brings out the legislative intention that, though an express permission in writing is not required in cases falling under the proviso to Section 33 (2) (b), it is desirable that there should not be any time-lag between the action taken by the employer and the order passed by the appropriate authority in an enquiry under the said proviso"—
The settled position in law therefore is that permission should be refused if the Tribunal is satisfied that the management’s action is not *bona fide* or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman’s misconduct that the management has not acted *bona fide*. A finding that the management has acted *bona fide* will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every case therefore it would be proper for the Tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether on the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion.

In deciding whether the permission to award the proposed punishment of discharge should be granted or not, it becomes the duty of the Tribunal to see whether in holding the inquiry the management had been guilty of any unfair labour practice or victimisation, whether principles of natural justice were observed and ultimately whether a *prima facie* case was made out on the evidence taken in the enquiry and the management was acting *bona fide*—*Banglore Woollen & Cotton Mills v. Its Workmen*, AIR 1960 SC 1352 : (1960) 2 LLJ 39 : 18 FJR 93.

It has been consistently held that in exercising its jurisdiction under Section 33 of the Act the tribunal has to consider whether a *prima facie* case has been made out by the employer for the dismissal of the employee. If the employer has held a proper enquiry into the alleged misconduct of the employee and it does not appear that the proposed dismissal amounts to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a *prima facie* case has been made out or not. In such proceedings it is not open to the tribunal to substitute its judgment in the matter of punishment. It cannot enquire whether the dismissal for which permission is asked is unduly severe. It is no doubt true that mere participation in an alleged strike may not always deserve dismissal but this question had hardly any relevance when the tribunal is considering an application under this section—*Caltex (India) Ltd. v. Their Workmen*, (1960-61) 18 FJR 52 : (1960) 2 LLJ 12 : AIR 1960 SC 1962 referred.

Where an application is made by the employer for the requisite permission under Section 33, the jurisdiction of the Tribunal in dealing with such an application is limited. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or unfair labour practice, the Tribunal has to limit the enquiry only to the question whether a *prima facie* case has been made out or not. The Tribunal has either to grant the permission or refuse it according as it holds that a *prima facie* case is or is not made out by the employer. The Tribunal cannot grant permission subject to certain conditions which it

In dealing with industrial disputes under the Industrial Disputes Act and other similar legislation, industrial tribunals, labour courts, appellate tribunals and finally the Supreme Court have by a series of decisions laid down the law that even though under contract law, pure and simple, an employee may be liable to dismissal, without anything more, industrial adjudication would set aside the order of dismissal and direct reinstatement of the workmen where dismissal was made without proper and fair enquiry by the management or where even if such enquiry had been held the decision of the enquiring officer was perverse or the action of the management was \textit{mala fide} or amounted to unfair labour practice or victimisation, subject to this that even where no enquiry had been held or the enquiry had not been properly held the employer would have an opportunity of establishing its case for the dismissal of the workman by adducing evidence before an industrial tribunal—Provincial Transport Services v. State Industrial Court, AIR 1963 SC 114.

In Delhi Cloth and General Mills Co. v. Ludh Budh Singh, AIR 1972 SC 1031, it was contended that the jurisdiction of the Tribunal, as laid down by the Supreme Court in several decisions, was only to satisfy itself whether a \textit{prima facie} case has been made out by the employer and that the employer has not acted \textit{mala fide} and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the Tribunal comes to the conclusion that the management has not acted \textit{mala fide} and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the evidence led before it, the Tribunal cannot substitute its own judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion on the evidence adduced before the Enquiry Officer.

The contention was accepted by the Supreme Court and it was observed:

"The Industrial Tribunal has to consider whether the appellant has made out a \textit{prima facie} case for permission being granted for the action proposed to be taken against the workmen, for that purpose the Tribunal was justified in considering the nature of the allegations made against the workman, the findings recorded by the Enquiry Officer and the materials that were available before the Enquiry Officer, on the basis of which such findings had been recorded. Accepting the contention of Mr. Anand that it was within the jurisdiction of the Enquiry Officer to accept the evidence of Sujan Singh and Rampal will be over-simplifying the matter and denying the legitimate jurisdiction of the Tribunal in such matters to consider whether the findings are such as no reasonable person could have arrived at on the basis of the materials before the Enquiry Officer. If the materials before the Enquiry Officer are such, from which the conclusion arrived at by the Enquiry Officer could not have been arrived at by a reasonable person then it is needless to state, as laid down by this Court in (1969) 1 SCR 733 : AIR 1969 SC 983, that the finding has to be characterised as perverse."
If so the Industrial Tribunal has ample jurisdiction to interfere with such a finding.

"We have already pointed out that the Tribunal has not taken into account the admissions made by Sujan Singh in his cross-examination where he has not attributed any acts of destruction or violence to the respondent. The Enquiry Officer has proceeded on the basis that though Rampal declined to participate in the enquiry at an earlier stage, that circumstance does not affect his veracity when he has later on appeared to give evidence. This observation of the Enquiry Officer clearly shows that he has not at all cared to give effect to the record made by him, on June 13, 1966 to the effect that Rampal had refused to give evidence because he had no knowledge about the occurrence. If a person had no knowledge, on June 13, 1966, that is a matter which had to be very carefully borne in mind by the Enquiry Officer when he again came to give evidence about the incident. This aspect has not been given due consideration by the Enquiry Officer. Therefore, a finding recorded by an Enquiry Officer ignoring the material admissions made by a party in favour of an accused, is not a question of mere appreciation of evidence but really recording a finding contrary to the evidence adduced before him. Even otherwise, the findings recorded by the Enquiry Officer are rather very strange. He does not hold the respondent guilty of any act of violence or of destroying the mill’s property or of obstructing the workmen from going to their place of work. There were the allegations of misconduct in the charge-sheet. But curiously, the Enquiry Officer proceeds on the basis that because the workman was in the crowd, that by itself is enough to find him guilty of the charges of obstructing the mill-workers and destroying mill property. The Enquiry Officer has also committed another mistake when he proceeded on the basis that as the workman has not adduced any evidence in his defence, it is not open to him to contend that he was not responsible for the acts of destruction and damages. This observation clearly shows that elementary principle of jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty.

"The above aspects, in our opinion, have been rightly taken into account by the Industrial Tribunal when it characterised the finding recorded by the Enquiry Officer as being such that no reasonable person will come to, on the material on record. Therefore, the Industrial Tribunal was perfectly justified in coming to the conclusion that the enquiry proceedings are vitiated by violation of the principles of natural justice and that the appellant has not made out a prima facie case for grant of the permission to dismiss the respondent. Therefore the first contention of Mr. Anand will have to be rejected."

A similar aspect was dealt with in Delhi Cotton and General Mills Co. v. Ganesh Dutta, [C.A. No. 982 of 1967, dated 17-12-1971] 41 FJR 4 (SC). It was observed therein:
"The nature of the jurisdiction exercised by an Industrial Tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide.—Vide Punjab National Bank, Ltd. v. Its Workmen, (1960) 1 SCR 804 : AIR 1960 SC 160 ; Bharat Sugar Mills Ltd. v. Jai Singh, (1961) 2 Lab LJ 644 (SC) ; Management of Ritz Theatre (P.) Ltd. v. Its Workmen, (1963) 3 SCR 461 : AIR 1963 SC 295 and Mysore Steel Works v. Jintender Chandra Kar, (1971) 1 Lab LJ 543 (SC).

In Martin Burn Ltd. v. R. N. Banerjee, 1958 SCR 514 : AIR 1958 SC 79, has been laid down that once an Industrial Tribunal is satisfied that the conclusion arrived at by the Enquiry Officer, on the evidence led before it, is a possible one, the Tribunal has no jurisdiction to substitute its own judgment for the judgment of the Enquiry Officer, though the Tribunal may itself have arrived at a different conclusion on the same materials.

It has been further laid down in the Lord Krishna Textile Mills v. Its Workmen, (1961) 3 SCR 204 : AIR 1961 SC 860, as follows:

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fail to be considered by an appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as under Section 33 (2) (b). It is conceivable that even in holding an enquiry under Section. 33 (2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be recorded to the employer or not; but is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

We may also refer to the decision in Central Bank of India Ltd., New Delhi v. Prakash Chand Jain, (1969) 1 SCR 735 : AIR 1969 SC 983, where after a reference to the principles laid down in (1961) 3 SCR 204 : AIR 1961 SC 860, it has been pointed out that the test of perversity of a finding recorded by a Tribunal or an Enquiry Officer will be that the said finding is not supported by any legal evidence at all. It has been further pointed out that a finding recorded by a domestic Tribunal like an Enquiry Officer will also be held to be perverse in those cases where the finding arrived at by the domestic Tribunal is one which no reasonable person could have arrived at on the material before it. The position was summed up in the said decision as follows:
Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. In each of these cases the findings are treated as perverse.

In Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory, (1965) 3 SCR 588 : AIR 1965 SC 1803, the Supreme Court had again to consider the nature of the jurisdiction exercised by a Tribunal. The management therein had terminated the services of some of its workmen without holding any enquiry as required by its Standing Orders. The legality of termination of the services of the workmen was referred to for adjudication to the Industrial Tribunal under the Act. The management led in evidence before the Tribunal justifying its action in terminating the services of the workmen for misconduct. The workmen also led in evidence contra. The Tribunal after consideration of the evidence adduced before it held that the action of the management in terminating the services of the workmen was proper. Before the Supreme Court it was urged on behalf of the workmen that as the management had given no charge-sheets and had held no enquiry as required by the Standing Orders, it was not open to the management to justify before the Tribunal its order discharging the workmen and that the Tribunal had no jurisdiction to consider the claim of the management on merits. The contention of the workmen was rejected by the Court as follows:

It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit, which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (See Indian Iron & Steel Co. v. Their Workmen, 1958 SCR 667 : AIR 1958 SC 130) but also to satisfy itself on the facts adduced by the employer whether the dismissal or discharge was justified. We may in this connection refer to M/s. Sasa Musa Sugar Works (P.) Limited v. Shobrat Khan, 1959 (Supp) 2SCR 836 : AIR 1959 SC 923; Phulbari Tea Estate v. Its Workmen, (1960) 1 SCR 32 : (AIR 1959 SC 1111 and (1960) 1 SCR 806 : AIR 1960 SC 160. The three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Shri Jai Singh, and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belsund Sugar Co., 1954 Lab AC 697. It was pointed out that the impert, effect of commission to hold an enquiry was merely this; that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have been made out. It is true that three of these cases, except Phulbari Tea Estate's case, [(1960) 1 SCR 32 :AIR 1959 SC 1111] were on application under Section 33
of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the Tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case, if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal, or discharge was proper, Phulbari Tea Estate's case was on a reference under Section 10 and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.

The reasons for allowing an employer to lead evidence before the tribunal to justify his action have been stated as under:

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the domestic enquiry is invalid and those where no enquiry has in fact been held. We must, therefore, reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal."

The recent decision of the Supreme Court bearing on this matter is—
That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of the workmen was set aside.
On appeal by the management, the Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. The Supreme Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workmen concerned is justified. It was observed as follows:

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was also held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant therein had made no such request; and, therefore, the contention that the Tribunal should have given an opportunity suo motu to adduce evidence was not accepted, in the circumstances of that case.

We have referred to decisions illustrative of various aspects—M/s. Bharat Sugar Mills Ltd. v. Jai Singh, (1962) 3 SCR 684, was an instance where a domestic enquiry was held, but it was not accepted by the Tribunal as a proper enquiry. The management led-in evidence to justify its action, which was accepted by the Tribunal. The contention of the workmen that when once the domestic enquiry has been held to be defective by the Tribunal, there was no right in the management to adduce evidence to justify its action, was rejected by the Court.

The Management of Ritz Theatre (P.) Ltd. v. Its Workmen, (1963) 3 SCR 461 : AIR 1963 SC 295 was an instance where a domestic enquiry had been held by the management. But when the dispute regarding the termination of the services of the workmen on the basis of such an enquiry was referred to the
Industrial Tribunal even when the trial started the management adduced evidence justifying its action. The management also relied upon the enquiry proceedings conducted by it. The Tribunal did not consider the validity of the domestic enquiry, but, on the other hand, held against the management on the evidence before it. The grievance of the management that the Tribunal should have first considered the validity of the domestic enquiry was accepted by the Supreme Court.

**Workmen of Motipur Sugar Factory (Private) Ltd. v. Motipur Sugar Factory, private Ltd.,** (1965) 3 SCR 588 : AIR 1965 SC 1803, was an instance where no enquiry at all had been held by the management as per its Standing Orders before terminating the services of the employees. But evidence was adduced before the Tribunal by the management justifying its action and that evidence was accepted by the Tribunal. The contention of the workmen that as no enquiry had been held by the management before passing the order of termination, it was not open to the management to adduce evidence before the Tribunal justifying its action, was rejected by the Supreme Court.

**State Bank of India v. R. K. Jain** (1972), 1 SCR 755 : AIR 1972 SC 136, was an instance where an enquiry was conducted by the management, but it was held to be defective by the Tribunal and in consequence the order terminating the services of the workmen was set aside. No permission to adduce evidence before the Tribunal justifying its action was asked for by the management. The grievance of the management before this Court, that the Tribunal should have given such an opportunity *suo motu*, was not accepted, in the circumstances of that case.

From the above decisions the following principles broadly emerge:

(1) If no domestic enquiry had been held by the management or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, than the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.
(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

In Delhi cloth & General Mills Co. v. Ludh Budp Singh, AIR 1972 SC 1031, the Supreme Court considered the above principles and observed:—

"In our opinion, the application filed by the management for permission to adduce evidence was highly belated. We have already emphasised that the enquiry proceeding before the Tribunal is a composite one, though the jurisdiction of the Tribunal to consider the validity of the domestic enquiry and the evidence adduced by the management before it, are to be considered in
two stages. It is no doubt true that the management has got a right to adduce evidence before the Tribunal in case the domestic enquiry is held to be vitiated. The Tribunal derives jurisdiction to deal with the merits of the dispute only if it has held that the domestic enquiry has not been held properly. But the two stages in which the Tribunal has to conduct the enquiry are in the same proceeding which relates to the consideration of the dispute regarding the validity of the action taken by the management. Therefore, if the management wants to avail itself of the right, that it has in law of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. An enquiry into the preliminary issue is in the course of the proceedings and the opportunity given to the management, after a decision on the preliminary issue, is really a continuation of the same proceedings before the Tribunal”.

In Delhi Cloth and General Mills Co. Ltd. v. Thejvir Singh, AIR 1972 SG 2128, the Supreme Court observed:

“Coming to the second contention which relates to the request made by the management in its application dated March 15, 1966 for being given an opportunity to adduce evidence if the domestic enquiry is held to be defective, we agree with the Tribunal when it rejected the application but however, we do not agree with the reasons given by the Tribunal for rejecting the same. In its order the Tribunal has stated that if the management is allowed to adduce evidence, it will mean that it can coach up its witnesses so as to give improved statements before the Tribunal. This is not a proper approach to be made when dealing with such an application. The nature of the evidence to be let in before the Tribunal is entirely a matter for the management and if such witnesses give a version different from the one give in the domestic enquiry, then it will be a matter for the Tribunal to consider these aspects in appreciating their evidence.”

When the matter again came up before the Supreme Court in the Workmen of M/s Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Management and others, the following broad principles were laid down:

1. The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

2. Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

3. When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence
adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or *mala fide*.

4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence *contra*.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a *prima facie* case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such case, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

6. The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

7. It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee. Once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

8. An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

9. Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate v. The Workmen* (1971) 1 SCC 743: AIR 1971 SC 2171, within the judicial decision of a Labour Court or Tribunal.

(c) Tribunal cannot substitute another punishment—No enquiry—Management can still adduce evidence before Tribunal:

It is not open to the industrial tribunal when it is asked to give permission for dismissal of an employee to substitute some other kind of punishment and give permission for that.
If the management did not hold the enquiry which normally it should hold before applying to the Tribunal for permission to dismiss an employee, he could make good the defect by producing all relevant evidence which would have been examined at the enquiry before the Tribunal. In such a case the Tribunal would decide whether permission should be granted or not—Sasa Musa Sugar Works (Private) Ltd. v. Shobrati Khan, (1959) 2 LLJ 388 : (1959-60) 17 FJR 1 : AIR 1959 SC 923.

(d) Tribunal not an enquiry body—Tribunal only to be satisfied that management’s action is bona fide and that a prima facie case has been made out:

The proceedings under Section 33 are not an enquiry by the Industrial Tribunal into the rights or wrongs of the dismissal, all that it has to see is whether a *prima facie* case has been made out or not for the lifting the ban imposed by the section and whether a fair enquiry has been made by the employer in which he came to the *bona fide* conclusion that the employee was guilty of misconduct. Once it found these conditions in favour of the employer, it is bound to grant the permission sought for by him. It is thus clear that proceedings under Section 33 are not in the nature of an enquiry into the conduct of the employee by the industrial tribunal.

When the Standing Order uses the words “pending enquiry” these words can only refer to the enquiry by the employer into the conduct of the employee. Standing Orders are concerned with employers and employees and not with tribunals. Therefore, when an enquiry is mentioned on the Standing Order it can in the context only refer to the enquiry by the employer and not to a proceeding under Section 33 before the Tribunal.

When the suspension without pay took place after the application under Section 33 had been made and was pending permission under the section and the Industrial Tribunal accorded the permission, there was no question of the employer being paid during the period of suspension without pay—Rampur Colliery v. Bhuban Singh, (1959-60) 16 FJR 176 : (1959) 2 LLJ 231 : AIR 1959 SC 833.

(e) Employer seeking permission to dismiss employee for misconduct as per clause 18 (b) (viii) of Standing Orders—Subsequent application by employer to discharge employee under clause 17 (a)—Tribunal allowing subsequent application—Tribunal’s order not appealable.

Where, while an industrial dispute was pending between the appellant and its workmen, the appellant files an application under Section 33 of the Industrial Disputes Act, 1947, seeking permission of the Industrial Tribunal to dismiss the respondents on the ground of misconduct as per Cl. 17 (b) (viii) of the appellant’s Standing Order but later makes another application asking for permission of the tribunal to discharge the respondents from its employ under Cl. 14 (a) of the Standing Orders instead of dismissing them under Cl. 17 (b) (viii), relying upon the facts and circumstances set out in the original application, the second application was in substance a new application and it was competent to the Industrial Tribunal to allow the appellant to do so. It is competent to an Industrial Tribunal to allow the amendment of the prayer in the original application so as to enable the employer to discharge a workman instead of visiting him with punish-
ment of dismissal, if the Industrial Tribunal was satisfied as to the bona fides of the action of the employer. In such a case no question of law, much less a substantial question of law could arise in the appeal if filed by the respondents against the decision of the Industrial Tribunal and the Labour Appellate Tribunal would be, clearly in error if it entertained the appeal. —Patna Electric Supply Co. Ltd., Patna v. Shri Bali Rai, (1957-58) 13 FJR 394 : AIR 1958 SC 204 : (1958) 1 LLJ 257.

(f) Violation of principles of natural justice by management—Duty of tribunal:

Where the principles of natural justice were violated and the domestic enquiry held by the management was not valid, the Tribunal had no option but to go into the question whether the management case had been made out before the tribunal or not. Once the tribunal holds that the domestic enquiry was conducted in violation of principles of natural justice, it must consider for itself on the evidence adduced before it whether the dismissal was justified. Then there is no question of considering only whether there was a prima facie case for dismissal.

If the domestic enquiry is conducted in violation of principles of natural justice, evidence must be adduced before the tribunal by the employer to obtain the approval of the tribunal to the dismissal order passed by it. This evidence must be adduced in the manner evidence is normally adduced before the tribunal i.e. witnesses must be examined before it. Unless the parties otherwise agree and the tribunal assents to this, it is not the proper way to tender the record of evidence led before the domestic enquiry and ask the tribunal to treat it as evidence before it—K. N. Baruah v. Budle Beta and another, (1967) 15 FLR 40 (SC).

(g) Application by employer for approval of dismissal of employee survives decision of main industrial dispute:

If as a result of the pendency of an industrial dispute between an employer and his employees, the employer is required to apply for approval of the dismissal of his employee under Section 33 (2) (b), such an application survives if the main industrial dispute is meanwhile finally decided and an award pronounced on it. Approval by prescribed authority makes the order of discharge or dismissal effective; in the absence of approval, such an order is invalid and inoperative in law. The application of the appellant can, in a sense, be treated as an incidental proceedings, but it is a separate proceeding all the same, and in that sense, it will be governed by the provisions of Section 33 (2) (b) as an independent proceeding. It is not an interlocutory proceeding properly so called in its full sense and significance; it is a proceeding between the employer and his employee who was, no doubt, concerned with the main industrial dispute along with other employees; but it is nevertheless a proceeding between two parties in respect of a matter not covered by the said main dispute. What is the order that should be passed in such a proceeding is a question which cannot be satisfactorily answered, unless it is held that the proceeding in question must proceed according to law and dealt with as such. Consequently, a proceeding validly commenced under Section 33 (2) would not automatically come to an end merely because the main industrial dispute has in the meanwhile been finally determined—Tata Iron and Steel Co., Ltd. v. S. N. Modak, (1963) 2 SCA 681 : (1963) 2 SCJ 858 : (1965) 2 SCWR 516 : (1965) 11 Fac LR 61 : (1965) 2 LLJ 128 : AIR. (1966) SC 380.
(h) Dismissal payment of—Wages and application for approval—If part of same transaction:

The proviso to Section 33 (2) (b) contemplates three things: (i) dismissal or discharge; (ii) payment of wages; and (iii) making of an application for approval to be simultaneous and to be part of the same transaction. The object is that when the employer takes action under Section 33 (2) (b) by dismissing or discharging an employee he should immediately make payment to him or offer payment of wages for one month and also make an application to the Tribunal or the Labour Court, as the case may be, for approval. The employers conduct should show that the three things contemplated under the proviso are parts of the same transaction. Similar action has to be taken in these matters but it does not mean that all the three things mentioned before should be done on the same day. It is the conduct of the employer that has to be considered from the point of view of finding out whether the dismissal or discharge, payment of wages and making of the application for the approval from a part of the same transaction. A difference of a day in doing one thing or the other may not be of material consequence so long as it is clear that the employer meant to do all the three things as part of one and the same transaction. No hard and fast rule can be laid down in these matters. Each case must be decided on its own fact—Calcutta Transport Corporation v. Mohd. Noor Alam, AIR 1973 SC 1404.
CHAPTER IV

RETRENCHMENT AND LAY-OFF

SYNOPSIS

1. What is lay-off?
2. Compensation for lay-off.
3. What is retrenchment?
4. Retrenchment when justified and when not justified.
5. Rule of retrenchment.
6. Mala fide retrenchment.
7. Retrenchment compensation is different from gratuity.
8. Object of retrenchment compensation.
9. Right of employer to get retrenchment compensation only of the employer can pay.
10. Non-compliance with section 25-F (b) of Industrial Disputes Act—Effect.
11. Section 25-F (c), Industrial Disputes Act is not in condition precedent.

1. What is lay-off?

The word “lay-off” is not the same thing as the order of dismissal. It is more akin to an order of suspension. It is also different from discharge on closure of business and arises out of an employer’s failure, refusal or inability to give employment to a workman on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason. Failure, etc. to give employment to all the workmen on account of the business is not lay-off. The words “any other reason” in the definition of lay-off mean reasons analogous to those already stated and do not include closure of the whole business.

The very essence of a lay-off is that it is a temporary stoppage. It is equally the essence of lay-off that within a reasonable period of time the employer expects that the business or industry would continue and his employees who have been laid off will be restored to their full rights as employees. At the same time, it is clear that the Act does not compel the workmen to continue in the state of affairs where the contract between them and their employer is merely suspended and where they get no wages. But it is not an accepted contention which stresses that a lay-off is only permissible so long as it is for a fixed period of time and does not extend beyond a month or two.

Whether a lay-off at any particular time is proper and legal must depend upon the circumstances of each case. The law does not lay down any definite period, as indeed it could not, and therefore, there is no principle of law involved in the contention that in this particular case the lay-off which was for one year was illegal or improper.

It may be that the Legislature might have taken the view that normally a lay-off would not be for a very long period and it may be pointed out that it is possible for the interest of the workmen to be protected by standing orders which may provide that a lay-off should not be for a longer period than specified in the relevant standing order. But from this possible lacuna in Section 25-C, it cannot possibly be inferred that the Legislature has
provided a time-limit for a lay-off and has provided that when the time limit expires the lay-off becomes illegal. It is always open to the employee at any particular point of time to contend before the appropriate authority that the lay-off is no longer legal, no longer satisfies the conditions of the definition and that they are entitled to be retrenched and paid retrenchment compensation.

The whole of industrial law in India today constitutes an inroad upon the common law rights of the employer to terminate the services of an employee at any time even though the business or his industry was only temporarily stopped. Thus, Chapter V-A of the Industrial Disputes Act constitutes a serious encroachment upon the employer's rights under the common law. Now the common law right of the employer is curtailed and limited if he is bound to lay-off his employee under certain circumstances. Instead of being free to dispense with his services, if there is a temporary breakdown and the conditions laid down in the Act prevail, he cannot put an end to the contract between himself and his employee, but all that he can do is to suspend the contract for the time being and the employee is entitled to resume his services and to receive full wages as soon as that temporary stoppage has come to an end.

Where an employee, as a matter of fact under his contract of work with his employer, has no right whatsoever for the period during which the business or industry is suspended, he is liable to be dismissed summarily. Hence, if any obligation, cast upon the employer under Chapter V-A far from being in derogation of any right of the employee, confers a new right upon him during the time when the circumstances mentioned in the definition of lay-off in Section 2 (hhh) continues to exist.

The word 'lay-off' is defined in Section 2 (hhh) of the Industrial Disputes Act as under:

"(hhh) 'Lay off' (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdowns of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched;

Explanation—Every workman whose name is borne on the muster rolls of the industrial establishment and who represents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment as the commencement of any shift for any day is asked to present himself for the purpose during the second-half of the shift for the day and is given employment, then he shall be deemed to have been laid-off only for one-half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second-half of the 'shift' for the day and
shall be entitled to full basic wages and dearness allowance for that part of the day”.

2. Compensation for lay-off

It cannot be contended that lay-off is not permissible without the payment of compensation. Compliance with provisions of Chapter V-A of the Industrial Act is not a condition precedent to the laying off of a workman. Under the provisions of Chapter V-A workmen who have been laid off would be entitled to recover compensation according to the provisions of the Act. No doubt the standing orders have to be read along with the provision of Chapter V-A, but it does not follow in case of a lay-off that compensation must be actually paid before a workman is laid off. The Standing Orders read with Chapter V-A now create a right in favour of the workman who has been laid off to claim compensation. They do not create a right in his favour of being paid compensation before he is laid off. He can work out his right independently and also the employer can exercise his right in favour of laying off independently of paying compensation.

The right of the workmen cannot be taken away even when the lay-off is due to the orders of the Government curtailing the working hours in the industry. Social justice demands that workmen forced into unemployment should receive compensation. —Rashtriya Mill Mazdoor Sangh, Bombay v. Applio Mill Ltd., AIR 1960 SC 819: (1960) 3 S. C. R. 213.

Where the two units owned by the same employer form “one establishment”, the workmen in one unit who are laid off as a result of shortage of material caused by a strike in the other unit, lose their claim to lay-off compensation—Associated Cement Co., Ltd. (Chaubasa Cement Works) v. Their Workmen, AIR 1960 SC 56: (1960) 1 SCR 703.

3. What is retrenchment?

The expression “retrenchment” is defined by Section 2 (oo) of the Industrial Disputes Act as under:

“2 (oo) ‘Retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health.”

Where the definition clause is so worded that the requirement laid down therein are fulfilled, whether, the court gives a restricted or a wider meaning; to the extent there is an ambiguity and the definition clause is readily capable of more than one interpretation. The Court must then see what light is thrown on the true view to be taken of the definition clause by other provisions of the Act or even by the aim and provisions of subse-
quent statutes amending the Act or dealing with same subject-matter. Interpreted in harmony with rest of the Industrial Disputes Act, 1947, the term "retrenchment" as defined in the Act has no wider meaning than the ordinary accepted connotation of the word; it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as punishment for disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business, or where the services of all workmen are terminated by the employer on account of the business or undertaking being taken over by another employer—Hariprasad Shivshankar v. A. D. Divelkar, (1957) 11 FJR 317; (1957) 1 LLJ 243; AIR 1957 SC 121.

4. Retrenchment, when justified and when not justified:

In dealing with the question of retrenchment it is necessary to bear in mind that the management can retrench the employees only for proper reasons. It is undoubtedly true that it is for management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertaking of any employer must always be left to be determined by the management in its discretion, and so, occasions may arise when the number of employees may exceed the reasonable and legitimate needs of the undertaking. In such a case, if any workmen become surplus, it would be open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and bona fide adopted by the management, or of other industrial or trade reasons. In all these cases, the management would be justified in effecting retrenchment in its labour force. Thus, though the right of the management to effect retrenchment cannot normally be questioned, when a dispute arises before an Industrial Court in regard to the validity of any retrenchment it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason.

Where the undertaking was in the possession and management of the vendee as an owner and that the conduct of the parties already showed that the vendee was the employer and workmen working in the undertaking including the retrenched workmen were the vendee's employees, then whether or not the transfer of management took place before retrenchment, there can be little doubt that the vendee before the date of retrenchment accepted the employers as its workmen and became answerable to them in character. The impugned retrenchment, in the instant case by the vendor cannot, therefore, be taken to attract the operation of Section 25-FF at all. It is not retrenchment consequent upon transfer; it is retrenchment effected after the transfer was made and it had been brought about by the transferee who, in the meanwhile, had become the employer of the retrenched workmen. Therefore the Tribunal erred in law in holding that the impugned retrenchment had been properly effected by the vendor and that the only relief to which the retrenched employees were entitled was compensation and notice under Section 25-FF of the Act. The retrenchment of the workmen being invalid in law cannot be said to have terminated the relationship of employer and employee between the vendee and the retrenched workmen concerned. They are accordingly entitled to
In enacting Section 25-F the Legislature standardised the payment of compensation to workmen retrenched in the normal or ordinary sense in an existing or continuous industry by adopting a simple yard-stick of the length of service of the retrenched workmen doing away with the perplexing variegation of factors for determining the appropriate relief in each case. In Hari Prasad Shiv Shankar Shukla v. A. D. Divekar, 1957 SCR 121 : AIR 1957 SG 121 it was not intended by the Legislature to be applicable to bona fide closure of business. This decision led to amendment of the Act by the Parliament. In 1957, Section 25-FFF was inserted in order to give benefit of Section 25-F to the retrenched workmen where an undertaking is closed down "for any reason whatsoever".

According to sub-section (2) of Section 25-FFF it is quite clear that in case of closure of the categories of undertakings as mentioned therein, no workman employed in those undertakings can claim compensation under clause (b) of Section 25-F. The language of Section 25-FFF (2) is plain and unambiguous—Management of Hindustan Steel Ltd. v. The Workmen and others, AIR 1973 SG 878.

Once it is conceded that there was an occasion for effecting economy, the conclusion is inescapable that the conduct of the employer in closing the department and dividing its work amongst its other employees cannot be reasonably characterized as improper, or as amounting to an unfair labour practice.

In the instant case it was held that the direction made by the Industrial Tribunal for reinstatement of the retrenched employee on the ground that some other employees should have been retrenched was unjustified. It was also held that Section 25-G of the Industrial Disputes Act was not contravened in the instant case—Hotel Ambassador v. Its Workmen, (1963) 7 FLR 140 : (1963) 2 LLJ 87 : (1963-64) 25 FJR 44 (SC).

In D. Macropollay & Co. v. Their Employees' Union, (1958) 2 Lab LJ 492 : AIR 1958 SC 1012, the Supreme Court held that if a scheme of reorganization has been adopted by an employer for reasons of economy or convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the scheme was adopted by the employer bona fide or not. In the circumstances, an industrial tribunal considering the issue relating to retrenchment, should not attach any importance to the consequences of reorganisation. The resulting discharge and retrenchment would have to be considered as an inevitable, though unfortunate, consequence of such a scheme. It also held that where the finding of a tribunal is based on wrong and erroneous assumption of certain material facts, such a finding would be perverse. A decision in Ghatge & Patil Concern's Employees' Union v. Ghatge & Patil (Transport) (P.) Ltd., (1968) 1 SCR 300 : AIR 1968 SC 503, was a case of an employer reorganising his business from conducting a transport business himself through employees engaged by him to conducting it through a contract system whereunder he let out his motor trucks to persons who, before his change, were his
employees. Admittedly, this was done because he could not implement some of the provisions of the Motor Transport Workers Act, 1961. The change over to the contract system was held by the Tribunal not to have been effected for victimising the employees. The employees had voluntarily resigned and hired the employer’s trucks on contract basis. It was held that a person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has without the arrangement, no proper means of obeying. In Workmen of Subong Tea Estate v. The Outgoing Management of Subong Tea Estate, (1964) 5 SCR 602 : AIR 1967 SC 420, the Court laid down the following propositions : (1) that the management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice, (2) that it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion, (3) if the number of employees exceeded the reasonable and legitimate needs of the undertaking it is open to the management to retrench them, (4) workmen may become surplus on the ground of rationalisation or economy reasonably or bona fide adopted by the management or on the ground of other industrial or trade reasons, and (5) the right to effect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as justified on proper reasons, i.e. that it was not capricious or without rhyme or reason.

In M/s. Panj & Co. Ltd. v. P. C. Pal, Judge of the Second Industrial Tribunal, Calcutta & others, 1970 Lab. IC 1071 AIR 1970 SC 1334, the Supreme Court observed:

“It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the matter he considers best. So long as that is done bona fide it is no competent of a tribunal to question its propriety. If a scheme for such reorganization results in surplusage of employees no employer is expected to carry the burden of such economic dead-weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and, therefore, provided by Section 25-F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have adopted by the employer.”

5. Rule of retrenchment

It may be conceded that if a case for retrenchment is made out it would normally be for the employer to decide which of the employees should be retrenched but there can be no doubt that the ordinary industrial rule of retrenchment is ‘last come, first go’ and where other things are equal this rule has to be followed by the employer in effecting retrenchment. It may, however, be added that when it is stated that other things being equal, the rule ‘last come, first go’ must be applied, it is not intended to deny freedom to the employer to depart from the said rule for sufficient
and valid reasons. The employer may take into account consideration of efficiency and trustworthy character of the employees, and if he is satisfied that a person with a long service is inefficient, unreliable or habitually irregular in the discharge of his duties, it would be open to him to retrench his services while retaining in his employment, employees who are more efficient, reliable and regular though they may be junior in service to the retrenched workmen. Normally, where the rule is thus departed from there should be reliable evidence preferably in the recorded history of the workmen concerned showing their inefficiency, unreliability or habitual irregularity. It is not as if industrial tribunals insist inexorable upon compliance with the industrial rule of retrenchment; what they insist on is on their being satisfied that whatever the rule is departed from the departure is justified by sound and valid reasons. It, therefore, follows that, wherever it is proved that the rule in question has been departed from, the employer must satisfy the Industrial Tribunal that the departure was justified; and in that sense the onus would undoubtedly be on the employer. In dealing with case of retrenchment it is essential to remember that the industrial rule of 'first come, first go' is intended to afford a very healthy safeguard against discrimination of workmen in the matter of retrenchment, and so, though the employer may depart from the rule, he should be able to justify the departure before the Industrial Tribunal whenever an industrial dispute is raised by retrenched workmen on the ground that their impugned retrenchment amounts to unfair labour practice of victimisation—Swadeshimitrans Ltd. v. Their Workmen, AIR 1960 SC 762: 1960 SCJ 658: (1960) 1 LLJ 504.

If the preferential treatment given to juniors ignores the well-recognised principle in the Industrial law that "the first come, last go" without any acceptable or sound reasoning, a Tribunal or an adjudicator will be well justified to hold that the action of the management is not bona fide. Unless there is a clear case made out by the management that a particular clerk doing a job similar to that of other clerks in other departments should be retained in preference to his senior clerks, the principle followed in Industrial law should be applied—J. K. Iron & Steel Co. v. Its Workmen, AIR 1960 SC 1238: (1960) 2 LLJ 64: (1960-61) 19 FJR 29.

Wherever it is proved that the rule of retrenchment has been departed from, the employer must satisfy the Industrial Tribunal that the departure was justified; and in that sense the onus would undoubtedly be on the employer—M/s. Swadeshimitrans Limited, v. Their Workmen, (1960) 2 SCR 144: 1960 SCJ 658: (1960) 1 LLJ 504: (1960-61) 19 FJR 46: AIR 1960 SC 762.

6. Mala fide retrenchment

The position under the industrial law seems to be fairly clear. The management has the right to retrench the workmen provided retrenchment is justified in effecting retrenchment the management normally has to adopt and give effect to the industrial rule of retrenchment. For valid reason it may depart from the said rule. If the departure from the said rule does not appear to the Industrial Tribunal as valid or satisfactory, then the action of the management in so departing from the rule can be treated by the Tribunal as being mala fide or as amounting to unfair labour practice; in other words, departure from the ordinary industrial rule of retrenchment without any justification may itself in a proper case, lead to the inference that the impugned retrenchment is the result of ulterior considerations and as such it is mala fide and amounts to unfair labour practice and victimisation.

If the reorganised scheme has been adopted by the employer for reasons of economy and convenience and it has been introduced in all the area of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the re-organisation has been adopted by him bona fide or not. Their discharge and retrenchment would have to be considered as an inevitable though very unfortunate consequence of the re-organised scheme which the employer, acting bona fide, was entitled to adopt—D. Macropollo & Co. (Private) Ltd. v. Their Employees' Union, (1958-59) 15 FJR 67 : (1958) 2 LLJ 592 : AIR 1958 SC 1012.

The order of retrenchment should, of course, be left to the management and the decision by the management that some are better qualified than others cannot be questioned by the Adjudicator unless he comes to the conclusion that the preferential treatment was due to mala fides. If the preferential treatment given to juniors ignores the well-recognised principle in the Industrial Law that 'first come, last go' without any acceptable or sound reasoning a Tribunal or an Adjudicator will be well-justified to hold that the action of the management is not bona fide.

It was said by the management that the junior clerks who were retained have experience in a particular branch of clerical work. To accept this ground of preference without more is to destroy the principle itself—J. K. Iron and Steel Co. Ltd. v. Its Workmen, (1960) 1 FLR 579 : (1960) 2 LLJ 64 (SC).

7. Retrenchment Compensation is different from gratuity

The whole object of granting retrenchment compensation is to enable the workman to keep his gratuity safe and unused so that it may be available to him after his retirement. Thus the object of granting retrenchment compensation to the employee is very different from the object which gratuity is intended to serve. That is why on principle the two schemes are not at all irreconcilable nor even inconsistent; they really complement each other; and so, on considerations of social justice, there is no reason why both the claims should not be treated as legitimate. The fact that they appear to constitute a double benefit does not affect their validity—The Indian Hume Pipe Co., Ltd. v. The Workmen, (1960) 2 SCR 32 : 1960 SCJ 550 : (1959-60) 17 FJR 273 : (1959) 2 LLJ 830 : AIR 1960 SC 251.

In Indain Hume Pipe Co., Ltd. v. The Workmen, AIR 1960 SC 251 : (1960) 2 SCR 32 : 1960 SCJ 550 : (1959) 2 LLJ 830, the Supreme Court's observation are reproduced below :

"On the contentions raised in the tribunals below, the principal point which calls for our decision is whether a scheme of gratuity can be framed by industrial tribunals for workmen who are entitled to the benefits of Section 25-F of the Act. This question has been frequently raised before industrial tribunals and has generally been answered in favour of the employees. In dealing with this question it is important to bear in mind the true character of gratuity as distinguished from retrenchment compensation. Gratitude is a kind of retirement benefit like the
provident fund or pension. At one time it was treated as payment gratuitously made by the employer to his employee at his pleasure, but as a result of a long series of decisions of industrial tribunals gratuity has now come to be regarded as a legitimate claim which workmen can make and which, in a proper case, can give rise to an industrial dispute. Gratuity paid to workmen is intended to help them after retirement whether the retirement is the result of the rules of superannuation or of physical disability. The general principle underlying such gratuity schemes is that by their length of service workmen are entitled to claim a certain amount as a retirement benefit.

"On the other hand, retrenchment compensation is not a retirement benefit at all. As the expression retrenchment compensation indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour of hardship which retrenchment inevitable causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment. Thus the concept on which grant of retrenchment compensation is based is essentially different from the concept on which gratuity is founded.

"It is true that a retrenched workman would by virtue of his retrenchment be entitled to claim retrenchment compensation in addition to gratuity; because industrial adjudication has generally taken the view that the payment of retrenchment compensation cannot affect the workmen's claim for gratuity. In fact the whole object of granting retrenchment compensation is to enable the workman to keep his gratuity safe and unused so that it may be available to him after his retirement. Thus the object of granting retrenchment compensation to the employee is very different from the object which gratuity is intended to serve. That is why on principle the two schemes are not at all irreconcilable nor even inconsistent; they really complement each other and so, on considerations of social justice, there is no reason why both the claims should not be treated as legitimate. The fact that they appear to constitute a double benefit does not affect their validity. That is the view which industrial tribunals have generally taken in a large number of reported decisions on this point.

"The enactment of Section 25-F thus merely standardises the payment of retrenchment compensation and nothing more. If retrenchment compensation could be claimed by the employees in addition to gratuity prior to the enactment of section 25-F there is no reason why a similar claim cannot be made by them subsequent to its enactment.
"It is then urged that in determining the amount of compensation payable to a retrenched workman the length of his past service has been taken into account, and it is pointed out that schemes of gratuity also provide for payment of gratuity on similar considerations and adopt a similar measure. As we have already pointed out, even before Section 25-F was enacted tribunals were adopting similar methods in determining the amount of retrenchment compensation and so the mere fact that the length of the past service of the retrenched workman is made the basis for computing retrenchment compensation cannot clothe retrenchment compensations with the character of gratuity. The claims for retrenchment compensation and gratuity proceed on different considerations and it would be impossible to hold that the grant of one excludes the claim or grant of the other."

8. Object of retrenchment compensation

The object of retrenchment compensation is to give partial protection to the retrenched employee to enable him to tide over the period of unemployment. Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, employee is thrown out of employment suddenly and for no fault of his and the hardships which he was to face are, whether unemployment is the result of retrenchment or closure of business, the same. If the true basis of the impugned provision is the achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is bona fide or otherwise—M/s. Hathisingh Manufacturing Co., Ltd., Ahmedabad v. Union of India, (1960) 3 SCR 523 : (1960) 2 LLJ 1 : (1960-61) 18 FJR 181 : (1961) 1 SCJ 22 : AIR 1960 SC 923.

9. Right of employee to get retrenchment compensation only if the employer can pay

Normally, if he business is capable of meeting the obligation to pay the wages of the workmen and to meet the other expenses necessary for its continuance, it would not be closed down. Capacity to pay has therefore to be taken into account in the case of running business in assessing liability to fix wages or gratuity of dearness allowance. Once the undertaking is closed and liability to pay compensation under the impugned section is not made a condition precedent, the amount which the workmen may be able to recover must depend upon the assets of the employer which may be available to meet the obligation. The workmen would be entitled to recover compensation only if the employer is able to meet the obligation, otherwise they would have to rank pro rata with the other ordinary creditors of the employer—Ms. Hathisingh Manufacturing Co., Ltd., Ahmedabad v. Union of India, (1960) 3 SCR 523 : (1960) 2 LLJ : (1960-61) 18 FJR 181 : (1961) 1 SCJ 22 : AIR 1960 SC 923.

10. Non-compliance with Section 25.F(b) of Industrial Dispute Act—Effect.

The requirement prescribed by Section 25-F(b) is a condition precedent for the retrenchment of the workmen. Therefore, a failure to comply with the aforesaid provision will render an order of retrenchment invalid and inoperative.—State of Bombay v. Hospital Mozdor Sabha (1959-60) 17 FJR 423 : (1960) 1 LLJ 251 : AIR 1960 SC 610.
11. Section 25-F (c) Industrial Disputes Act is not a condition precedent

A closer examination of the section shows that clause (c) of Section 25-F cannot receive the same construction as clauses (a) and (b) of Section 25-F. Section 25-F (a) requires that the workman has to be given one month’s notice in writing, indicating the reasons for retrenchment, and the period of notice has to expire before the retrenchment takes place. It also provides that the workman can be paid in lieu of such notice wages for the said period. It is the latter provisions of clause (a) which requires careful consideration in dealing with the character of the requirement prescribed by Section 25-F (c). This latter provision allows the employer to retrench the workman on paying him his wages in lieu of notice for one month prescribed by the earlier part of clause (a), and that means that if the employer decides to retrench a workman, he need not give one month’s notice in writing and wait for the expiration of the said period before he retrenches him; he can proceed to retrench him straightaway on paying him his wages in lieu of the said notice. Take a case where retrenchment is effected under this latter provision of clause (a); how would the requirement of clause (c) operate in such a case? If it is held that the notice in the prescribed manner has to be served by the employer on the appropriate Government before retrenching the employee in such a case it would mean that even in a case where retrenchment is effected on payment of wages in lieu of notice, it cannot be valid unless the requisite notice is served on the appropriate Government; and that does not appear to be logical or reasonable. Reading the latter part of clauses (a) and (c) together, it seems to follow that in cases falling under the latter part of Clause (a) the notice prescribed by clause (c) has to be given not before retrenchment, but after retrenchment; otherwise the option given to the employer to bring about immediate retrenchment of the workmen on paying him wages in lieu of notice would be rendered nugatory. Therefore, it seems that clause (c) cannot be held to be a condition precedent even though it has been included under Section 25-F along with clauses (a) and (b) which prescribe conditions precedent.

Section 25-F (c) cannot be said to constitute a condition precedent which has to be fulfilled before retrenchment can be validly effected.

There is a proviso to Section 25-F (a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specified a date for the termination of services. Clause (a) of Section 25-F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month’s notice or to pay him wages in lieu thereof before he is retrenched. Similarly, clause (b) provides that the workman has to be paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay for every completed year of service, or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment and this requirement again provides a safeguard, in the interests of the workman he must be given one month’s notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The
hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (e). Clause (e) is not intended to protect the interests of the workmen as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (e) a condition precedent as in the case of clauses (a) and (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) and (b) as distinguished from the object which clause (e) has in mind, it would not be unreasonable to hold that clause (e), unlike Clauses (a) and (b), is not a condition precedent Bombay—Union of journalists v. State of Bombay, (1964) 1 LLJ 351 : (1964) 8 FLR 236 : 26 FJR 32 : AIR 1964 SC 1617.

12. Statutory provisions for compensation in case of Lay-off and retrenchment

The following are the relevant provisions contained in the Industrial Disputes Act. These provisions were introduced by the Amendment Act 43 of 1953:

"25-A. Application of Sections 25-G to 25-E.—(1) Sections 25-C to 25-E inclusive shall not apply—

(a) to industrial establishments in which less than fifty workmen on an average pay working day have been employed in the preceding calendar month; or

(b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.

(2) If a question arises whether an industrial establishment is of seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

Explanation.—In this section and in Sections 25-C, 25-D and 25-E, "industrial establishment" means—

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (LXIII of 1948); or

(ii) a mine as defined in clause (j) of Section 2 of the Mines Act, 1952 (XXXXV of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (LXIX of 1951).

25-B. Definition of one year of continuous service.—For the purposes of Sections 25-C and 25-E, a workman who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation.—In computing the number of days on which a workman has actually worked in an industry, the days on which—
(a) he has been laid-off under an agreement or as permitted by the Standing Orders made under the Industrial Employment (Standing Orders) Act 1946 (XX of 1946), or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid-off being taken into account for the purposes of this clause;

(b) he has been on leave with full wages, earned in the previous year, and

(c) in the case of a female, she has been on maternity leave, so however that the total period of such maternity leave shall not exceed twelve weeks,

shall be included.

25-C. Right of workmen laid-off for compensation.—(1) Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Provided that the compensation payable to a workman during any period of twelve months shall not be for more than forty five days.

Explanation.—“Badli workman” means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during any period of twelve months, a workman is laid-off for more than fortyfive days, whether continuously or intermittently, and the lay-off after the expiry of the first forty-five days comprises continuous periods of one week or more, the workman shall, unless there is any agreement to the contrary between him and the employer, be paid for all the days comprised in every such subsequent period of lay-off for one week or more compensation at the rate specified in sub-section (1):

Provided that it shall be lawful for the employer in any case falling within this sub-section to retrench the workman in accordance with the provisions contained in Section 25-F at any time after the expiry of the first forty-five days of lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.

25-D. Duty of an employer to maintain muster rolls of workmen.—Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain
for the purposes of this Chapter a muster roll and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

25-E. Workmen not entitled to compensation in certain cases.—No compensation shall be paid to a workman who has been laid-off—

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workmen, provided that the wages which would normally have been paid to the workmen are offered for the alternative employment also;

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;

(iii) if such laying-off is due to a strike or slowing-down of production on the part of workmen in another part of the establishment.

25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

25-FF. Compensation to workmen on case of transfer of undertaking.—Where the ownership or management of an undertaking is transferred, whether by agreement or by operator of law, from the employer on relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F as if the workman had been retrenched.
Provided that nothing in the section shall apply to a workman in any case where there has been a change of employers by reason of the transfer if:

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is under the terms of such transfer or otherwise, legally liable to pay the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

25-FFF. Compensation of workmen in case of closing down of undertakings.—(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched.

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25-F and shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undispensed stock [or the expiry of the period of the lease of the licence granted it where the period of the lease or the licence expires on or after the first day of April 1967], shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other constructions work is closed down on account of the completion of the work within reads two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25-F but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months.

25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall
ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches and other workman.

25-H. Re-employment of retrenched workmen.—When any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen who offer themselves for re-employment shall have preference over other persons.

25-J. Effect of laws inconsistent with this chapter.—(1) The provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946)]:

Provided that when under the provisions of any other Act or rules, orders or notifications issued thereunder or under any Standing Orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this chapter shall be deemed to effect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this chapter.
THE ALL INDIA SERVICES ACT, 1951

[No. LXI of 1951]

An Act to regulate the recruitment, and the conditions of service of persons appointed, to the All-India Services common to the Union and the States

(29th October, 1951)

Be it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the All-India Services Act, 1951.

2. **Definition.**—In this Act, the expression "an All India Services" mean the service known as the Indian Administrative Service or the service known as the Indian Police Service [or any other service specified in section 2-A.]

4[2-A. **Constitution of new All India Services.**—With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be constituted the following All-India Services and different dates may be appointed for different services, namely:—

1. The Indian Service of Engineers (Irrigation, Power, Buildings and Roads);
2. The Indian Forest Service.
3. The Indian Medical and Health Service.]

3. **Regulation of recruitment and conditions of service.**—(1) The Central Government may, after consultation with the Governments of the States concerned [including the State of Jammu and Kashmir], make rules for the regulation of recruitment, and the conditions of service of persons appointed, to an All-India Service.

(2) All rules made under this section shall be laid for not less than fourteen days before Parliament as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid.

4. **Continuance of existing rules.**—All rules in force immediately before the commencement of this Act and applicable to an All-India Service shall continue to be in force and shall be deemed to be rules made under this Act.

**Government of India’s Decision:**

*See Government of India’s decision 7 below:

---

1. Introduced by The All India Services (Amendment) Act, 1963 (No. 27 of 1963) enacted on 6-9-1963.
7. The constitutional position regarding the officers of the Secretary of States' service vis-a-vis the protection of service conditions contained in Article 314 is as follows:

Among the various former Secretary of State’s Services, the I.C.S. and the I.P. are part of the two All-India Services viz., the I. A. S. and the I. P. S. Officers of the All-India Services are governed by the rules and regulations framed by the Central Government, in consultation with the State Governments, as provided for in the All India Services Act, 1951. These rules and regulations generally apply to the ICS/IP officers unless, in respect of any particular set of rules, it is stated that those rules do not apply to the officers of the ICS/IP. Where the rules framed under the All India Services Act, 1951, do not apply to the ICS/IP officers they are governed by the separate set of rules, e.g., the ICS Provident Fund Rules, the provisions of the Fundamental Rules, Section II, the Civil Service Regulations etc. These rules are deemed to be rules framed under section 4 of the All India Services Act, 1951. In view of this, whenever an amendment is sought to be made to these rules, so far as they apply to the ICS/IP officers, the State Governments are required to be consulted as provided for in Section 3 of the All India Services Act, 1951.

7.2 As regards the officers of other former Secretary of State’s Services, they are governed by the rules framed by the Secretary of State which form Section II of the FRs and SRs, Superior Civil Service Rules, Civil Service Regulations etc.

7.3. In the case of the members of all the former Secretary of State’s Services, it is the Government of India which must be deemed to have appointed them to the service, after the conferral of Independence on India, to the respective posts which they were holding whether under the Government of India or under a Government of a Province. The power of rule-making as well as appointment in respect of these services, which was till then vested in the Secretary of State, therefore, devolved on the Governor-General after August, 1947, and on the President after the coming into force of the Constitution of India. All the powers which were exercisable by the Secretary of State in respect of these services are thus to be exercised by the President.

[ G. I., MHA letter No. 29/70/63-AIS (II), dated 27-11-1964. ]
THE ALL-INDIA SERVICES (CONDITIONS OF SERVICE—RESIDUARY MATTERS) RULES, 1960

In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Governments of the States concerned, hereby makes the following rules, namely:

1. **Short title.**—These rules may be called the All India Services (Conditions of Service—Residuary Matters) Rules, 1960.

2. **Power of Central Government to provide for residuary matters.**—The Central Government may, after consultation with the Governments of the States concerned, make regulations to regulate any matters relating to conditions of service of persons appointed to an All-India Service, for which there is no provision in the rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951); and until such regulations are made, such matters shall be regulated:

   (a) in the case of persons serving in connection with the affairs of the Union, by the rules, regulation and orders applicable to officers of the Central Civil Services, Class I;

   (b) in the case of persons serving in connection with the affairs of a State, by the rules, regulations and orders applicable to officers of the State Civil Services, Class I, subject to such exceptions and modifications as the Central Government may, after consultation with the State Government concerned, by order in writing, make:

   Provided that no order granting gratuity and pension to a member of an All-India Service or his family members, under the relevant extraordinary pension rules applicable to officers of the State Civil Services, Class I, shall be passed by the State Government except after consultation with the Union Public Service Commission.

3. **Power to relax rules and regulations in certain cases.**—Where the Central Government is satisfied that the operation of—

   (i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

   (ii) any regulation made under any such rule,

regulating the condition of service of persons appointed to an All-India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner.

**Government of India’s Decisions:**

1. A doubt was raised whether the power of relaxing rules was intended to be applicable to "recruitment rules" also.

---

1. Added *vide* M. H. A. Notification No. 9/2/60-AIS (III), dated the 16th May, 1961.
The Government of India have held that the "recruitment rules" cannot be relaxed under rule 3 of the A. I. S. (Conditions of Service—Residuary Matters) Rules, 1960.

[M. H. A. F. No.14/2/55-AIS (III).]

2. A question arose regarding the extent of the powers vested in the Government under rule 3 of the A. I. S. (Conditions of Service—Residuary Matters) Rules, 1960, to deal with cases involving relaxation of rules and regulations.

The Government of India have held that:—

(a) "undue hardship" signifies unforeseen or unmerited hardship to an extent not contemplated when the rule was framed and does not cover any ordinary hardship or inconvenience which normally arises;

(b) the relaxation should enable the case to be dealt with in a just and equitable manner and not on grounds of compassion however justified; and

(c) the benefit to be conferred in relaxation of any rule or rules must be of a nature already provided for in the rules; Government are not empowered by this rule to confer benefits which are not contemplated in the rules.

[G. I., M. H. A. letter No. 30/1/63-AIS (II), dated the 1st January, 1966.]

4. Interpretation.—If any question arises relating to the interpretation of these rules or relating to application or interpretation of rules, regulations or orders referred to in clauses (a) and (b) of rule 2, it shall be referred to the Central Government, whose decision thereon shall be final.

[No. 14/2/55-AIS (III), dated the 8th August, 1960.]
ALL INDIA SERVICE (LEAVE) RULES, 1955

1. Short title.—These rules may be called the All India Services (Leave) Rules, 1955.

2. Definition.—In these rules unless the context otherwise requires,—

(a) "commuted leave" means leave taken under rule 13;

(b) "commuted year of service" means continuous service of the specified duration under the Government and includes periods spent on duty as well as on leave including extraordinary leave;

(c) "duty" means duty as a member of the Service and includes:—

(i) service as probationer;

(ii) joining time;

(iii) such other periods as the Government may, by general or special order, declare as "duty";

(d) "earned leave" means leave earned under rule 10 in respect of periods spent on duty;

(e) "earned leave due" means the amount of earned leave to the credit of a member of the Service on the date on which he became subject to these rules calculated in accordance with the Government rules by which he was governed immediately before the date plus the amount of earned leave calculated as prescribed in Rule 10 diminished by the amount of earned leave taken after the date on which he became subject to these rules;

(f) "foreign service" means service where a member of the Service receives his pay with the sanction of the Government from any source other than the Consolidated Fund of India or the Consolidated Fund of any State.

(g) "Government" means—

(i) in the case of a member of the Service serving in connection with the affairs of the Union, the Central Government; or

(ii) in the case of a member of the Service serving under a foreign Government (whether on duty or on leave), the Central Government; or

(iii) in the case of a member of the Service serving in connection with the affairs of a State, the Government of that State; or

(iv) in the case of a member of the Service on leave, the Government who sanctioned him the leave;
Explanation.—A member of the Service whose services are placed at the disposal of any company, corporation, organization or any local authority by the Central Government or the Government of a State shall for the purposes of these rules, be deemed to be a member of the Service serving in connection with the affairs of the Union or the affairs of that State, affairs as the case may be, notwithstanding that his salary is drawn from sources other than Consolidated Fund of the Union or of that State;

(h) "half pay leave" means leave earned under rule 12 in respect of completed years of service;

(i) "half pay leave due" means the amount of half pay leave to the credit of a member of the Service on the date on which he became subject to these rules calculated in accordance with the Government rules by which he was governed immediately before that date plus the amount of half pay leave calculated as prescribed in Rule 12 diminished by the amount of half pay leave including twice the amount of commuted leave taken under these rules;

(j) "leave salary" means the monthly amount admissible to a member of the Service who has been granted leave under these rules;

(k) "joining time" means the time allowed to a member of the Service in which to join a new post or to travel to or from a station to which he is posted;

(l) "leave" includes earned leave, half pay leave, commuted leave not due, extraordinary leave, study leave, special disability leave, maternity or any other authorised leave of absence;

(m) "member of the Service" means a member of the Indian Administrative Service or the Indian Police Service, as the case may be;

(n) "month means a calendar month;

Explanation—In calculating a period expressed in terms of months and days, complete calendar months irrespective of the number of days of which each such month may consist shall first be calculated and the odd number of days calculated subsequently;

(o) "substantive pay" means pay other than special pay, personal pay or any other emoluments which may be specially classed as pay, of the permanent post which a member of the Service holds substantially or on which he holds a lien or would hold a lien had the lien not been suspended, or the pay other than special pay personal pay or any other emoluments which may be specially classed as pay, to which he is entitled by reason of his substantive position in a cadre.
3. **Right of leave.**—(1) Leave cannot be claimed as of right and when the exigencies of public service so demand leave of any description may be refused or revoked by the Government.

(2) It shall not be open to the Government to compel any member of the Service, to proceed on leave or, except at the request of the member of the Service, to alter the nature of the leave due and applied for.

4. **Earning of leave.**—Except as otherwise provided in these rules, leave shall be earned by duty only.

*Explanation.*—For the purposes of this rule, the period spent on foreign service counts as duty if on account of such period contributions towards leave salary have been paid by the foreign employer or the member of the Service or remitted by the Government.

5. **Commencement and termination of leave.**—Leave ordinarily begins on the day on which a transfer of charge is effected and ends on the day preceding that on which such charge is resumed. Where joining time is allowed to a member of the Service returning from leave out of India, the last day of his leave is the day before the arrival at her moorings or anchorage in the port of disembarkation of the vessel in which he returns or if he returns by air, the day on which the aircraft in which he returns, arrives at its first regular port in India:

Provided that the Government may prescribe the circumstances in and conditions in which Sundays or other public holidays may be prefixed or affixed (or both prefixed and affixed) to the leave.

6. **Return to duty on expiry of leave.**—Except with the permission of the authority which granted him leave, no member of the Service on leave may return to duty before the expiry of the period of leave granted to him.

7. **Maximum period of absence from duty.**—(1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.

(2) Unless the Government in view of the special circumstances of the case determine otherwise, a member of the Service who remains absent from duty for a continuous period exceeding five years, elsewhere than on foreign service, whether with or without leave, shall be deemed to have resigned from the Service.

8. **Combination of leave.**—Except as otherwise provided in these rules, any kind of leave under these rules may be granted in combination with or in continuation of any other kind of leave.

9. **Grant of leave beyond the date of retirement.**—(1) No leave shall be granted beyond the date on which a member of the Service must compulsorily retire:

Provided that, if in sufficient time before the date of compulsory retirement a member of the Service has been denied in whole or in part on account of exigencies of public service any leave applied for and due as preparatory to retirement, then he may be granted, after the date of compulsory retirement the amount of earned leave which was

---

due to him on the said date of compulsory retirement subject to the maximum limit of 120 or 180 days, as prescribed in Rule 11, so long as the leave so granted including the leave granted to him between the the date from which the leave preparatory to retirement was to commence and the date of compulsory retirement actually denied, the half pay leave, if any, applied for by a member of the service preparatory to retirement and denied in the exigencies of the public service being exchanged with earned leave to the extent such leave was earned between the date from which the leave preparatory to retirement was to commence and the date of compulsory retirement:

Provided further that every member of the Service:

(a) who, after having been under suspension, is reinstated within 120 days or 180 days, as the case may be, preceding the date of his compulsory retirement and was prevented by reason of having been under suspension from applying for leave preparatory to retirement, shall be allowed to avail of such leave as he was prevented from applying for, subject to a maximum of 120 days or 180 days as the case may be, reduced by the period between the date of reinstatement and the date of compulsory retirement;

(b) who retired from service on attaining the age of compulsory retirement while under suspension and was prevented from applying for leave preparatory to retirement on account of having been under suspension shall be allowed to avail of the leave to his credit subject to a maximum of 120 days or 180 days, as the case may be, after termination of proceedings, as prescribed in Rule 11;

as if it had been refused as aforesaid if, in the opinion of the authority competent to order reinstatement, he has been fully exonerated and the suspension was wholly unjustified:

Provided further that a member of the Service, whose service has been extended in the interests of the public service beyond the date of his compulsory retirement may be granted earned leave as under:

(i) during the period of extension, any earned leave due in respect of the period of such extension and, to the extent necessary, the earned leave which could have been granted to him under the preceding proviso had he retired on the date of compulsory retirement;

(ii) after the expiry of the period of extension—

(a) the earned leave which could have been granted to him under the preceding proviso had he retired on the date of compulsory retirement, diminished by the amount of such leave availed of during the period of extension; and

(b) any leave earned during the period of extension as has been formally applied for as preparatory to final cessation of his duties in sufficient time during the extension and refused to him on account of the exigencies of the public service; and
in determining the amount of earned leave due in respect of the extension with reference to Rule 11, the earned leave, if any admissible under the preceding proviso shall be taken into account:

Provided further that the grant of leave under this rule, extending beyond the date on which a member of the Service must compulsorily retire or beyond the date up to which a member of the Service has been permitted to remain in Service, shall not be construed as extension of service.

(2) Notwithstanding anything contained in sub-rule (1), a member of the Service, who has given notice under sub-rule (2) of Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, or to whom notice has been given under sub-rule (3) of that rule may be granted leave due and admissible to him, not extending beyond the date on which he attains the date on which he retires on the expiry of the notice under the said rule.

Explanations.—For the purposes of this rule a member of the Service may be deemed to have been denied leave only if in sufficient time before the date on which he must compulsorily retire or the date on which his duties finally cease, he had either formally applied for leave as leave preparatory to retirement and has been refused it on the ground of exigencies of public service or has ascertained in writing from the sanctioning authority that such leave if applied for would not be granted on the aforesaid ground.]

10. Rate and amount of earned leave.—(1) The earned leave admissible to a member of the Service shall be one-eleventh of the period spent on duty.

(2) A member of the Service shall cease to earn leave when the earned leave due amounts to 180 days.

(3) In the case of a State Service Officer appointed to the All-India Services the maximum limit on accumulation of leave laid down in sub-rule (2) shall not apply during the period of the first five years from the date of his appointment to the Service or from that of the commencement of these rules, whichever is later and such an officer may be allowed during the said period of five years to avail himself of the accumulated leave to his credit:

Provided that on the expiry of the said period of five years the leave at the credit of the officer in excess of the normal maximum limit of accumulation of leave laid down in sub-rule (2) shall lapse:

Provided further that he shall not earn leave during that period unless the accumulated leave at his credit falls below 180 days.

11. Maximum leave admissible at a time.—(1) Subject to the provisions of Rule 9 and sub-rule (2) of this rule, the maximum earned leave that can be granted to a member of the Service at a time shall be 120 days.

(2) Earned leave may be granted to a member of the Service exceeding a period of 120 days but not exceeding 180 days, if the entire leave so
granted or any portion thereof is spent outside India, Burma, Ceylon, 
1 [Daman, Diu, Goa] Nepal and Pakistan:

Provided that where earned leave exceeding a period of 120 days is 
granted under this sub-rule, the period of such leave spent in India shall 
not in the aggregate exceed 120 days.

12. Half pay leave.—(1) The half pay leave admissible to a member 
of the Service in respect of each completed year of service shall be 
20 days.

(2) The half pay leave due may be granted to a member of the Service 
on medical certificate or on private affairs.

13. Commuted leave.—Commuted leave not exceeding half the 
amount of pay leave due may be granted on medical certificate to a member 
of the Service subject to the following conditions, namely:

(a) commuted leave during the entire service shall be limited to a 
maximum of 240 days;

(b) when commuted leave is granted, twice the amount of such leave 
shall be debitable to the half pay leave due; and

(c) the total duration of earned leave and commuted leave taken in 
conjunction shall not exceed 240 days at a time:

Provided that no commuted leave may be granted under this rule 
unless the Government has reason to believe that the member of the Service 
will return to duty on its expiry.

14. Leave not due.—Save in the case of leave preparatory to retire-
ment, leave not due may be granted to a member of the Service for a period 
not exceeding 360 days during his entire service out of which not more than 
90 days at any time and 180 days in all may be granted otherwise than on 
medical certificate.

Notes.—(1) Leave not due shall not be granted to a member of the 
Service unless the Government is satisfied that as far as can be reasonably 
foreseen, he will return to duty and earn an equal amount of half pay 
leave.

(2) A member of the Service who is invalidated during the currency 
of or at the end of a period of leave not due, shall be retired from the date 
of expiry of such leave not due.

(3) Where a member of the Service who has been granted leave not 
due under this rule applies for and is granted permission to retire, the leave 
not due shall be cancelled and his retirement shall have effect from the 
date on which such leave commenced.

15. Extraordinary leave.—(1) Subject to the provisions of Rule 7, 
extraordinary leave may be granted to a member of the Service in the 
following special circumstances that is to say:

1. Omitted by All-India Services (Leave) First Amendment Rules, 1970, published in Gazette 
(a) when no other kind of leave is admissible, or

(b) when any other kind of leave is admissible but the member of the Service applies in writing for the grant of extraordinary leave.

(2) Government may retrospectively convert period of absence without leave into extraordinary leave even when any other kind of leave was admissible at the time when absence without leave commenced.

(3) Extraordinary leave shall not be debited to the leave account.

16. Special disability leave.—(1) Special disability leave which may be combined with leave of any other kind, may be granted to member of the Service under such conditions as may be prescribed in consultation with State Government concerned.

(2) Such leave shall not be debited to the leave account except as provided in sub-rule (6) of Rule 20.

(3) Such leave may be granted on more than one occasion if the disability is aggravated or reproduced in similar circumstances on a later date but not more than twenty-four months of such leave shall be granted in consequence of any one disability.

(4) When a member of the Service suffers an injury while on service under the Armed Forces, any period of leave granted under the leave rules applicable in the Armed Forces in respect of that injury shall be treated as granted under this rule.

17. Study leave.—(1) Leave may be granted to a member of the Service on such terms as may be prescribed in the regulations made in this behalf by the Central Government in consultation with the State Government concerned to enable him to undergo, in India or out of India, a special course of study or instructions approved by the Government in public interest.

(2) Such leave shall not be debited to the leave account.

18. Maternity leave.—(1) Maternity leave may be granted to a woman member of the Service on full pay for a period which may extend up to the end of three months from the date of its commencement or to the end of six weeks from the date of confinement, whichever is earlier.

(2) Such leave shall not be debited to the leave account.

(3) Maternity leave may be combined with leave of any other kind, but any leave applied for in continuation of maternity leave may be granted only if the application is supported by a medical certificate.

Note.—Maternity leave may also be granted in cases of miscarriage including abortion subject to the condition that the leave applied for does not exceed six weeks and the application for leave is supported by a medical certificate.

19. Conversion of one kind of leave into another kind.—(1) At the request of a member of the Service, the Government may convert any kind of leave retrospectively into leave of a different kind which may be
admissible, but the member of the Service cannot claim such conversion as a matter of right.

(2) If one kind of leave is converted into another the amount of leave salary admissible shall be re-calculated and arrears of leave salary paid or amounts overdrawn recovered, as the case may be.

20. Leave salary.—A member of the Service on earned leave is entitled to leave salary equal to the average monthly pay earned during the ten complete months immediately preceding the month in which the leave commences or the substantive pay to which the member of the Service is entitled immediately before the commencement of the leave whichever is greater.

(2) A member of the Service on half pay leave or leave not due is entitled to leave salary equal to half the amount specified in sub-rule (1) subject to a maximum of Rs. 700:

Provided that this limit shall not apply if the leave is on medical certificate or for pursuing an approved course of study otherwise than on study leave terms.

(3) A member of the Service on commuted leave is entitled to leave salary equal to the amount admissible under sub-rule (1).

(4) A member of the Service on extraordinary leave is not entitled to any leave salary.

(5) A member of the Service on special disability leave shall be entitled, in respect of the initial period of 120 days, to leave salary in accordance with sub-rule (1).

(6) In respect of special disability leave beyond the initial period of 120 days, leave salary equal to the amount specified in sub-rule (1), may be granted at the opinion of the member of the Service for a further period limited to the number of days of earned leave due to him in which case the earned leave account shall be debited with half the number of days for which leave salary is granted under this sub-rule.

(7) The leave salary during special disability leave in respect of any period not covered by sub-rules (5) and (6) shall be at the rate specified in sub-rule (2).

21. Accepting any service or employment while on leave.—(1) A member of the Service on leave shall not take any service or accept any employment without obtaining the permission of the Government:

Provided that a member of the Service who has been granted permission to take any service or accept any employment during leave preparatory to retirement shall be precluded from withdrawing his request for permission to retire and from returning to duty.

Note.—This rule does not apply to casual literary work or service as an examiner or similar employment.

(2) The leave salary of a member of the Service who is permitted to take up employment under any Government or private employer during leave preparatory to retirement shall be subject to such restrictions as the Central Government may, by general or special order, prescribe.
22. Recall of a member of the Service while on leave.—All orders recalling a member of the Service to duty before the expiry of the leave granted to him shall state whether the return to duty is optional or compulsory. If the return is optional, the member of the Service shall not be entitled to any concession. If it is compulsory he shall be entitled—

(a) if the leave from which he is recalled is out of India,

(i) to receive a free passage to India, and provided that he has not completed half the period of his leave by the date of leaving for India on recall or 90 days whichever period is shorter, to receive the refund of the cost of his passage from India;

(ii) to receive travelling allowances admissible to him as member of the Service in respect of the journey from the port of disembarkation to the station to which he is posted.

(iii) to count the time spent on the voyage to India as duty for purposes of calculating leave; and

(iv) to receive leave salary during the voyage to India, and for the period from the date of landing in India to the date of joining his post, to be paid leave salary at the same rate at which he would have drawn it had he not been recalled but returned in the ordinary course on the termination of his leave;

(b) if the leave from which he is recalled in India to be treated as on duty from the date on which he starts for the station to which he is ordered and to draw travelling allowances admissible to him as a member of the Service for the journey but to draw until he joins his post, leave salary only.

Explanation.—For purposes of this rule leave out of India has the same meaning as given in sub-rule (2) of Rule 11.

23. Rejoining of duty on return from leave on medical grounds.—No member of the Service who has been granted leave on medical certificate shall return to duty without first producing a medical certificate of fitness in such form as the Government may, by order, prescribe. A similar certificate may be required in the case of a member of the Service who has been granted leave for reasons of health, even though such leave was not actually granted on medical certificate.

24. Overstay after expiry of leave.—A member of the Service who remains absent at the end of his leave is entitled to no leave salary for the period of such absence and that period shall be debited to his leave account as though it were leave on half pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may render a member of the Service liable to disciplinary action.

25. Effect of transfer to foreign service while on leave.—A member of the Service transferred to foreign service while on leave ceases, from the date of such transfer, to be on leave and shall not be entitled to draw leave salary from that date.
26. Regulation of leave during foreign service in India.—(1) A member of the Service who is on foreign service in India shall not be granted leave otherwise than in accordance with these rules and shall not be entitled to avail himself of leave or draw leave salary from the Government unless he is actually relieved of his duty under the foreign employer and proceeds on leave.

(2) If a member of the Service avails himself of leave to which he is not entitled, he may be required to refund leave salary irregularly drawn and in the event of his refusing to refund, he shall forfeit previous service under the Government and shall cease to have any claim on the Government in respect of either pension or leave salary.

27. Regulation of leave during foreign service out of India.—(1) A member of the Service on foreign service out of India may be granted leave by his foreign employer on such conditions as the employer may determine. In any individual case, the authority sanctioning foreign service may determine before hand in consultation with the employer, the conditions subject to which such leave may be granted by the employer. The leave salary in respect of such leave granted by the employer will be paid by the employer and such leave shall not be debited to the leave account of the member of the Service.

(2) In special circumstances, the authority sanctioning a transfer to foreign service out of India may make arrangements with the member of the Service or the foreign employer under which leave may be granted to a member of the Service in accordance with these rules if the foreign employer or the member of the Service pays to the Consolidated Fund of India leave contribution at such rate as the Central Government may, by general or special order, prescribe.

Note.—In the case of a member of the Service who remains on foreign service out of India for more than twelve months and who on reversion immediately takes leave under these rules, the leave salary shall be calculated in accordance with Rule 20 of these rules. For this purpose the substantive pay drawn by him on the day preceding the date on which he was transferred to foreign service or pay drawn by him during the twelve complete months or thirty-six complete months, as the case may be, preceding the month in which he was transferred to foreign service shall be taken into account.

28. Leave salary contribution while on foreign service in India.—(1) While a member of the Service is on foreign service in India contributions towards the amount of leave salary shall be paid to the Government concerned on his behalf.

(2) The contribution due under sub-rule (1) shall be paid by the member of the Service himself unless the foreign employer agrees to pay them.

(3) The rates of contributions payable under this rule shall be such as the Central Government may, by general or special order, prescribe.

(4) The Government may, by general or special order, remit the contributions payable under this rule in any specific case or class of cases.
5. A member of the Service on foreign service may not elect to withhold contributions and to forfeit the right to count as duty in Government service the time spent in foreign employ.

6. Neither the member of the Service nor the foreign employer has any right of property in a contribution paid and no claim for refund shall be entertained.

Explanation.—For the purpose of calculating the rate of leave salary admissible, the pay drawn in foreign service, less in the case of the member of the Service paying his own contribution, such part of pay as may be paid as contribution, shall count as pay.

29. Extend of leave admissible to a probationer in case of termination of service.—If for any reason it is proposed to terminate the services of a member of the Service on probation, any leave which may be granted to him shall not extend beyond the date on which the probationary period already sanctioned or extended expires, or any earlier date on which his services are terminated by an order of the Central Government.

30. Counting of former service for leave in case of reinstatement after dismissal or removal or compulsory retirement from service.—A member of the Service who is dismissed or removed or compulsorily retired from the service but is reinstated on appeal or revision, under the relevant provisions of the All India Services (Discipline and Appeal) Rules, 1955, shall be entitled to count his former service for leave.

31. Procedural instructions.—(1) A leave account shall be maintained in respect of each member of the Service.

(2) Subject to any general or special order that may be issued by the Central Government, if necessary in consultation with the Comptroller and Auditor-General of India, the Government may prescribe the procedure to be followed in regard to:

(i) making of application for leave and for permission to return from leave;

(ii) granting of leave; and

(iii) the payment of leave salary.

32. Relaxation of the provisions of the rules in individual cases.—Where the Government is satisfied that the operation of any of these rules causes or is likely to cause under hardship to a member of the Service, it may, after recording its reasons for so doing and notwithstanding anything contained in any of these rules, deal with the case of such member in such manner as may appear to it to be just and equitable:

Provided that the case shall not be dealt with in any member less favourable to such member than that prescribed in these rules.

33. Interpretation.—If any question arises relating to the interpretation of these rules, it shall be referred to the Central Government whose decision thereon shall be final.

34. Repeal.—All rules corresponding to these rules and in force immediately before the commencement of these rules are hereby repealed:
Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

35. **Saving.**—(1) Nothing in these rules shall apply to members of the Service specified in clauses (a) and (b) or sub-rule (1) of Rule 3 of the Indian Administrative Service (Recruitment) Rules, 1954, or to members of the Service specified in clause (a) of sub-rule (1) of Rule 3 of the Indian Police Service (Recruitment) Rules, 1954.

(2) The conditions of Service of such members as respects leave shall continue to be regulated by the rules applicable to them immediately before the commencement of these rules.
THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850
(No. 37 of 1850)

As Amended up to date

An Act for regulating inquiries into the behaviour of public servants

Whereas it is expedient to amend the law for regulating inquiries into the behaviour of public servants not removable from their appointments without the sanction of Government, and to make the same uniform throughout India;

It is enacted as follows:


2. Articles of charge to be drawn out for public inquiry into conduct of certain public servants.—Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the Government not removable from his appointment without the sanction of the Government, it may cause the substance of the imputations to be drawn into distinct articles of charge and may order a formal and public inquiry to be made into the truth thereof.

3. Authorities to whom inquiry may be committed: Notice to accused.—The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons especially appointed by the Government, Commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

4. Conduct of Government prosecution.—When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

5. Charge by accuser to be written and verified. Penalty for false accusation. Institution of inquiry by Government.—When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

6. Security from accuser left by Government to prosecute.—Where the imputation shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subordination of perjury, as the case may be.

{ 329 }
7. Power of Government to abandon prosecution and to allow accuser to continue it.—At any subsequent stage of the proceedings, the Government may, if it thinks fit, abandon the prosecution, and in such case may, if it thinks fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

8. Power of Commissioners. Their protection.—Service of the process.—Powers of Courts, etc., acting under commission.—The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings as is given to Civil and Criminal Courts by the Code of Criminal Procedure, 1898 and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection at the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, or whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature there. When the commission has been issued to a Court or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such powers for the purposes of the commission.

9. Penalty for disobedience to process.—All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

10. Copy of charge and list to be furnished to accused.—A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

11. Procedure at beginning of inquiry. Non-appearance of accused and admission of charge.—At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead “guilty” or “not guilty” to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

12. Prosecutor’s right of address.—The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved; his address shall not be recorded.

13. Evidence for prosecution and examination of witnesses.—Re-examination by prosecutor.—The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit.
14. Power to admit or call for new evidence for prosecution.—
Accused’s right to adjournment.—It shall appear necessary before the close
of the case for the prosecution, the commissioners may in their discretion
allow the prosecutor to exhibit evidence not included in the list given to the
person accused; or may themselves call for new evidence and in such case
the person accused shall be entitled to have, if he demands it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to
which the proceedings are adjourned.

15. Defence of accused to be recorded orally or written.—When
the case for the prosecution is closed, the person accused shall be required
to make his defence, orally or in writing, as he shall prefer. If made orally,
it shall not be recorded; if made in writing, it shall be recorded after
being openly read, and in that case a copy shall be given at the same time
to the prosecutor.

16. Evidence for defence, and examination of witnesses.—The
evidence for the defence shall then be exhibited, and the witnesses examin-
ed, who shall be liable to cross-examination and re-examination and to
examination by the commissioners according to the like rules as the wit-
nesses for the prosecution.

17. Examination of witnesses and evidence by prosecutor.—
(Repealed by the Repealing Act, 12 of 1876).

18. Notes or oral evidence.—The commissioners or some person
appointed by them shall take notes in English of all the oral evidence,
which shall be read aloud to each witness by whom the same was given,
and, if necessary, explained to him in the language in which it was given,
and, shall be recorded with the proceedings.

19. Inquiry when closed with defence. Prosecutor when entitled
to reply and give evidence. Accused not entitled to adjournment.—If
the person accused makes only an oral defence, and exhibits no evidence,
the inquiry shall end with his defence; if he records a written defence, or
exhibits evidence, the prosecutor shall be entitled to a general oral reply on
the whole case, and may also exhibit evidence to contradict any evidence
exhibited for the defence, in which case the person accused shall not be
entitled to any adjournment of the proceedings, although such new evidence
were not included in the list furnished to him.

20. Power to require amendment of charge and to adjourn. Rea-
sons for refusing adjournment to be recorded.—When the commissioners
shall be of opinion that the articles of charge, or any of them, are not drawn
with sufficient clearness and precision, the commissioners may in their
discretion require the same to be amended, and may thereupon, on the
application of the person accused, adjourn the inquiry for a reasonable
time. The commissioners may also, if they think fit, adjourn the inquiry
from time to time, on the application of either the prosecutor or the person
accused, on the ground of sickness or unavoidable absence of any witness or
other reasonable cause. When such application is made and refused the
commissioners shall record the application, and their reasons for refusing to
comply with it.

21. Report of commissioner’s proceedings.—After the close of the
inquiry, the commissioners shall forthwith report to Government their pro-
cedings under the commission, and shall send with the record thereof their
opinion upon each of the articles of charge separately, with such observ-
ations as they think fit on the whole case.
22. **Powers to call for further evidence or explanation. Inquiry into additional articles of charge. Reference of report of special commissioners. Final orders.**—The Government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.


24. **Saving of enactments as to dismissal of certain officers. Commission under Act for their trial.**—Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of principal and other Sadar Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

25. **Saving of power of removal without inquiry under Act.**—Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act,
THE ALL-INDIA SERVICES (CONDUCT) RULES, 1968

In exercise of the powers conferred by sub-section (1) of section 3 of the All India Services Act, 1951, (61 of 1951) the Central Government after consultation with the Governments of the States concerned, hereby makes the following rules, namely:

1. Short title and commencement.—(1) These rules may be called the All India Services (Conduct) Rules, 1968.

(2) They shall come into force on the date of their publication in the official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “Government” means—

(i) in the case of a member of the Service serving in connection with the affairs of the Union, the Central Government; or

(ii) in the case of a member of the Service serving under a Foreign Government or outside India (whether on duty or on leave), the Central Government; or

(iii) in the case of a member of the Service serving in connection with the affairs of a State, the Government of that State;

Explanation.—A member of the Service whose services are placed at the disposal of a company, corporation or other organisation or a local authority by the Central Government or the Government of a State shall, for the purposes of these rules, be deemed to be a member of the Service serving in connection with the affairs of the Union or in connection with the affairs of that State, as the case may be, notwithstanding that his salary is drawn from the sources other than the Consolidated Fund of India or the Consolidated Fund of that State;

(b) “member of family”, in relation to member of the Service, includes—

(i) the wife or husband as the case may be, of such member, whether residing with him or her or not, but does not include a wife or husband separated from the member of the Service by a decree or order of a competent court;

(ii) the son or daughter or the step-son or step-daughter of such member and wholly dependent on him or her, but does not include a child or step-child who is no longer in any way dependent on him or her or of whose custody the member of the Service has been deprived by or under any law; and

(iii) any other person related, whether by blood or marriage, to such member or to his or her wife or husband, as the case may be, and wholly dependent on such member;

(c) “member of the Service” means a member of an All-India Service as defined in Section 2 of the All India Services Act, 1951 (61 of 1951).
3. General.—(1) Every member of the Service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the Service.

(2) Every member of the Service shall take all possible steps to ensure integrity of, and devotion to duty by, all Government servants for the time being under his control and authority.

(3) No member of the Service shall, in the performance of his official duties or in exercise of powers conferred on him,—

(i) act otherwise than in his best judgment except when he is acting under the direction of his official superior and he shall obtain such direction in writing, wherever practicable and where it is not practicable, he shall obtain written confirmation as soon thereafter as possible;

(ii) evade the responsibility devolving legitimately on him and seek instruction from, or approval of, a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibilities.

4. Employment of near relatives in companies or firms.—(1) No member of the Service shall use his position or influence directly or indirectly to secure employment for any member of his family with any company or firm.

(2) (a) No member of the Service shall, except with the previous sanction of the Government, permit his son, daughter or dependent to accept employment with any company or firm having official dealings with the Government:

Provided that where the acceptance of such employment cannot await the sanction of the Government or is otherwise considered urgent, the matter shall be reported to the Government; and the employment may be accepted provisionally subject to the sanction of the Government.

(b) A member of the Service shall, as soon as he becomes aware of the fact of acceptance by a member of his family of an employment with any company or firm, report to the Government the fact of such acceptance and also whether he has or has had any official dealings with that company or firm:

Provided that no such report shall be necessary if the member of the Service has already obtained sanction of, or sent a report to the Government under clause (a).

(3) (a) No member of the Service shall in the discharge of his official duties, deal with any matter relating to, or award any contract in favour of, a company or firm or any other person or if any member of his family is employed in that company or firm or under that person or he or any member of his family is interested in such company or firm or other person in any other manner.

(b) In any case referred to in clause (a), the member of the Service shall refer the matter to his official superior and the case shall thereafter be disposed of according to the instructions of the official superior.
5. Taking part in politics and elections—(1) No member of the Service shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics, nor shall he take part in, or subscribe in aid of, or assist in any other manner, any political movement or political activity.

(2) It shall be the duty of every member of the Service to endeavour to prevent any member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any movement or activity which is, or tends directly or indirectly to be subversive of the Government as by law established, and where a member of the Service is unable to prevent any member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether any movement or activity falls within the scope of this rule the question shall be referred to the Government for its decision.

(4) No member of the Service shall canvass or otherwise interfere with, or use his influence in connection with, or take part in an election to any Legislature or local authority:

Provided that—

(i) a member of the Service qualified to vote at any such election may exercise his right to vote but where he does so he shall give no indication of the manner in which he proposes to vote or has voted; and

(ii) a member of the Service shall not be deemed to have contravened the provisions of this sub-rule by reason only that he has assisted in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.—The display by member of the Service on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election, within the meaning of this sub-rule.

6. Connection with press or radio.—(1) No member of the Service shall except with the previous sanction of the Government own wholly or in part, or conduct or participate in the editing or management of any newspaper or other periodical publication.

(2) No member of the Service shall except with the previous sanction of the Government or any other authority, empowered by it in this behalf, or except in the bona fide discharge of his duties,—

(a) publish a book himself or through a publisher, or contribute an article to a book or a compilation of articles, or

(b) participate in a radio broadcast or contribute any article or write a letter to a newspaper or periodical,

either in his own name or anonymously or pseudonymously or in the name of any other person:
Provided that no such sanction shall be required—

(i) if such publication is through a publisher and is of a purely literary, artistic or scientific character; or

(ii) if such contribution, broadcast or writing is of a purely literary artistic or scientific character.

7. Criticism or Government—No member of the Service shall in any radio broadcast or in any document published anonymously, pseudonymously or in his own name or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion—

(i) which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government; or

(ii) which is capable of embarrassing the relations between the Central Government and any State Government; or

(iii) which is capable of embarrassing the relations between the Central Government and the Government of any foreign State.

Provided that nothing in this rule shall apply to any statement made or views expressed by a member of the Service in his official capacity and in the due performance of the duties assigned to him.

8. Evidence before communities etc.—(1) Save as provided in sub-rule (3) no member of the Service shall except with the previous sanction of the Government, give evidence in connection with any inquiry conducted by any person, committed or other authority.

(2) Where any sanction has been accorded under sub-rule (1) and member of the Service giving such evidence shall criticise the policy or any action of the Central Government or of a State Government.

(3) Nothing in this rule shall apply to—

(a) evidence given at any inquiry before an authority appointed by the Government, or by Parliament or by a State Legislature; or

(b) evidence given in any judicial inquiry; or

(c) evidence given at departmental inquiry ordered by any authority subordinate to the Government.

(4) No member of the Service giving any evidence referred to in sub-rule (3) shall give publicity to such evidence.

9. Unauthorised communication of information.—No member of the Service shall except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.
Explanation.—Quotation by a member of the Service (in his representations to the Head of Office or Head of Department or President) of, or from, any letter, circular or office memorandum or from the notes on any file to which he is not authorised to have access, or which he is not authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the meaning of this rule.

10. Subscriptions.—No member of the Service shall, except with the previous sanction of the Government or of such authority as may be empowered by it in this behalf, ask for, or accept, contributions to or otherwise associate himself with the raising of, any fund or other collections in cash or in kind in pursuance of any object whatsoever.

11. Gifts.—(1) Save as provided in these rules no member of the Service shall accept, or permit his wife or any other member of his family or any other person acting on his behalf to accept, any gift exceeding seventy-five rupees in value without the previous sanction of the Government.

Explanation.—For the purposes of this rule “gift” includes free transport, free boarding, free lodging or any other service or pecuniary advantage when provided by a person other than a near relative or personal friend having no official dealings with the member of the Service but does not include a casual meal, casual lift or other social hospitality.

(2) Where it is not practicable for a member of the Service to obtain the previous sanction of the Government under sub-rule (1) for accepting, or permitting his wife or any other member of his family or any other person acting on his behalf to accept, any gift exceeding seventy-five rupees in value, he shall, within one month of the acceptance of such gift make a report to the Government stating the circumstances under which such gift was accepted, and if the Government does not approve of such acceptance, he shall return the gift to the donor.

(3) On occasions such as weddings, anniversaries, funerals and religious functions, when making of gifts is in conformity with the prevailing religious or social custom, gifts may be accepted—

(a) from near relatives, provided that a report shall be made to the Government, if the value of any such gift exceeds five hundred rupees;

(b) from personal friends having no official dealings with the member of the service; provided that a report shall be made to the Government, if the value of any such gift exceeds two hundred rupees.

(4) Members of the Service shall avoid accepting lavish hospitality or frequent hospitality from individuals having official dealings with them or from industrial or commercial firms or other organisations.

12. Public demonstrations in honour of Government Servants.—

(1) No member of the Service shall, except with the previous sanction of the Government, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour or in the honour of any other Government servants:

Provided that nothing in this rule shall apply to—

(a) a farewell entertainment of a substantially private and informal character held in honour, of a member of the
Service or any other Government servant on the occasion of his retirement or transfer or of any person who has recently quit service of Government; or

(ii) the acceptance of simple and inexpensive entertainments arranged by public bodies or institutions.

(2) No member of the Service shall exercise pressure of any sort on any Government servant to induce him to subscribe towards any farewell entertainment even if it is of a substantially private and informal character.

13. **Private trade or employment.**—(1) No member of the Service shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any employment:

Provided that a member of the Service may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall discontinue, such work if so directed by the Government.

*Explanation.*—Canvassing by a member of the Service in support of the business of insurance agency or commission agency, owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every member of the Service shall, if any member of his family is engaged in a trade or business, or owns or manages an insurance agency or commission agency, report that fact to the Government.

(3) No member of the Service shall, without the previous sanction of the Government or except in the discharge of his official duties, take part in the registration, promotion or management of any Bank or other company registered under the Companies Act, 1956 or any other law for the time being in force, or any co-operative society the primary object of which is a commercial purpose:

Provided that a member of the Service may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government servants or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860), or any corresponding law in force.

*Explanation.*—In this sub-rule, ‘co-operative society’ means a society registered, or deemed to be registered, under the Co-operative Societies Act, 1912 (2 of 1912) or any other law relating to co-operative societies for the time being in force in any State.

(4) No member of the Service shall accept any fee for any work done for any public body or for any private person without the sanction of the Government.

14. **Investments, lending and borrowing.**—(1) No member of the service shall speculate in any stock, share or other investments.

*Explanation.*—Frequent purchase or sale or both, of shares securities or other investment shall be deemed to be speculation within the meaning of this sub-rule.
(2) No member of the Service shall make, or permit any member of his family or any person acting on his behalf to make, any investment which is likely to embarrass or influence him in the discharge of his official duties.

(3) If any question arises whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2), it shall be referred to the Government for its decision.

(4) (i) No member of the Service shall, save in the ordinary course of business with a bank or a public limited company, himself or through any member of his family or any person acting on his behalf,—

(a) lend or borrow or deposit money as a principal or agent, to, or from, or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings or otherwise place himself under pecuniary obligation to such person or firm;

(b) lend money to any person at interest or in manner whereby return in money or kind is charged or paid:

Provided that a member of the service may give to, or accept from a relative or a personal friend a purely temporary loan of small amount free of interest or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee:

Provided further that nothing in this sub-rule shall apply in respect of any transaction, entered into by a member of the Service with the previous sanction of the Government.

(ii) When a member of the Service is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the Government and shall thereafter act in accordance with such order as may be made by the Government.

15. Insolvency and habitual indebtedness.—(1) A member of the Service shall so manage his private affairs as to avoid habitual indebtedness or insolvency.

(2) A member of the Service against whom any legal proceedings is instituted for recovery of any debt due from or for adjudging him as an insolvent, shall forthwith report the full acts of such legal proceedings to the Government.

(3) The burden of proving the indebtedness or insolvency is the result of circumstances which, with the exercise of ordinary diligence, the member of the Service could not have foreseen or over which he had no control, and has not proceeded from extravagant or dissipated habits, shall be upon him.

16. Movable, immovable and valuable property.—(1) Every person shall,—

(a) where such person is a member of the Service at the commencement of these rules, before such date after such commencement as may be specified by the Government in this behalf, or

(b) where such person becomes a member of the Service after such commencement, on his first appointment to the service, and
thereafter at such intervals as may be specified by the Government in this behalf, submit a return of his assets and liabilities in such form as may be specified by the Government.

(2) The return to be submitted under sub-rule (1) shall contain full particulars regarding—

(a) immovable property owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures, postal cumulative time deposits and cash including bank deposits owned, acquired or inherited by him or held by him, either in his own name or in the name of any member of his family or in the name of any other person;

(c) movable property other than those specified in clause (b);

(d) debts and other liabilities incurred by him directly or indirectly.

Note.—In all returns the values of items of movable property, less than one thousand rupees in value, may be added and shown as a lump sum and the value of articles of daily use such as clothes, utensils, crockery and books need not be included.

(3) No member of the Service shall, except with the previous knowledge of the Government,—

(a) acquire any immovable property by lease, mortgage, purchase, gift or otherwise, either in his own name or in the name of any member of his family; or

(b) dispose of by lease, mortgage, sale, gift or otherwise any immovable property owned by him or held by him either in his own name or in the name of any member of his family:

Provided that the previous sanction of the Government shall be obtained, if any such transaction is—

(i) with a person having official dealings with the member of the Service; or

(ii) otherwise than through a regular or reputed dealer.

(4) A member of the Service shall report to the Government within one month from the date of every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property if the value of such property exceeds one thousand rupees:

Provided that the previous sanction of the Government shall be obtained, if any such transaction is—

(i) with a person having official dealings with the member of the Service; or

(ii) otherwise than through a regular or reputed dealer.

(5) The Government or any authority empowered by it in this behalf may, at any time, by general or special order, require a member of the Service to furnish within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him.
or on his behalf or by any member of his family as may be specified in the order and such statement shall if so required by the Government or by the authority so empowered, include details of the means by which, or the source from which, such property was acquired.

Explanation.—For the purposes of this rule, the expression "movable property" includes inter alia the following property, namely:

(a) jewellery, insurance policies the annual premia of which exceeds one thousand rupees or one-sixth of the total annual emoluments received by the member of the Service from the Government, whichever is less, shares, securities and debentures;

(b) loans advanced by or to such member of the Service, whether secured or not;

(c) motor cars, motor cycles, horses, or any other means of conveyance; and

(d) refrigerators, radios and radiograms.

17. Vindication of acts and character of members of the Service.—No member of the Service shall, except with the previous sanction of the Government, have recourse to any or to the press for the vindication of any official act which has been the subject-matter of adverse criticism or any attack of a defamatory character.

Explanation.—Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity; provided that he shall submit a report to the Government regarding such action.

18. Canvassing.—No member of the Service shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government.

19. Bigamous marriages.—(1) No member of the Service shall enter into, or contract, a marriage with a person having a spouse living; and

(2) no member of the Service, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Government may permit a member of the Service to enter or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that—

(a) such marriage is permissible under the personal law applicable to such member of the Service and the other party to the marriage; and

(b) there are other grounds for so doing.

20. Consumption of intoxicating drinks and drugs.—A member of Service shall—

(a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;

(b) take due care that the performance of his duties is not prejudiced or affected in any way by influence of such drinks or drugs;
(c) not appear in a public place in a state of intoxication;
(d) not habitually use such drinks or drugs to excess.

21. Interpretation.—If any doubt arises as to the interpretation of these rules, the Central Government shall decide the same.

22. Delegation of powers.—The Government may, by general or special order, direct that any power exercisable by it under these rules (except the power under rule 21 or the power under this rule) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.

23. Cesser and saving.—The All India Services (Conduct) Rules, 1954 (hereinafter referred to as the said rules), shall cease to be in force:

Provided that the cesser shall not affect—

(a) the previous operation of, or anything duly done or suffered under, the said rules; or
(b) any right, privilege, obligation or liability acquired, accrued, or incurred under the said rules; or
(c) any penalty or punishment incurred under the said rules; or
(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said rules had not ceased to be in force.
THE ALL-INDIA SERVICES (DISCIPLINE AND APPEAL) RULES, 1969

In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government, after consultation with the Government of the States concerned, hereby makes the following rules, namely:

1. **Short title and commencement.**—(1) These rules may be called the All India Services Discipline and Appeal) Rules, 1969.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.**—In these rules, unless the context otherwise equires:

(a) "Commission" means the Union Public Service Commission;

(b) "disciplinary authority" means the authority competent under these rules to impose on a member of the service any of the penalties specified in rule 6;

(c) "Government means—

(i) in the case of member of the service serving in connection with the affairs of the Union or with a Union Territory or serving under a foreign Government or outside India (whether on duty or on leave), the Central Government; or

(ii) in the case of member of the service serving in connection with the affairs of a State, the Government of that State.

Explanation.—A member of the Service whose services are placed at the disposal of any company, corporation, organization or any local authority by the Central Government or the Government of a State shall, for the purpose of this clause, be deemed to be a member of the Service serving in connection with the affairs of the Union or the affairs of that State, as the case may be, notwithstanding that his salary is drawn from sources other than the Consolidated Fund of the Union or of that State:

(d) "member of the Service" means a member of an All-India Service as defined in Section 2 of the All India Services Act, 1951 (61 of 1951) and includes a member of a former Secretary of State's Service, who is now a member of the IAS by virtue of clauses (a) and (b) of sub-rule (1) of Rule 3 of the Indian Administrative Service (Recruitment) Rules, 1954 or a member of the Indian Police Service by virtue of clause (a) of sub-rule (1) of Rule 3 of the Indian Police Service (Recruitment) Rules, 1954;

(e) "State Government concerned" in relation to a joint cadre, means the Government of all the States for which the joint cadre is constituted and includes the Government of a State nominated by the Governments of all such States to represent them in relation to a particular matter.
PART II—Suspension

3. Suspension during disciplinary proceedings.—(1) If, having regard to the nature of the charges and the circumstances in any case, the Government which initiates and disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started, that Government may—

(a) if the member of the Service is serving under it, pass an order placing him under suspension, or

(b) if the member of the Service is serving under another Government request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case:

Provided that in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government for its decision.

(2) A member of the service, who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule.

(3) A member of the service in respect of, or against, whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(4) A member of the Service shall be deemed to have been placed under suspension with effect from the date of conviction of, in the event of conviction for a criminal offence, he is not forthwith dismissed or removed or compulsorily retired consequent on such conviction provided that the conviction carries a sentence of imprisonment exceeding forty-eight hours.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order or dismissal, removal or compulsory retirement and shall remain in force until further orders.

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the service is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of the original order or dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.
(7) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a member of the Service is suspended or is deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the member of the service shall continue to be under suspension with the termination of all or any of such proceedings;

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order.

4. Subsistence allowance during suspension—(1) A member of the service who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the Government, under whom he was serving at the time of suspension, as a subsistence allowance, an amount equal to the leave salary which he would have drawn under the leave rules applicable to him if he had been on leave on half pay or on half average pay:

Provided that, where the period of suspension exceeds twelve months it shall be within the competence of the suspending authority to increase or reduce the amount of subsistence allowance for any period subsequent to the period of the first twelve months, subject to the following conditions, namely:—

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance drawn during the period of the first twelve months, if, in the opinion of the suspending authority, the period of suspension has been prolonged for reasons not directly attributable to the member of the service;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding fifty per cent of the subsistence allowance drawn during the period of the first twelve months, if, in the opinion of the suspending authority, the prolongation of the period of suspension has been due to reasons directly attributable to the member of the service:

Provided further that, in addition to the subsistence allowance, the Government may direct, to such extent and subject to such conditions as it thinks fit, the payment of—

(i) any compensatory allowance admissible from time to time on the basis of pay, of which the member of the service was in receipt on the date of suspension, or that may be subsequently sanctioned; and

(ii) dearness allowance not exceeding the amount admissible as such had he been on leave on leave salary equal to the rate of subsistence allowance payable from time to time.

(2) No member of the Service shall be entitled to receive payment under sub-rule (1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.
(3) The authority to grant subsistence allowance shall be the suspending authority.

5. Pay, allowances and treatment of service on reinstatement—(1) When a member of the Service, who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make order as to—

(a) the pay and allowances which shall be paid to the member of the service for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) (a) Where such competent authority holds that the member of the service has been fully exonerated or, in the case of suspension, that it was unjustifiable, the member of the service shall be granted the full pay to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowance of which he was in receipt immediately prior to the dismissal, removal, compulsory retirement or suspension, or may have been sanctioned subsequently and made applicable to all members of the Service.

(b) In all other cases, the member of the service shall be granted such proportion of such pay and allowance as such competent authority may direct:

Provided that the payment of allowance under this sub-rule shall be subject to all other conditions subject to which such allowances are admissible:

Provided further that the pay and allowances granted under this clause shall not be less than the subsistence and other allowances admissible under the rule 4.

(3) (a) In a case falling under clause (a) of sub-rule (2), the period of absence from duty shall for all purposes be treated as a period spent on duty.

(b) In a case falling under clause (b) of sub-rule (2), the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing that it shall be treated for any specific purpose.

PART III—Penalties and Disciplinary Authorities

6. Penalties.—(1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Service, namely:

Minor penalties:

(i) censure:

(ii) withholding of promotions:
(iii) recovery from pay of the whole, or part, of any pecuniary loss caused to Government by negligence or breach of orders;

(iv) withholding of increments of pay:

Major penalties:

(v) reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the member of the service will earn increments during the period of reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay;

(vi) reduction to a lower time-scale of pay, grade or post which shall ordinarily be a bar to promotion of the member of the service to the time-scale of pay, grade or post from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post from which the member of the service was reduced and his seniority and pay on such restoration to that grade or post:

(vii) compulsory retirement:

Provided that, if the circumstances of the case so warrant, the authority imposing the penalty may direct that the retirement benefits admissible to the member of the service under the All India Services (Death-cum-Retirement Benefits) Rules, 1958, shall be paid at such reduced scale as may not be less than two-third of the appropriate scales indicated in Schedules ‘A’ and ‘B’ of the said rules.

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Explanation.—The following shall not amount to a penalty within the meaning of this rule; namely:—

(i) withholding of increments of pay of a member of the Service for failure to pass a departmental examination in accordance with the rules or orders governing the service;

(ii) stoppage of a member of the Service at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(iii) non-promotion of a member of the Service, whether in a substantive or officiating capacity, after due consideration of his case to a post or grade to which promotions are made by selection;

(iv) reversion of a member of the Service officiating in a higher grade or post to which promotions are made by selection, to a lower grade or post after a period of trial not exceeding three years on the ground that he is considered unsuitable for such higher grade or post, or on any administrative ground unconnected with his conduct;

(v) reversion of a member of the service, appointed on probation to the service, to State Service, during or at the end of the period of probation, in accordance with the terms of appointment or the rules and orders governing such probation;
(vi) replacement of the services of a member of the service whose services have been borrowed from a State Government at the disposal of the State Government concerned;

(vii) compulsory retirement of a member of the Service under the provisions of the All India Services (Death-cum-Retirement Benefits) Rules, 1958;

(viii) termination of the service of a member of the Service, appointed on probation, during or at the end of the period of probation, in accordance with the terms of the service or the rules and orders governing such probation.

(2) The penalty of compulsory retirement shall not be imposed on a member of the former Secretary of State's Services, referred to in clause (d) of rule 2.

7. Authority to institute proceedings and to impose penalty.—

(1) Where a member of the Service has committed any act or omission which renders him liable to any penalty specified in rule 6—

(a) if such act or omission was committed before his appointment to the service, the Government, under whom he is for the time being serving shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit;

(b) if such act or omission was committed after his appointment to the service, the Government under whom such member was serving at the time of the commission of such act or omission, shall alone be competent to institute disciplinary proceedings against him and subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit and the Government, under whom he is serving at the time of the institution of such proceedings, shall be bound to render all reasonable facilities to the Government instituting and conducting such proceedings.

Explanation.—In the event of re-organisation of a State, if such act or omission was committed while the officer was serving in connection with the affairs of the State, the Government, on whose cadre he is borne after re-organisation of the State, shall alone be competent to institute disciplinary proceedings against him and, subject to the provisions of sub-rule (2), to impose on him such penalty specified in rule 6 as it thinks fit.

(2) The penalty of dismissal, removal or compulsory retirement shall not be imposed on a member of the service except by an order of the Central Government.

(3) Where the punishing Government is not the Government on whose cadre the member is borne, the latter Government shall be consulted before any penalty specified in rule 6 is imposed:

Provided that where the Governments concerned are the Central Government and the State Government or two State Governments and there is a difference of opinion between the said Governments in respect of any matter referred to in this rule, the matter shall be referred to the Central Government for its decisions, which shall be passed in consultation with the Commission.
PART IV—Procedure for Imposing Penalties

8. Procedure for imposing major penalties.—(1) No order imposing any of the major penalties specified in rule 6 shall be made except after an inquiry is held as far as may be, in the matter provided in this rule and rule 10, or, provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) 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 member of the service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquiry into the truth thereof.

(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers; provided that at least one member of such a board shall be an officer of the service to which the member of the service belongs.

(4) Where it is proposed to hold an inquiry against a member of the service under this rule and/or rule 10, the disciplinary authority shall draw up or caused to be drawn up—

(i) the substance of the imputations of misconduct or misconduct or misbehaviour into definite and distinct articles of charge;

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

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

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

(5) The disciplinary authority shall deliver or cause to be delivered to the member of the service a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the member of the service to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(6) (a) On receipt of the written statement of defence, the disciplinary authority may appoint, under sub-rule (2), an inquiring authority for the purpose of inquiring into such of the articles of charge as are not admitted, and, where all the articles of charge have been admitted by the member of the service in his written statement of defence, the disciplinary authority shall record its finding on each charge and shall act in the manner laid down in rule 9.

(b) If no written statement of defence is submitted by the member of the service, the disciplinary authority may, if it considers it necessary to do so, appoint, under sub-rule (2), an inquiring authority for the purpose.

(c) Where the disciplinary authority appoints an inquiring authority for holding an inquiry into such charge, it may by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.
(7) The disciplinary authority shall forward the inquiring authority—

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

(ii) a copy of the written statement of defence if any, submitted by the member of the service:

(iii) a copy of the statement of witnesses, if any, referred to in sub-rule (4);

(iv) evidence proving the delivery of the documents referred to in sub-rule (4) to the member of the service; and

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

(8) The member of the service shall be required to appear in person before the inquiring authority at any time prescribed after the expiry of ten working days from the date of receipt of the articles of charge and the statement of imputations of misconduct or misbehaviour, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(9) The member of the service may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority having regard to the circumstances of the case, so permits.

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

(11) The inquiring authority shall return a finding of guilty in respect of these articles of charge to which the member of the service pleads guilty.

(12) The inquiring authority shall, if the member of the service fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days after recording an order that the member of the service may, for the purpose of preparing his defence:

(i) inspect, within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (4);

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

Note:—If the member of the service applies orally or in writing for the supply of the statement of witnesses mentioned in the list referred to in sub-rule (4), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.
(33) give a notice within ten days of the order or, within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (4).

Note.—The member of the service shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

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

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

(14) On receipt of the requisition referred to in sub-rule (13), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the member of the service and withdraw the requisition made by it for the production or discovery of such documents.

(15) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by, or on behalf of the disciplinary authority. The witnesses shall be examined by, or on behalf of the Presenting Officer and may be cross-examined by, or on behalf of, the members of the service. The Presenting Officer shall be entitled to re-examine the witnesses on any points, on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(16) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the member of the service or may itself call for new evidence or recall and re-examine any witness and, in such case, the member of the service shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give to the member of the service an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the member of the service to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

Note:—New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such
evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(17) When the case for the disciplinary authority is closed, the member of the service shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the member of the service shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(18) The evidence on behalf of the member of the service shall then be produced. The member of the service may examine himself in his own behalf if he so prefers. The witnesses produced by the member of the service shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(19) The inquiring authority may, after the member of the service closes his case, and shall, if the member of the service has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.

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

(21) If the member of the service, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(22) (a) Where a State Government which has caused to be inquired into the articles of any charge and, having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (vi) to (ix) of rule 6 should be imposed on the member of the service, the State Government shall forward the records of the inquiry to the Central Government suggesting imposition of the penalties specified in clauses (vii) to (ix) of rule 6.

(b) The Central Government may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine such witnesses. If the Central Government do not find justification for imposing one of the penalties specified in clauses (vii) to (ix) of rule 6 in a case referred to it by a State Government, then it shall refer it back to the State Government.

(23) Whenever an inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that, if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already
been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witness as hereinbefore provided.

(24) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain:

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

(b) the defence of the member of the service in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge; and

(d) the findings on each article of charge and the reasons therefor.

Explanation.—If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the member of the service has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority shall forward to the disciplinary authority the records of inquiry which shall include:

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the member of the service;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the member of the service or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

9. Action on the inquiry report.—(1) The disciplinary authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clause (i) to (iv) of rule 6 should be imposed on the member of the service, it shall notwithstanding anything contained in rule 10, make an order imposing such penalty:

Provided that, in every case, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the member of the service.
(4) (i) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (p) to (sx) of rule 6 should be imposed on the member of the service, it shall:

(a) furnish to the member of the service a copy of the report of such authority and a statement of its findings on each article of charge, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the member of the service a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of the receipt of the notice or such further time, not exceeding fifteen days as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 8.

(ii) (a) in every case, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in pursuance of such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice;

(b) the disciplinary authority shall, after considering the representation, if any, made by the member of the service, and the advice given by the Commission, determine what penalty, if any, should be imposed on the member of the service and make such order as it may deem fit.

10. Procedure for imposing minor penalties.—(1) Subject to the provision of sub-rule (3) of rule 9, no order imposing on a member of the service any of the penalties specified in clauses (i) to (iv) of rule 6 shall be made except after:

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

(b) holding an inquiry, in the manner laid down in sub-rule (4) to (23) of rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

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

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

(e) consulting the Commission.

(2) The record of proceedings in such cases shall include:

(i) a copy of the intimation to the member of the service of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

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

11. Cases of difference of opinion to be referred to Central Government.—When there is any difference of opinion between a State Government and the Commission on any matter covered by these rules such matter shall be referred to the Central Government for its decision.

12. Communication of orders.—Orders made by the disciplinary authority shall be communicated to the member of the service who shall also be supplied with a copy of the report of the inquiring authority and a statement of the finding of the disciplinary authority, together with brief reasons for its disagreements, if any, with the findings of the inquiring authority (unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

13. Common proceeding.—Where two or more members of the service are concerned in any case, the Government may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

14. Special procedure in certain cases.—Notwithstanding anything contained in rules 8 to 12—

(i) where any penalty is imposed on a member of the service on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission be consulted where any orders are made in any case under this rule.

PART V—Appeals

15. Orders against which no appeal lies.—(1) Notwithstanding anything contained in this part, no appeal shall lie against:

(i) any order made by the President;

(ii) any order of an interlocutory nature or of the nature of step-in-aid for the final disposal of a disciplinary proceeding, other than an order of suspension;
(iii) any order passed by an inquiring authority in the course of inquiry under rule 8;

(iv) any order by a competent authority withholding an appeal under rule 23.

(2) Nothing in clauses (i) and (iv) of sub-rule (1) shall be deemed to affect or abridge the right of a member of the service to submit a memorial to the President under, and in accordance with, the provisions of rule 26.

16. **Orders against which appeal lies.**—(1) Subject to the provisions of rule 15 and the explanation to rule 6, a member of the service may prefer an appeal to the Central Government against all or any of the following orders, namely:

(i) an order of suspension made or deemed to have been made under ruled 3;

(ii) and order passed by a State Government imposing any of the penalties specified in rule 6;

(iii) an order of a State Government which—

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules applicable to him; or

(b) interprets to his disadvantage the provisions of any such rule; or

(c) has the effect of superseding him in promotion to a selection post;

(iv) an order of the State Government—

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar; or

(b) reverting him while officiating in a higher grade or post to a lower grade or post, otherwise than as a penalty; or

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules; or

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof; or

(e) determining his pay and allowances—

(i) for the period of suspension; or

(ii) from the date of dismissal, removal or compulsory retirement from service, or from the date of reduction to a lower grade, post, time-scale of pay or stage in a time-scale of pay, to the date of reinstatement or restoration to be paid to him on his reinstatement or restoration; or

(f) determining whether or not the period from the date of suspension or from the date of dismissal, removal, compulsory retirement or reduction to a lower grade, post, time-scale of pay or stage in a time-scale of pay, to the date of his reinstatement or restoration shall be treated as a period spent on duty for any purpose.

*Explanation.*—In this rule—
(c) the expression "member of the service" includes a person who has ceased to be in Government service;

(ii) the expression "pension" includes additional pension, gratuity any other retirement benefit.

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

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

18. Form and content of appeal.—(1) Every member preferring an appeal shall do so separately and in his own name.

(2) Every appeal preferred under these rules shall be addressed to the Secretary to the Government of India in the Ministry of Home Affairs and shall—

(a) contain all material statements and arguments relied on by the appellant;

(b) contain no disrespectful or improper language; and

(c) be complete in itself.

(3) Every such appeal shall be submitted through the head of the office under whom the appellant is for the time being serving and through the Government from whose order the appeal is preferred.

(4) The authority which made the order appealed against shall, on receipt of a copy of every appeal, which is not withheld under rule 22, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the Central Government.

19. Consideration of Appeal.—(1) In the case of an appeal against order of the State Government imposing any penalty specified in rule 6, the Central Government shall consider—

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

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

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

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

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

Provided that—

(f) the Commission shall be consulted in all such cases where such consultation is necessary;
(ii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (9) to (14) of rule 6 and an inquiry under rule 8 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 8 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (4) of rule 9, of making representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

(iii) if the enhanced penalty which the Central Government proposes to impose is one of the penalties specified in clauses (9) to (14) of rule 6 and an inquiry under rule 8 has already been held in the case, the Central Government shall, after giving the appellant a reasonable opportunity as far as may be in accordance with the provisions of sub-rule (4) of rule 9, of making representations against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of rule 10, of making representation against such enhanced penalty.

(2) In an appeal against any other order specified in rule 16 the Central Government shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

20. Implementation of orders on appeal.—Every order passed by the Central Government in appeal under any of the relevant provisions of these rules shall be final and the State Government concerned shall forthwith give effect to such order.

21. Circumstances in which appeals may be withheld.—(1) The State Government, from whose order an appeal is preferred, may withhold the appeal if—

(a) it is an appeal in a case in which under these rules there is no right of appeal, or

(b) it does not comply with the provisions of rule 18, or

(c) it is not preferred within forty-five days after the date on which the orders appealed against were received by the appellant and no reasonable cause is shown for the delay, or

(d) it is a repetition of a previous appeal which has already been decided and no new facts or circumstances are adduced which afford grounds for a reconsideration of the case.

(2) In every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons therefor.
(3) An appeal withheld on account only of failure to comply with the provisions of rule 18 may by resubmitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal, and, if resubmitted in a form which complies with the said provisions, not be withheld.

22. List of appeals withheld.—The State Government shall forward to the Central Government on the first day of January and July every year a list of appeals to the Central Government withheld by them under rule 21 during the preceding six months together with the reasons for withholding the same.

23. Appellate authority may call for any appeal withheld.—The Central Government may call for any appeal which has been withheld by any State Government under rule 22, dealt with it in the manner laid down in rule 19 and pass such orders thereon as the Central Government thinks fit.

PART VI—Review and Memorials

24. Review.—(1) Notwithstanding anything contained in these rules, the Central Government or the State Government concerned, as the case may be, may at any time not exceeding 6 months from the date of the order passed in appeal, if an appeal has been preferred, and where no such appeal had been preferred within one year of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and review any order made under these rules or under the rules repealed by rule 30 from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may;

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed, or

(c) remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

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

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 6 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 8 and after giving a reasonable opportunity to the member of the service concerned to show cause against the penalty proposed on the evidence adduced during such inquiry and except after consultation with the Commission:

Provided further that where the original order was passed by the Central Government or the State Government concerned, as the case may
be, after consultation with the Commission, it shall not be revised except after consultation with the Commission.

(2) No proceeding for review shall be commenced until after—

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

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

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

25. Memorials.—(1) A member of the service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved within a period of three years from the date of the passing of such order.

(2) Every such memorial shall be authenticated by the signature of the memorialist and submitted by the memorialist on his own behalf.

(3) Every memorial submitted under these rules shall—

(a) contain all material statements and arguments relied up on by the memorialist;

(b) contain no disrespectful or improper language;

(c) be complete in itself; and

(d) end with a specific prayer.

(4) If the memorial is against the order of a State Government, it should be submitted through the State Government concerned and if the memorial is against the orders of the Central Government, it shall be submitted through the Ministry of the appropriate authority in the Central Government under whom the member of the service is for the time being serving.

(5) A memorial forwarded under sub-rule (4) shall be accompanied by a concise statement of facts material thereto and, unless there are special reasons to the contrary, with an expression of opinion thereon—

(a) of the State Government concerned, or

(b) of the Ministry or the appropriate authority in the Central Government under whom the member of the service is for the time being serving, or

(c) of both.

(6) The authority against whose orders a memorial is submitted under this rule shall give effect to any order passed thereon by the President.

26. Forwarding of advance copies.—In cases where an appeal is preferred or a memorial is submitted under these rules, the appellants or the memorialist, as the case may be, may, if he so desires, forward an advance copy to the appellate authority in the case of an appeal or the President of India in the case of a memorial.
PART VII—Miscellaneous

27. Service of orders, notices etc.—Every order, notice and other process made or issued under these rules shall be served in person on the member of the service concerned or communicated to him by registered post.

28. Power to relax time limit and condone delay.—Save as otherwise expressly provided in these rules, the Central Government or the State Government, as the case may be, may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

29. Supply of copy to Commission’s advice.—Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and, where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to be member of the service concerned along with a copy of the order passed in the case.

30. Repeal and Saving.—(1) The All India Services (Discipline and Appeal) Rules, 1955, are hereby repealed:

Provided that—

(a) such repeal shall not affect the previous operation of the said rules, or anything done, or any action taken, thereunder;

(b) any proceedings under said rules, pending at the commencement of these rules shall be continued and disposed of, as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person, to whom these rules apply of any right of appeal which had accrued to him under the rules hereby repealed (hereinafter referred to as the repealed rules).

(3) An appeal pending at the commencement of these rules against any order made before such commencement under the repealed rules shall be considered and orders thereon shall be made, in accordance with these rules, as if such orders were made and the appeal was preferred under these rules.

(4) As from the commencement of these rules any appeal or application for review against any order made before such commencement under the repealed rules shall be preferred or made under these rules, as if such orders were made under these rules:

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by the repealed rules.

31. Removal of doubts.—Where a doubt arise as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Central Government for its decision.

[No. 7/15/63-AIS (II), dated 20-3-69.]
THE ALL INDIA SERVICES (SPECIAL DISABILITY LEAVE) REGULATIONS, 1957

1. Short title.—These regulations may be called the All India Services (Special Disability Leave) Regulations, 1957.

2. Definitions.—In these regulations, unless the context otherwise requires,—

(a) "disability" means any injury, illness, infirmity, or disease; and

(b) "Medical Board" means a medical board set up by the Government.

(2) All other words and expressions used in these regulations but not defined shall have the meanings respectively assigned to them in the All India Services (Leave) Rules, 1955.

3. Conditions for the grant of special disability leave and the amount of such leave.—(1) (i) Special disability leave may be granted to a member of the Service who suffers a disability as a result of risk of office or special risk of office.

(ii) Such leave shall not be granted unless the disability manifested itself within three months of the occurrence to which it is attributed and the member of the Service who suffers the disability acted with due promptitude in bringing it to the notice of the Government. The Government may, however, if satisfied as to the cause of disability permit such leave being granted in cases where the disability manifested itself more than three months after the occurrence of its cause.

Explanation.—(i) "Risk of office" means any risk, not being special risk, of accident or disease to which a member of the Service is exposed in the course of and as a consequence of his duties, but nothing shall be deemed to be a risk of office which is a risk common to human existence in modern conditions in India, unless such risk is definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of Government service and includes any risk of injury, illness, disease or accident (whether caused or occasioned by riots, civil disorders or commotions and other extraordinary circumstances) arising out of and in the course of discharge of his duties by a member of the Service on a working day or holiday. A member of the Service who is proceeding to or returning from any place to which he has to go in the course of his duties or in order to discharge his duties shall be deemed to be acting in the discharge of his duties.

(ii) ‘Special risk of office’ means—

(a) a risk of suffering injury by the act of a person who inflicts an injury on a member of the Service;

1. Published by Notification No. S. R. O. 2349, dated the 16th July, 1957 as amended by Notification No. 13/54/57-AIS (III), dated the 13th May, 1958.

(362)
(s) by assaulting or resisting him in the discharge of his duties, or in order to deter or prevent him from performing his duties; or;

(ii) because of anything done or attempted to be done by such member of the Service in the lawful discharge of his duty as such; or

(iii) because of his official position;

(b) a risk of injury by accident to which a member of the Service is exposed in the course of, or as a consequence of, the performance of any particular duty which has the effect of materially increasing his liability to such injury beyond the normal risk of his office; and

(c) a risk of contracting disease in the performance of any particular duty which has the effect of increasing his liability to illness beyond the ordinary risk attaching to the civil post which he holds.

(2) The period of leave granted shall be such as may be certified by a medical board to be necessary and shall not be extended except on a certificate from a medical board.

(3) Where a member of the Service suffers a disability by an injury accidentally incurred in or in consequence of his official position or by illness incurred in the performance of any particular duty which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the post which he holds, the grant of special disability leave is subject to the further conditions that—

(i) the disability if due to a disease must be certified by a medical board to be directly due to the performance of the particular duty;

(ii) the disability contracted during service otherwise than with the Armed Forces must, in the opinion of Government, be so exceptional in character or in the circumstances of its occurrence as to justify such unusual treatment as the grant of this form of leave; and

(iii) a period of absence recommended by a medical board may be covered in part by special disability leave and in part by other leave and that a period of special disability leave granted on full pay may be less than 120 days.
THE CENTRAL CIVIL SERVICES (CONDUCT) RULES 1964

New Delhi, the 30th November, 1964

In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules, namely:—

1. short title, commencement and application.—(1) These rules may be called the Central Civil Services (Conduct) Rules, 1964.

(2) They shall come into force at once.

(3) Save as otherwise provided in these rules and subject to the provisions of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, these rules shall apply to every person appointed to a civil service or post (including a civilian in Defence Service) in connection with the affairs of the Union:

Provided that nothing in these rules shall apply to any Government servant who is—

(a) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890);

(b) a person holding a post in the Railway Board and is subject to the Railway Services (Conduct) Rules;

(c) holding any post under the administrative control of the Railway Board or of the Financial Commissioner of Railways;

(d) a member of an All-India Service;

(e) a holder of any post in respect of which the President has, by a general or special order, directed that these rules shall not apply:

Provided further that rules 4, 6, 7, 12, 14, sub-rule (5) of rule 15, rule 16, sub-rules (1), (2) and (3) of rule 18, rules 19, 20 and 21 shall not apply to any Government servant who draws a pay which does not exceed Rs. 500.00 per mensem and holds a non-gazetted post in any of the following establishment, owned or managed by the Government namely:

(i) ports, docks, wharves or jetties;

(ii) defence installations except training establishments;

(iii) public works establishments, in so far as they relate to work-charged staff;

(iv) irrigation and electric power establishments;

1. Published in Gazette of India, Part II, Section 3 (ii) on 12-12-1964.
(vi) field units of the Central Tractor Organisation employing workmen governed by labour laws:

Provided further that these rules shall apply to any person temporarily transferred to a service or post specified in clause (a) of the first proviso to whom but for such transfer these rules would have otherwise applied.

Explanation.—For the purposes of the second proviso, the expression 'establishment' shall not include any railway establishment or any office mainly concerned with administrative managerial, supervisory security or welfare functions.

Government of India Decisions

(1) Applicability of the Conduct Rules to employees of public undertakings.

A question has been raised whether employees of corporate bodies controlled or financed by the Central Government should be subject to all or any of the conditions imposed in the case of Central Government servants by the Central Civil Services Conduct Rules. The extent to which such conditions can be applied to employees of a statutory Corporation would naturally depend on the provisions of the statute setting up the Corporation. That statute may provide for suitable rules being made by the Corporation itself or by Government. Where there is no such statutory provision or the body is non-statutory, the conditions of service of employees would be determined by the terms, expressed or implied, of the contract of service. It will then be open to the employer, subject to the relevant labour laws where they apply, to lay down conditions of service which would operate as terms of the contract.

It has been decided that in corporate undertakings entirely financed by the Central Government, i.e., where the whole capital is invested by the State, the activities of the employees should be restricted in the same manner as for those working directly under Government. In such cases action should be taken to extend the provisions of the Central Civil Services (Conduct) Rules to the employees either by a self-contained set of rules under the specific statutory authority for framing such rules, or as terms of the contract.

In regard to employees of corporate undertakings controlled or partly financed by the Central Government also, the provisions of the Central Civil Services (Conduct) Rules should, wherever possible, be applied with such modifications as may be necessary.¹

It is laid down in Decision No. 1 above that in the corporate undertakings entirely financed by the Central Government, i.e., where the whole capital is invested by the State, the activities of the employees should be restricted in the same manner as for those directly under Government and, in such cases, action should be taken to extend the provisions of the Central Civil Services (Conduct) Rules to the employees either by a self-contained

¹. M.H.A., O.M. No. 25/55/53-Ests (A), dt. 14-3-56.
set of rules under the specific statutory authority for framing such rules or as terms of the contract. In regard to employees of corporate undertakings controlled or partly financed by the Central Government the Central Civil Services (Conduct) Rules should wherever possible be applied with such modifications as may be necessary.

The Central Civil Services (Conduct) Rules which have been recently revised—vide Home Ministry’s Notification No. 25.4/63-Ests (A), dated 30th November, 1964—contain certain important provisions such as these relating to integrity, which have been made or modified on the recommendation of the Committee on Prevention of Corruption (Santhanam Committee). It is requested that statutory and other corporate public sector undertakings under the control of the Ministry of Industry and Supply etc., may be advised to bring their Conduct Rules on the lines of the revised C.C.S. (Conduct) Rules, 1964, and to incorporate particularly, the important provisions of the C.C.S. (Conduct) Rules relating to integrity.[2]

(2) Employment of honorary workers in Civil posts—Applicability of the C.C.S. (Conduct) Rules:

Various questions have arisen from time to time in connection with the employment of honorary workers in civil posts. After careful consideration it has been decided that the following instructions should be laid down for the guidance of all concerned.

2. The basic principles to be adopted in this matter are:

(i) Employment of honorary workers in civil posts should be an exceptional procedure to be resorted to only in abnormal circumstances or when suitable paid employees are not available.

(ii) Honorary employment should be offered only to such persons as have rendered meritorious services or are eminent in public life and have a striking reputation for integrity.

(iii) Services of an honorary worker should be utilised only in an advisory capacity. The work to be entrusted to him should not be such as would involve exercise of executive, administrative or judicial powers as the holder of a civil post or exercise of authority in the name, or on behalf, of Government.

(iv) An honorary worker should be paid a nominal salary of Re. 1 per month in respect of the civil post the duties of which he is required to perform. This is necessary in order to bring him within the ambit of the Government Servants’ Conduct Rules and other service rules. An honorary worker need not, however, actually draw the nominal salary and may, by writing to the Accounts Officer concerned, voluntarily surrender it. For the purpose of official records, however, such nominal salary must be fixed and specified in the order of appointment.

(v) All honorary workers should automatically and proprio vigore be subject to the provisions of the Indian Official Secrets Act, 1923. They need not be required to sign and declaration in this connection, but the position should expressly be made clear to each honorary worker at the time of his appointment.

3. It is realised that strict enforcement of the above principles may present practical difficulties in individual cases. For example, it may not be necessary to enforce the requirements of clause (ii) in Paragraph 2 above in the case of persons who have previously held a high office under Government. Again, honorary workers who are prominent in the public or political life of the country cannot reasonably be expected to sever their life-long association with the political parties to which they belong; as a working arrangement, therefore Rule 1d (connection with the press), 2 (criticism of Government) and 23 (taking part in politics) of the Government Servants' Conduct Rules ought not to be enforced against such persons in so far as participation in politics is concerned. In all other respects, however, such persons should be governed by the provisions of the Government Servants' Conduct Rules.

4. In the case of the employment of Members of Parliament in an honorary capacity, it is necessary to ensure that such employment does not amount to holding an office of profit under Article 102 (1) (a) of the Constitution. In such cases the requirements of clause (iii) in Paragraph 2 above should be strictly adhered to while the requirements of clause (iv) should not be enforced at all. The instructions issued in the Ministry of Law's Office Memorandum No. F. 55 (1)/50-C, dated the 6th February, 1951, (not reproduced), regarding the payment of allowances and fees to Members of Parliament should also be carefully borne in mind.

5. All proposals for the employment of honorary workers in civil posts as well as all proposals for exceptional treatment in cases in which the Ministry concerned consider that the requirements of any of the basic principles laid down in Paragraph 2 above, should be relaxed, should be referred to the Ministry of Home Affairs for prior concurrence.

6. It should be made clear to honorary workers at the time of the appointment that there is no obligation on the part of Government to provide them with residential accommodation or any other concessions usually allowed to salaried employees of Government. Each such case would be treated on its merits. Accommodation, furniture, etc. may be made available if justified, and to the extent it can be done without detriment to Government's commitments to salaried employees.

7. A copy of this Office Memorandum should be communicated to every honorary worker along with the orders of his appointment.

8. The Ministry of Finance etc. are requested to note these instructions and communicate them to their attached and subordinate officers for guidance. They are also required to examine the cases of any honorary workers at present employed under them or in their attached or subordinate offices with a view to ensuring compliance with these instructions.

9. These instructions supersede the orders contained in the late Home Department Office Memorandum No. 50/15/39-Public, dated the 24th October, 1950 (not reproduced).

(3) **Applicability of the Central Civil Services (Conduct) Rules to members of Committees/Commissions appointed by the Government of India.**

Attention is invited to Decision No. 3 above in which it is laid down that an honorary worker should be paid a nominal salary of Re. 1 per mensem so that he may technically be a Government servant governed by the Central Civil Services (Conduct) Rules and other service rules. The Government of India have since been advised that, subject to the exceptions specified in the Central Civil Services (Conduct) Rules, 1955, these rules apply to "all persons appointed to civil services and posts in connection with the affairs of the Union" and that the criterion for deciding whether the rules apply in a particular case is whether the person concerned has been formally appointed to a civil service or post under the Central Government, and not merely whether he is in receipt of remuneration from Government. Accordingly, where the intention is that the person to be appointed should be governed by the Central Civil Services (Conduct) Rules, the appointment should be made to a specific civil service or post.

2. Non-official members (i.e., all persons other than those who are in active Government service) of Commissions, Boards and Committees of Enquiry set up by Government, may sometimes attach considerable importance to their non-official status and prefer it to be maintained while accepting membership of such Commissions etc. In such cases, if the intention is that the said rules should not apply, the person concerned should not be appointed to any Central civil service or post, but should be appointed as Chairman or member of the Commission or Committee, as the case may be, without reference to any civil service or post, on such honoraria as may be considered suitable.

3. The Government of India have also noticed that in several instances the honoraria sanctioned for honorary workers are substantial. In such cases the person concerned is an honorary worker in name only. The Government of India do not consider it proper to fix the amount of honorarium at such a figure that the honorary character of the employment is lost. Moreover if the person desires to maintain his non-official status and does not wish to be regarded as a Government servant, it follows that the remuneration allowed to him as honorarium should be nominal and not equivalent to what would have been allowed to him as salary if he had been appointed to a regular post.

4. The Ministry of Finance etc. are requested to bring these instructions to the notice of all departments and offices under their administrative control.

2. **Definitions.**—In these rules, unless the context otherwise requires—

(a) "the Government" means the Central Government;

(b) "Government servant" means any person appointed by Government to any civil service or post in connection with the affairs of the Union and includes a civilian in a Defence Service;

**Explanation.**—A Government servant whose services are placed at the disposal of a company, corporation, organisation or a local authority by the Government shall, for the purposes of these rules, be deemed to be a Government servant serving under the Government notwithstanding that his salary is drawn from sources other than the Consolidated Fund of India;

(c) "members of family" in relation to a Government servant includes—

(i) the wife or husband, as the case may be, of the Government servant, whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent court;

(ii) son or daughter or step-son or step-daughter of the Government servant and wholly dependent on him, but does not include a child or step-child who is no longer in any way dependent on the Government servant or of whose custody the Government servant has been deprived by or under any law;

(iii) any other person related, whether by blood or marriage, to the Government servant or to the Government servant’s wife or husband and wholly dependent on the Government servant.

3. General.—(1) Every Government servant shall at all times—

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

(2) (i) Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority;

(ii) No Government servant shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in the best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

E. planation.—Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

Government of India Decisions

(1) Conviction of Government servant—Requirement regarding intimation to departmental superiors.

Attention is invited to Rules 55 and 55-A of the Civil Services (Classification, Control and Appeal) Rules and Section 240 (3) of the Government of India Act, 1935 (also Article 311 of the new Constitution) which provide, that the procedure thereunder need not be followed in cases where a depart-
mental penalty is to be imposed on a Government servant on the basis of facts which have led to his conviction in a criminal court. Dismissal etc. in such cases is not to be automatic; each case should be examined on its merits and orders imposing the appropriate penalty passed only where the charges against the Government servant on which his conviction is based show that he was guilty of moral turpitude or of grave misconduct which is likely to render his further retention in service undesirable or contrary to public interest.

2. In order that the departmental authorities of a Government servant who has been convicted by a court of law, may be in a position to consider his case and pass suitable orders thereon, every Government servant is ordinarily expected to inform his departmental superiors of such conviction, whether the offence is of a serious nature or is purely technical. Since, however there is no specific requirement at present to do so, cases frequently occur in which Government servants concerned omit to inform their official superiors of the fact of their conviction which comes to light later from other sources. In these circumstances it has been decided, and it is hereby made clear, that it shall hereafter be the duty of a Government servant who may be convicted in a criminal court, to inform his official superiors of the fact of his conviction and the circumstances connected therewith, as soon as it is possible for him to do so. Failure on the part of any Government servant so to inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which his conviction was based.

3. It is requested that the position as in Para 2 above may kindly be caused to be explained to all Government servants with whom the Ministry of Finance etc. may be concerned.1

(2) Joining of educational institutions by Government servants outside normal office hours

It has been brought to the notice of this Ministry on behalf of Government servants belonging to Scheduled Castes/Scheduled Tribes, that certain Ministries/Department do not permit member of their staff belonging to these communities to join educational institutions outside the normal office hours.

2. As the Ministries aware, it was proposed in this Ministry’s O. M. No. 25/27/52-Est, dated the 3rd May, 1952 to issue general instructions on the subject. The replies received to that O. M. however revealed that while same departments found that efficiency was suffering on account of Government servants attending a regular course of study for University Degrees even outside office hours, a great majority of the Ministries was able to permit their employees to pursue such studies without detriment to official duties and that no serious problems had been created in most of the departments by Government servants joining educational institutions. It was therefore, not considered necessary to issue any specific instructions on the subject. Ordinarily, there can be no objection to the pursuit of knowledge by Government servants in their leisure hours. But this must be subject to the condition that such pursuit does in no way detract from their efficiency. Wherever found necessary, the administrative authorities may require that Government servants under their control should take prior permission before

1 M. H. A., O. M. No. 25/70/49-Est. dated 20-12-1949.
joining educational institutions or courses of studies for University Degrees, as the joining of educational institutions involve advance commitment about attendance at specific hours and absence from duty during periods of examinations. Ordinarily, permission is to be granted but with a view to summarily dealing with cases where it is noticed that the Government servant has been neglecting his duties for the sake of his studies, a condition may be attached saying that the permission may be withdrawn at any moment without assigning any reason. This will, of course, be without prejudice to any other departmental action being taken where mere withdrawal of the permission is not considered adequate.

3. Government servants belonging to the Scheduled Castes/Scheduled Tribes may be allowed to take full advantage of the educational facilities subject to the policy stated above.

4. These instructions have been issued with the concurrence of the Comptroller and Auditor-General in so far as persons serving under him are concerned.¹

(3) Integrity of officer appointed to responsible posts—Reputation regarding honesty.

In Para 7 of Chapter VI of the First Five Year Plan, the Planning Commission have observed that no officer who does not have a reputation for honesty should be placed in a position in which there is considerable scope for discretion. The Government of India fully agree with this observation. While there is no intention that an officer should be penalised or condemned merely on hearsay evidence, it is necessary that all recommending authorities should, before recommending officers for responsible posts where there is considerable scope for discretion, take into account all relevant factors regarding their integrity and reputation for honesty and impartiality. This is, of course, not an entirely new principle and it has always been expected that the authorities concerned with postings and promotion should observe it in the ordinary course. In view, however, of the importance which both public opinion and Government attach to maintenance of a high standard of integrity by Government servants, the Ministry of Finance etc. are requested to bring this principle specifically to the notice of such authorities under them.²

(4) Integrity of Government servants holding responsible posts—Independence and impartiality in the discharge of their duties.

Both the All India Services (Conduct) Rules, 1954 and the Central Civil Services (Conduct) Rules, 1955, lay down inter alia that Government servants should, at all times, maintain absolute integrity and devotion to duty. It is, in fact, axiomatic that Government servants, especially those holding positions of trust and responsibility, should not only be honest and impartial in the discharge of their official duties but also have the reputation of being so. The Planning Commission have also referred to this matter in Chapter VI of the First Five Year Plan. They have observed that in their social relations and dealings, those holding responsible posts should ensure that there is no ground or occasion to suggest that some individuals have greater access or influence with them than others. Government have no doubt that their officers fully appreciate the need for maintaining a high standard of integrity and impartiality and ensuring as far as it lies in their power that their behaviour gives no room for any possible suggestion to the

¹ M. H. A. O. M. No. 130/54/Fats (A), dated 26-2-1955.
² M. H. A. O. M. No. 41/2/55 (II)-Ests (A), dated 23-4-1955.
contary. It is, however, requested that these observations should be specifically brought to the notice of all concerned and steps should also be taken to include them in the teaching given at training institutions under the Ministry of Finance, etc.¹

(5) Observance of courtesies by officers in their dealings with Members of Parliament.

Government of India would like to remind all officers that due courtesy and regard to the representatives of the people are desirable in the larger interests of the country. The Members of Parliament have important functions to perform under the Constitution and it should be the endeavour of every officer to help them to the extent possible in the discharge of their functions. In cases, however, when officers are unable to accede to the request or suggestion of Members of Parliament, the reasons for the officer’s inability to do so should be courteously explained to them. For purposes of interview, Members of Parliament should be given preference over other visitors, and in the very rare cases where an officer is unable to see a Member of Parliament at a time about which he had no previous notice, the position should be politely explained to the Member and another appointment fixed in consultation with him. The same courtesy and regard should be shown to Members of Legislatures attending public functions where, in particular, seats befitting their position should be reserved for them.²

(6) Instructions were issued on 28th August, 1957 (Decision No. 5 above) emphasising the need for observance of proper courtesies by officers of the Government in their dealings with Members of Parliament. In continuation of these instructions, it is further emphasised that where any meeting convened by Government is to be attended by Members of Parliament, special care should be taken to see that notice is given to them in good time regarding the date, time, venue, etc. of the meeting, and it should be ensured that there is no slip in any matter of detail, however minor it may be.

2. Ministry of Finance, etc., are requested to bring the above instructions to the notice of all concerned.³

(7) Participation by Government servants in proselytisation—Instructions regarding.

The question has been raised whether a specific provision should be added to the Central Civil Services (Conduct) Rules to prohibit Government servants from taking part in proselytising activities.

2. The Constitution of India is based on the principle of a Secular State and expressly prohibits any discrimination in favour of or against any person or classes of persons on religious grounds. It follows, that, though servants of the State are entitled in their private lives freely to profess, practise or propagate any religion they should so conduct themselves in public as to leave no room for an impression to arise that they are likely, in their official dealings, to favour persons belonging to any particular religion.

Such an impression is bound to arise in respect of a Government servant who participates in bringing about or organising conversions from one religion to another and such conduct would be even more reprehensible if, in the process, he makes use, directly or indirectly, of his official position or influence.

3. As such cases are not likely to be very frequent, it has been decided that no specific provision need be added to the existing Conduct Rules. Nevertheless, participating in proselytising activities or the direct or indirect use of official position and influence in such activities on the part of a Government servant may be treated as good and sufficient reasons for taking disciplinary action against him under the Central Civil Services (Classification, Control and Appeal) Rules.

4. The Ministry of Finance, etc. are accordingly requested to ensure that the contents of this Officer Memorandum are brought to the notice of all Government servants serving under their control.¹

(8) **Government servants seeking redress in Courts of law of their grievances arising out of their employment or conditions of service:**

In supersession of Orders contained in this Ministry's Office Memorandum No. 25/52/52-Ests., dated the 11th October, 1952 (not reproduced) on the above subject, the following instructions are issued:

(a) Government servants seeking redress of their grievances arising out of their employment or conditions of service should, in their own interest and also consistently with official propriety and discipline, first exhaust the normal official channels of redress before they take the issue to a Court of law.

(b) Where, however, permission to sue Government in a Court of law for the redress of such grievances is asked for by any Government servant either before exhausting the normal official channels of redress or after exhausting them, he may be informed that such permission is not necessary and that if he decides to have recourse to a Court of law, he may do so on his own responsibility. [See decision 9 below].²

(9) Attention of the Ministry of Finance, etc., is invited to this Ministry's O. M. No. 25/3/59-Ests. (A), dated the 24th April, 1959 (Decision No. 8 above) in which it is stated *inter alia* that when a Government servant wants to sue the Government in a Court of law for redress of grievances arising out of service matters, he may be informed that such permission is not necessary and that if he decides to sue the Government, he may do so on his own responsibility. On consideration, it has been decided that, in such cases, it would be enough if the Government is informed that permission to sue the Government is not necessary, and it should not be added that "if he decides to have recourse to a Court of law, he may do so on his own responsibility."³

(10) Conduct of a Government servant in relation to the proper maintenance of his family:

Instances of failure of Government servants to look after the proper maintenances of their families have come to Government's notice. It has been suggested that a provision may be made in the Central Civil Services (Conduct) Rules, 1955 to enable Government to take action against those Government servants who do not look after their families properly.

2. The question has been examined and it has been decided that it will not be possible to make such a provision in the Conduct Rules as it would entail administrative difficulties in implementing and enforcing it. However, a Government servant is expected to maintain a responsible and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanours. In cases where a Government servant is reported to have acted in a manner unbecoming of a Government servant as for instance, by neglecting his wife and family, departmental action can be taken against him on that score without invoking any of the Conduct Rules. In this connection, a reference is invited to Rule 13 of the C. C. S. (C.C.A.) Rules, 1957 (now Rule 11) which specifies the nature of penalties that may, for good and sufficient reasons, be imposed on a Government servants. It has been held that neglect by a Government servant of his wife and family in a manner unbecoming of a Government servant may be regarded as a good and sufficient reason to justify action being taken against him under this rule.

3. It should, however, be noted that in such cases the party affected has a legal right to claim maintenance. If any legal proceedings in this behalf should be pending in a Court of law, it would not be correct for Government to take action against the Government servant on this ground as such action may be construed by the Court to amount to contempt.

(11) Government servants role in the eradication of untouchability

At the meeting of Central Advisory Board for Harijan Welfare held on the 27th April, 1961, the following recommendations were made:

The Central Government may impress upon all its servants and request State Governments to do likewise:

(a) that severe notice shall be taken of the practice of untouchability in Government offices and by Government servant; and

(b) that the police and the magistracy have a special obligation to enforce the provisions of the Untouchability (Offences) Act, 1955, and it is the duty of all Government servants to help them in the enforcement of the Act and in creating the necessary climate to remove untouchability from the mind of the orthodox section of the community.

The Government have accepted these recommendations.

It is specifically brought to the notice of all the Government servants that Article 17 (Part III — Fundamental Rights) of the Constitution declares that "Untouchability" is abolished and forbids its practice in any form; the practice of untouchability has also been made an offence by the Untouchability (Offences) Act, 1955. If any Government servant is guilty of the practice of untouchability in any form, he will be liable to prosecution and such conduct on his part will constitute a sufficient ground for imposing a

---

suitable penalty prescribed unless the appropriate control and discipline rule. Government expects its employees not only to observe strictly the law in force but also to set an example to others in the matter of complete elimination of the practice of untouchability in any form.

A Government servant who is found guilty of the practice of untouchability in any form, will be considered unfit for public service and disciplinary action will be taken against him.¹

(12) **Disciplinary proceedings against persons who fail to vacate Government accommodation**:

Cases are still coming to notice where Government officers, after cancellation of allotment of their residence or otherwise ceasing to be entitled to retain the same, are continuing in Government accommodation with impunity. Consequently, the Directorate of Estates is constrained to take proceedings against them under the public premises (Eviction of Unauthorised Occupants) Act, 1958, for vacation of the premises and recovery of damages for the unauthorised used and occupation of the Government accommodation.

2. The intention of this Ministry’s earlier O. M. dated 18-4-1961 (not reproduced) was that when Government officers fail to vacate the Government accommodation, in addition to any other action that the Directorate of Estates may take against them, the Ministry of Home Affairs etc., may institute departmental proceedings against such recalcitrant officers under the Central Civil Services (Classification, Control and Appeal) Rules, 1957, firstly, with a view to accelerating the process of vacating Government accommodation and secondly, to serve as a deterrent measure for continued unauthorised occupation of Government premises.

3. These instructions are once again restated for the information of the Ministry of Home Affairs etc., with the request that these may kindly be brought to the notice of all concerned in their Ministries/Attached Offices/Subordinate Offices. Cases where individual officers fail to comply with the orders of vacation of Government accommodation will be brought to the notice of the concerned authorities by the Directorate of Estates for taking appropriate disciplinary action against such officers.²

(13) **Role of public services—Estimate Committee’s recommendation in their 93rd Report on the Public Services**:

The Estimates Committee have made the following recommendations in Para 20 of their Ninety-third Report (1965-66) regarding the role of Public Services:

“At the same time, the Committee are constrained to mention the general feeling among the people of lack of the spirit of service expected of the members of the public services and also of the dilatory methods and tactics in their dealings with the public. The Committee feel that these lapses on the part of the public services very often compel the public to seek the intervention of legislators or public men of importance for the disposal of even matters of a routine nature.

² Directorate of Estates’ Memorandum No. 5/9/60-Vig., dated 20-10-65.
"The Committee would like Government to bring home to the service that their first obligation is to render service to, and not merely to exercise authority over the public. An improvement in the attitude and conduct of services towards the common man is necessary for the peoples' active co-operation in the stupendous task of building the nation through developmental planning and its implementation; and this improvement in their attitude and conduct should be visible to the common man. The Committee hope that the services would realise the particular obligations of the welfare State undertaking planned development through democratic methods for which voluntary co-operation of the people is essential and which can be enlisted only through courteous behaviour of the public services at all levels.

"The Committee, therefore, cannot too strongly stress the need for prompt and courteous service to the public which, in turn through courteous and helpful attitude, can be educated to act towards the services in a responsible, restrained and courteous manner. The Committee hope that Government would be ever watchful in ensuring that Government machinery as a whole and particularly such segments of it as come in direct contact with the public, are helpful in attitude and quick in disposal of cases and that deterrent and prompt action is taken against discourteous behaviour and dilatory tactics."

2. Government have decided that the above recommendations of the Committee should be brought to the notice of all the Ministries/Departments etc. for information and guidance. If any complaint is received against any Government servant that he has acted in a discourteous manner or adopted dilatory tactics in his dealings with the public and if it is established that he has so acted, deterrent and prompt action should be taken against him.

3. Ministry of Finance etc. may also kindly bring the contents of this Office Memorandum to the notice of all the training institutions for Government employees under their control and direct them to lay special emphasis in their training programmes on the very salutary recommendations made by the Estimates Committee. The recommendations of the Estimates Committee may also be brought to the individual notice of all Government employees.1

(14) Observance of proper decorum by Government servants during the lunch-break—playing games beyond the prescribed lunch hour and playing-cards in the open to be discouraged:

It has been observed that a number of Government employees play cards on lawns outside the office buildings and other open spaces inside the North and South Blocks. These games generally degenerate into gambling and non-government servants also sometime participate in such games. The sight of groups of Government servants playing cards around and inside Government offices is not becoming and does not promote discipline and decorum in Government offices.

2. It has also been noticed that a large number of Government employees continue to move about or play games in the quadrangles and the lawns

---

well beyond the prescribed lunch hour of half an hour. Besides this, the indoor games are continued till very late in the evening, which puts a strain on the security arrangements in Government buildings.

3. It has, therefore, been decided that:

(i) no Government employee should play cards on the lawns and such other places inside and outside office buildings;

(ii) the game of cards should be confined to the recreation rooms or places approved for such purposes;

(iii) no indoor games should be played in office buildings after 7.00 p.m. except on special occasions such as tournaments, etc.

4. Persons found violating these instructions will be liable to disciplinary action.

5. It will be appreciated if departmental instructions in regard to the above decision are issued by the Ministries/Departments concerned and a copy endorsed to this Ministry for information.¹

(15) It has come to the notice of the Ministry of Home Affairs that the lunch hour is not strictly observed by some staff and some of them are even found playing cards outside Government offices and buildings after the lunch hour. The Ministry of Finance etc. are, therefore, requested to ensure by periodical surprise checks that the staff under them do not over-stay the lunch hour, as already indicated in the office Memorandum referred to above (not reproduced). They may also bring to the notice of the staff the undesirability of their playing cards in lawns, outside Government Offices/buildings vide the Ministry of Home Affairs D.O. letter No. F. 15/45/67-SSO, dated the 11th August, 1967, to all the Vigilance Officers (Decision No. 14 above).²

4. Employment of near relatives of Government servants in private undertakings enjoying Government patronage.—(1) No Government servant shall use his position or influence directly or indirectly to secure employment for any member of his family in any private undertaking.

(2) (i) No Class I officer shall, except with the previous sanction of the Government, permit his son, daughter or other dependant, to accept employment in any private undertaking with which he has official dealings or in any other undertaking having official dealings with the Government:

Provided that where the acceptance of the employment cannot await prior permission of the Government or is otherwise considered urgent, the matter shall be reported to the Government; and the employment may be accepted provisionally subject to the permission of the Government.

(ii) A Government servant shall, as soon as he becomes aware of the acceptance by a member of his family of an employment in any private undertaking, intimate such acceptance to the prescribed authority and shall also intimate whether he has or has had any official dealings with that undertaking:

Provided that no such intimation shall be necessary in the case of a Class I officer if he has already obtained the sanction of, or sent a report to the Government under clause (4).

(3) No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any undertaking or any other person if any member of his family is employed in that undertaking or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the Government servant shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made.

5. Taking part in politics and elections.—(1) No Government servant shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(2) It shall be the duty of every Government servant to endeavour to prevent any member of his family from taking part in, subscribing in aid of or assisting in any other manner, any movement or activity which is, or tends directly or indirectly to be, subversive of the Government as by law established and where a Government servant is unable to prevent a member of his family from taking part in, or subscribing in aid of or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

(3) If any question arises whether a party is a political party or whether any organisation takes part in politics or whether any movement or activity falls within the scope of sub-rule (2), the decision of the Government thereon shall be final.

(4) No Government servant shall canvass or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority:

Provided that—

(i) a Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) a Government servant shall not be deemed to have contravened the provisions of this sub-rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation.—The display by a Government servant on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this sub-rule.

Government of India Decisions

(1) Participation of Government servants in political activities:

Doubts have been raised recently as to the scope of Rule 23 (i) of the Government Servants' Conduct Rules (now Rule 5) which lays down that
no Government servant shall take part in, subscribe in/aid/of, or assist in any way, any political movement in India or relating to Indian Affairs. According to the Explanation (not in the new rule) to that clause, the expression "political movement" includes any movement or activities tending directly or indirectly to excite dissatisfaction against, or to embarrass, the Government as by law established or to promote feelings of hatred or enmity between classes of His Majesty's subjects or disturb the public peace. This explanation is only illustrative and is not intended, in any sense, to be an exhaustive definition of "political movement". Whether or not the aims and activities of any organisation are political is a question of fact which has to be decided on the merits of each case. It is in the opinion of Government, necessary, however, that the Government Servants under the Ministry of Finance, etc. should be warned that—

(a) it is the duty of the Government servant who wishes to join, or take part in the activities of any association or organisation, positively to satisfy himself that its aim and activities are not of such a nature as are likely to be objectionable under Rule 23 of the Government Servants' Conduct Rules (now Rule 5); and

(b) the responsibility for the consequences of his decision and action must rest squarely on his shoulders and that a plea of ignorance or misconception as to Government's attitude towards the association or organisation would not be tenable.

It should also be impressed on them that, in cases where the slightest doubt exists as to whether participation in the activities of an association or organisation involves an infringement of Rule 23 (now Rule 5), the Government servant would be well advised to consult his official superiors.¹

(2) Attendance by Government servants at political meetings:

Attention is invited to the Ministry of Home Affairs' Office Memorandum No. 25/44/49-Estts., dated the 17th September, 1949, (Decision No. 1 above), dealing with the scope of Rule 23 (i) of the Government Servants' Conduct Rules (now Rule 5) which lays down that no Government servant shall take part in, subscribe in aid of, or assist in any way, any political movement in India.

2. Enquiries have been received as to whether attendance by a Government servant at public meetings organised by political parties would amount to participation in a political movement within the meaning of the rule referred to. Even in regard to this narrower question the position must necessarily remain as stated in the Office Memorandum referred to in Paragraph 1, viz:

(i) that whether or not the conduct of any particular nature amounts to participation in a political movement is a question of fact to be decided on merits and in the circumstances of each particular case; and

(ii) that the responsibility for the Government servant's conduct must rest squarely on his shoulders and that a plea of ignorance or misconception as to Governments' attitude would not be tenable.

¹ M. H. A. O. M. No. 25/44/49-Estts (A), dated 17-9-1949.
3. The following observations may, however, be of assistance to Government servants in deciding their own course of action:

(1) Attendance at meetings organised by a political party would always be contrary to Rule 23 (4) of the Government Servants' Conduct Rules (now Rule 5) unless all the following conditions are satisfied:

(a) that the meeting is a public meeting and not in any sense a private or restricted meeting;

(b) that the meeting is not held contrary to any prohibitory order or without permission where permission is needed; and

(c) that the Government servant in question does not himself speak at, or take active or prominent part in organising or conducting, the meeting.

(2) Even where the said conditions are satisfied, while occasional attendance at such meetings may not be construed as participation in a political movement, frequent or regular attendance, by a Government servant at meetings of the particular political party is bound to create the impression that he is a sympathiser of the aims and objects of that party and that in his official capacity he may favour or support the members of that particular party. Conduct which gives cause for such an impression may well be construed as assisting a political movement.

(3) Government servants have ample facilities through the medium of the press to keep themselves informed regarding the aims, objects and activities of the different political parties and to equip themselves to exercise intelligently their civic rights, e.g., the right to vote at elections to Legislatures or Local Self-Government institutions.

4. Government servants under the control of the Ministry of Finance, etc. may be informed accordingly.¹

(3) R. S. S. and Jamaat-e-Islami—participation by the Government servants in the activities of:

The attention of the Ministry of Finance, etc., is invited to the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.

2. As certain doubts have been raised about Government's policy with respect to the membership of and participation in the activities of the Rashtriya Swayam Sewak Sangh and the Jamaat-e-Islami by Government servants, it is clarified that Government have always held the activities of these two organisations to be of such a nature that participation in them by Government servants would attract the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Conduct) Rules, 1964. Any Government servant, who is a member of or is otherwise associated with the aforesaid organisations or with their activities is liable to disciplinary action.

¹ M. H. A. O. M. No. 25/44/49-Ests, dated 10-10.1949.
3. The Ministry of Finance, etc., are requested to bring the above position to the notice of Government employees working in or under them.¹

(4) Elections—Role of Government servants and their rights:

(1) Attention is invited to Rule 5 of the Central Civil Services (Conduct) Rules which lays down that a Government servant should not canvass or otherwise interfere or use his influence in connection with, or take part, in any election to a legislative body. There is, however, no bar against a Government servant who is qualified to vote as such election, exercising his right to vote, provided that, if he does so, he does not give any indication of the manner in which he proposes to vote or has voted.

The above rule clearly prohibits proposing or seconding by a Government servant of a candidate for election, as such action would constitute “taking part in an election” within the meaning of Rule 5(4), proposing or seconding being an essential preliminary to an election. The Supreme Court decided recently in a case that the mere proposing or seconding by Government servants of nominations of candidates at elections is not forbidden under the Election Law. The question has been raised whether this decision of the Supreme Court implies that Government servants are free to propose or to second the candidature of any one standing for an election. The position is that the Supreme Court has only decided the question whether the election of a candidate whose nomination paper has been proposed and/or seconded by a Government servant can be declared void merely for that reason. They have held that as Government servants are not in the excluded category, it follows that so far as Section 123(8) of the Representation of the People Act, 1951, is concerned, they are not disqualified from proposing or seconding a candidate’s nomination. The question before them was whether Section 123(3) took away from Government servants that which Section 33(2) of the Act had given to them. On a construction of the Act they held that it did not. That decision in no manner affects the obligation of Government servants under rule 4 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 5). The correct position is that though a Government servant proposing or seconding the nomination of a candidate at an election or acting as a polling agent may not vitiate the election, he nevertheless, commits thereby a breach of the Central Civil Services (Conduct) Rules for which he may be suitably penalised in accordance with the rules.²

(5) Elections—Role of Government servants in—need for strict impartiality:

Attention is invited to Sections 129 and 134 of the Representation of the People Act, 1951 in connection with the conduct of Government servants during the elections and to recall that the Government of India and the State Governments had, prior to the last general elections in 1951-52, issued instructions regarding the conduct of Government servants in relation to those elections. These instructions stressed that all Government employees should maintain an attitude of strict impartiality.

In fact, they were asked not only to be impartial but it was considered important that they should also appear to be impartial in relation to the elections. In short, they were required so to conduct themselves as to

---

¹ M.H.A. O.M. No. 3/10 (S)/66-Ests (B), dated 30-11-1966.
² M.H.A. Memo. No. 25/59/52-Ests, dated 30-6-1955.
inspire confidence in the public in regard to their impartiality. To do so, they were enjoined to avoid giving room for any suspicion that they were favouring any party or any candidate. The other points stressed in these instructions were that a Government servant should take no part in any election campaign or canvassing and that he should take scrupulous care not to lend his name, official position or authority to assist one group as against any other.

*   *   *   *   *   *

It was further emphasised that any disregard of the instructions would be considered by the Government as a serious act of indiscipline and that in cases of doubt a Government servant should not hesitate to consult his superior officer.

It may be added that the points summarised above are only illustrative and not exhaustive.

The Commission considers it important that similar detailed instructions should be reiterated at an early date for the guidance of Government servants in your State in connection with the ensuing general elections incorporating in particular the points mentioned above.*

(6) Elections—Position of Government servants in relation to:

Extracts are enclosed from the Election Commission’s letter No. 62/66, dated the 26th November, 1966 to all Chief Electoral Officers, indicating the principles which should guide the conduct of Government servants in relation to the coming General Elections. These principles should be scrupulously followed by Central Government servants. In this connection, attention is also invited to Rule 5 of the C. C. S. (Conduct) Rules, 1964 which *inter alia* prohibits Central Government servants from canvassing or otherwise interfering with, or using their influence in connection with or taking part in, an election to any legislature or local authority, subject to the exercise of the right of franchise and assisting in the conduct of an election in the due performance of a duty imposed on them by or under any law for the time being in force.

EXTRACTS FROM ELECTION COMMISSION’S LETTER No. 62/66, DATED 26-11-1966 TO ALL CHIEF ELECTORAL OFFICERS OF STATE/UNION TERRITORIES

Subject.—Position of Government servants in relation to elections.

Attention is invited to Sections 129 and 134 of the Representation of the People Act, 1961, in connection with the conduct of government servants during the elections and to recall that the Government of India and the State Governments had prior to the last general elections in 1962 issued instructions regarding the conduct of government servants in relation to those elections. These instructions stressed that all Government employees should maintain an attitude of strict impartiality.

In fact, they were asked not only to be impartial but it was considered important that they should also appear to be impartial in relation to the elections. In short, they were required so to conduct themselves as to inspire confidence in the public in regard to their impartiality. To do so, they were enjoined to avoid giving room for any suspicion that they were

favouring any party or any candidate. The other points stressed in these instructions were that a government servant should take no part in any election campaign or in canvassing them and that he should take scrupulous care not to lend his name, official position or authority to assist one group as against any other.

*  *

It was further emphasised that any disregard of instructions would be considered by the Government as a serious act of indiscipline and that in cases of doubt a government servant should not hesitate to consult his superior officer.

It may be added that the points summarised above are only illustrative and not exhaustive.

The Commission considers it important that the government servants' attention should be specially drawn to a new provision which has been made in the Representation of the People Act, 1951, reading as follows:

"134-A. Penalty for Government servants for acting as election agent, polling agent or counting agent.—If any person in the service of the Government acts as an election agent or a polling agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months or with fine, or with both"1.

(7) Participation of Government servants in the Indo-Foreign Cultural Organisations.

The Government of India have had under consideration the question whether Government servants should be allowed to participate in the activities of Indian Foreign Cultural Organisations such as the German-Indian Association, the Indo-Soviet Cultural Society, etc. The matter has been considered in consultation with the Ministry of External Affairs and the conclusion reached is that there is objection in principle to Government servants becoming members or office holders of such organisations despite the fact that their objectives may be praiseworthy and unobjectionable. One of the reasons is that when foreign dignitaries relating to a particular organisation come to India, addresses are often presented by these organisations. In some cases it may not be desirable for Government servants to be associated with such addresses, as they are bound to be as members or as office bearers. Some of these cultural organisations may not be very important or influential while others are very active and on occasions take a political stand which may be embarrassing to Government servants. In view of these considerations, it has been decided that while such organisations may, in suitable cases, be looked upon with favour and assisted, the association of Government servants with such organisations should be avoided.2

(8) Foreign language classes conducted by Indo-Foreign Cultural Organisations joining of by Government servants.

The question of regulating the participation of Government servants in foreign language classes conducted by Indo-Foreign Cultural Organisations like the German-Indian Association, Alliance Française de Del'ii, Indo-Soviet Cultural Society, etc. has been considered by Government and it has been

decided that Government servants desirous of joining such classes should obtain prior permission from the Ministry or office in which they are serving.

2. * * * * *

3. Ministry of Finance, etc., are requested to bring the contents of Para 1 of this office Memorandum to the notice of all Government servants under their control, separately. Para 2 is intended for the guidance of administrative authorities only. (Not reproduced.)

(9) Moral Re-armament Movement—Joining of by Central Government servants:

The Government of India have had under consideration the question whether Central Government servants should be permitted to become members and take part in the activities of Moral Re-armament Movement. Government have decided that Central Government servants should not associate themselves with any activities of the Moral Re-armament Movement in their official capacity, or with such of the activities as are political or have a political slant, even in their individual capacity. For the rest they are advised to be circumspect and to ensure that even in their individual capacity they do not do anything which may be construed or easily misconstrued as participation in political activities.

2. For associating themselves with the activities of the Moral Re-armament Movement, Central Government servants should keep their Head of the Department informed who having due regard to administrative requirements will be free to ask any Government servant to dissociate himself from the activities of the Movement.

3. The Ministry of Finance etc. are requested to bring these instructions to the notice of all Central Government servants under them.

(10) Bharat Sewak Samaj—Permission to Central Government servants to join:

Ministries are aware that the Bharat Sewak Samaj is a nation-wide non-official and non-political organisation recently started at the instance of the Planning Commission with the object of enabling individual citizens to contribute, in the form of an organised co-operative effort, to the implementation of the National Development Plan.

2. The Government of India are of the opinion that in view of the non-political and non-sectarian character of the Bharat Sewak Samaj and the nature of work in which it will be engaged, Government servants should, if they so wish, be encouraged to join the organisation and to participate in its activities provided this can be done without determent to the proper discharge of the normal official duties. Ministries of Finance etc. are, therefore, requested to observe the following instructions in this matter:

(1) Government servants wishing to join the Bharat Sewak Samaj should obtain prior permission from the appropriate Head of the Office or Department concerned.

(2) Permission should be freely granted; provided that the Head of the Office or Department satisfies himself in each case that partic-
icipation in the Samaj’s activities will not interfere with the due discharge by the Government servant concerned of his official duties. If actual experience in any individual case or class of cases shows that this condition cannot be satisfied, the permission already granted may be revoked.

(3) It should be made clear to all Government servants concerned that permission to participate in the activities of the Bharat Sevak Samaj will not absolve them from the due observance at all times of all the rules and instructions relating to the conduct and behaviour of Government servants, etc.¹

(11) Sanyukta Sadachar Samiti—Permission to Central Government servants to join:

The Government of India have had under consideration the question whether Central Government servants should be permitted to become members and take part in the activities of the Sanyukta Sadachar Samiti. The Sanyukta Sadachar Samiti is a non-official, non-political and non-sectarian organisation recently started with the objects mainly of creating a social and moral climate to discourage anti-social and corrupt practices and of developing the will and capacity of the people to fight and eradicate corruption in all forms.

In view of the non-political and non-sectarian character of the Sanyukta Sadachar Samiti, it has been decided that Central Government servants should be free to join the Samiti, provided that their association with the Samiti is without detriment to the proper discharge of their normal official duties or infringement of Government Servants’ Conduct Rules. Government servants as members of the Samiti should restrict their activities to the improvement of the ethical standards and the moral tone of society only and should not use the forum of the Samiti to lodge information or complaints against Government servants or Government agencies.

2. For becoming members of the Sanyukta Sadachar Samiti no prior permission of the Government will be necessary, but such membership should be with the knowledge of the Head of the Department concerned.

3. The Ministry of Finance etc., are requested to bring these instructions to the notice of all the Central Government servants.²

6. Joining of associations by Government Servants.—No Government servant shall join, or continue to be a member of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.

7. Demonstrations and Strikes.—No Government servant shall—

(i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant.

¹ M. H. A. O. M. No. 25/49/52-Ests. dated 11-10-1952.
² M. H. A. O. M. No. 25/21/64-Ests. (A), dated 15-7-1964.
Government of India Decisions

(1) *Restriction on Government servants who are office-bearers of service associations, in dealing—their official capacity with matters connected with those associations.*

Reference this Ministry’s Office Memorandum No. 24/23/57-Ests. (B), dated the 3rd March, 1959 (not reproduced), on the above subject and to say that a point has been raised whether after the promulgation of the Central Civil Services (Recognition of Service Associations) Rules, 1959, the convention that an officer who may be required to deal in a responsible capacity with representations from a Service Association, should not be an office-bearer or a member of the Executive Committee of that Association, would continue to be observed. It has been decided that any Government servant who is an office-bearer or a member of the Executive Committee of a Service Association, should not himself deal in his official capacity with any representation or other matters connected with that Association.

2. The Ministry of Finance etc. may kindly bring this to the notice of all authorities under their control.¹

(2) "*Strikes*”—Interpretation of what constitutes a strike under the Conduct Rules.

Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964 provides that no Government servant shall resort to or any way abet any form of strike any connection with any matter pertaining to his service or the service of in other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts are covered under the definition of ‘strike’ and if so, whether action can be taken against such employees for violation of the Conduct Rules.

2. It is, therefore, clarified that ‘strike’ means refusal to work or stoppage of or slowing down work by a group of employees acting in combination, and includes—

(i) mass absention from work without permission (which is wrongly described as "mass casual leave");

(ii) refusal to work overtime where such overtime work is necessary in the public interest;

(iii) resort to practices or conduct which is likely to result in, or results in the cessation or substantial retardation of work in any organisation. Such practices would include, what are called, ‘go-slow’, ‘sit-down’, ‘pen-down’, ‘stay-in’ 'token', 'sympathetic' or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

3. Government servants who resort to action of the above kind violate Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964 and disci-

Plenary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.¹

(3) "Gherao"—Participation in, by Central Government servants:

Instances have come to the notice of Government in which employees of certain Central Government offices staged what is called "Gherao", involving forcible confinement of public servants within office premises by surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants amount to conduct wholly unbecoming of Government servants and would constitute good and sufficient reason within the meaning of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has, therefore, been decided that a serious view should be taken of such acts of lawlessness and insubordination on the part of public servants. The Central Government Departments are advised to take action on the following lines in such cases:

(i) Disciplinary action should be taken against the prominent participants in the "Gherao" for contravention of Rules 3 and 7 of the C. G. S. (Conduct) Rules, 1964. In the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstrations prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement, criminal trespass and incitement to such offences, have been held; that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

(ii) Absence from work on account of participation in "Gherao" should in all cases be treated as unauthorised absence involving break in service. The absence should not be regularised as leave of any kind.

(iii) Whenever there is a case of "Gherao", wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the officer-in-charge of the Police Station having jurisdiction, requesting him to register the offence and to take action under the law. The names of the offenders to the extent known, and of responsible witnesses to the offences should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/ Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.

(vi) If, notwithstanding the mandatory provisions of the Criminal Procedure Code, police take no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other law. In certain circumstances a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice.

2. The above instructions may please be brought to the notice of all administrative authorities concerned.1

3. Reference Para 1(vi) of this Ministry’s O. M. of even number, dated 13-4-1967 (reproduced above). While taking action to file a complaint before the appropriate Magistrate, the assistance of the Officer of the Central Bureau of Investigation, if any, available locally, may also be taken in drafting the complaints and deciding the manner in which evidence should be collected and produced. The instructions may please be brought to the notice of all administrative authorities concerned.2

8. Connection with press or radio.—(1) No Government servant shall, except with the previous sanction of the Government, own wholly or in part, or conduct or participate in the editing or management of, any newspaper or other periodical publication.

(2) No Government servant shall, except with the previous sanction of the Government or of the prescribed authority, or except in the bona fide discharge of his duties:

(a) publish a book himself or through a publisher, or contribute an article to a book or a compilation of articles, or

(b) participate in a radio broadcast or contribute an article or write a letter to a newspaper or periodical,

either in his own name or anonymously or pseudonymously or in the name of any other person:

Provided that no such sanction shall be required—

(i) if such publication is through a publisher and is of a purely literary, artistic or scientific character, or

(ii) if such contribution, broadcast or writing is of a purely literary, artistic or scientific character.

9. Criticism of Government.—No Government servant shall, in any radio broadcast or in any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion—

(i) which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government:

Provided that in the case of any Government servant included in any category of Government servants specified in the second proviso to sub-rule (3) of Rule 1, nothing contained in this clause shall apply to bona fide, expression of views by him as an office-bearer of a trade union or such Government servants for the purpose of safeguarding the conditions of service of such Government servants or for securing an improvement thereof; or

(ii) which is capable of embarrassing the relations between the Central Government and the Government of any State; or

(iii) which is capable of embarrassing the relations between the Central Government and the Government of any foreign State:

Provided that nothing in this rule shall apply to any statements made or views expressed by a Government servant in his official capacity or in the due performance of the duties assigned to him.

**Government of India Decisions**

(1) *Estimates Committee's recommendation for giving freedom to officers to express their differing views.*

The Estimates Committee in Para 20 of their Ninety-third Report on Public Services have made the following recommendations:

"...............As regards the obligations of the ruling party towards the permanent services, the Committee can do no better than to quote from a speech delivered by the late Prime Minister Shri Lal Bahadur Shastri during the course of discussion in Lok Sabha (on 1-4-1963) relating to demands for grant of the Ministries of Home Affairs of which he was then the Ministry in charge.

...............the services, if their morale has to be kept up, must be given full freedom to express their differing views. It is entirely for the Ministers to accept the views of the officers or not. If they are made to do things, then the morale of the services will go down and the administration will suffer and I personally think that ultimately, the people will also suffer".

While the Committee endorse the forthright view expressed by the then Home Minister regarding the desirability of granting complete freedom to Government officers to express their differing views, they would also like Government to act in the capacity of *lucro parentis* to the public services and shield them against all unjustified attacks from whichever source they are launched. In the opinion of the Committee, nothing can weaken the morale of the public services more than a general feeling that, in a certain set of circumstances, they may be subjected to harassing enquiries with no prospect of any protection from any quarter, for whatever they might have done in good faith.

2. The above recommendations of the committee are brought to the notice of the Ministry of Finance etc., for information and guidance.  

(2) **Tendering of evidence by Government servants before the Administrative Reforms Commission**:

Government have appointed the Administrative Reforms Commission to examine the public administration of the country and to make recommendations for reform and re-organisation, where necessary. The Commission are interviewing Senior Officers of Government and Heads of Departments at the Centre and in the States with a view to ascertaining their views on administrative reforms. In such interviews, Government servants will be free to give frank expression to their personal views, *vide* Rule 10 (3) of the Central Civil Services (Conduct) Rules, 1964. No permission of Government or of the Head of Department, is required for this purpose. However, the evidence tendered before the Commission should not be given publicity as that would amount to public criticism of Government or unauthorised communication of information, *vide* Rules 9 and 11 of the C. C. S. (Conduct) Rules, 1964.

(3) **Service associations passing resolutions contravening Rule 9 of the C.C.S. (Conduct) Rules, 1964**.

Instances have come to the notice of Government of Service Associations (including Federations/Unions) of Government employees passing resolutions, making statements and/or expressing opinion on issues which involve violation by the individual employee of Rule 9 of the Central Civil Services (Conduct) Rules, 1964.

2. The Ministry of Finance etc., are requested to take note of the breaches of this rule and to initiate disciplinary action by calling for explanation from those individuals who are signatories or parties to the resolutions, or other activities mentioned in paragraph 1 above, if they are serving Government employees and if they in their individual capacity, or in their capacity as office-bearers of associations (including Federations/Unions) of Government employees, or editors/publishers/office-bearers of journals issued by such associations (including Federations/Unions), have violated the provisions of the abovementioned Conduct Rule.¹

10. **Evidence before Committee or any other authority.**—(1) Save as provided in sub-rule (3) no Government servant shall, except with the previous sanction of the Government, give evidence in connection with any enquiry conducted by any person, committee or authority.

(2) Where any sanction has been accorded under sub-rule (1), no Government servant giving such evidence shall criticise the policy or any action of the Central Government or of a State Government.

(3) Nothing in this rule shall apply to—

(a) evidence given at an enquiry before an authority appointed by the Government, Parliament or a State Legislature; or

(b) evidence given in any judicial enquiry; or

(c) evidence given at any departmental enquiry ordered by authorities subordinate to the Government.

Government of India Instruction,

(1) Points of conduct and etiquette for the guidance of witnesses appearing before the Committees of Parliament and their sub-committees:

The witnesses should note the following points while appearing before a Parliamentary Committee such as, Public Accounts Committee, Estimates Committee and their sub-committees:

(1) Due respect to the Chairman and the Committee/sub-committee should be shown by the witness by bowing while entering the room and when taking the seat.

(2) The witness should take his seat opposite to the seat of the Chairman.

(3) The witness should speak only when he is asked either by the Chairman, or by a Member of the Committee or any other person authorised by the Chairman. He should answer to the Chair rising up in his seat.

(4) All submissions to the Chair and the Committee should be couched in courteous and polite language.

(5) When the evidence is completed and the witness is asked to withdraw, he should bow to the Chair rising up in his seat.

(6) The witness should not smoke or chew when he is seated before the Committee.

(7) The witness should note that the following acts shall constitute breaches of privilege and contempt of Parliament:

(a) Refusal to answer questions,

(b) Prevarication or wilfully suppressing the truth or misleading the Committee.

(c) Trifling with the Committee; using saucy language; returning insulting answers.

(d) Destroying or damaging a material document relating to the enquiry.1

11. Unauthorised Communication of Information.—No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

Explaination.—Quotation by a Government servant (in his representation to the Head of office, or Head of Department or President) of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is not authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the meaning of this rule.

2. Inserted by M. H. A. Notification No. 25/9/66-Ests (A), dt. 3-3-1966.
Government of India Instructions

(1) Reproduction of matter from Government publications—Position under the Indian Copyright Act, 1944:

Under the provision of the Indian Copyright Act, 1914, copyright in Government publications vests in the Government and any reproduction, without consent, of work first published by Government ordinarily constitutes an infringement of copyright. The Government of India consider it desirable that the public should be at liberty to reproduce certain Government publications and they are pleased to grant general permission to reproduce:

(a) Any matter which has appeared in the Gazette of India except:
   (i) Central Acts;
   (ii) Matter not first published by the Government of India;

(b) Acts of the Indian Legislature or the Parliament subject to the condition that these are reproduced, together with original material, e.g., commentaries;

(c) Vernacular translations of Acts or bills of the Indian Parliament or the Indian Legislature.

2. Permission to reproduce other Government publications will be given in special circumstances. Applications for permission should be forwarded to the Surveyo-General in the case of the maps, charts, plans and other documents published by, or on behalf of, the Survey of India and to the Secretary to the Government of India in the Ministry of Education in all other cases.

3. In the case of works first published by State Governments application for permission to reproduce such works should be made, in the absence of any special orders passed by the State Government to the State Government concerned.  

(2) Confidential Reports—Disclosure of identity of superior officers while communicating adverse remarks:

Government have had under consideration the question whether the identity of the officer who recorded adverse remarks in the annual confidential report of a Government servant should be disclosed while communicating the adverse remarks to him. Cases have come to the notice of this Ministry where certain officers are reported to have disclosed the identity of the superior officer who made the adverse remarks while communicating them to the Government servant concerned. It is not necessary to disclose the identity of the officer concerned since, what the Government servant should be interested in, are the defects/shortcomings which his superior officers have found in his work and conduct and not the particular superior officer who recorded them in the confidential report and the representations on the remarks, if any, should be objective pertaining to the shortcomings noticed. Apart from this, disclosure of the identity of the superior officer is also likely to lead to unpleasantness and personal animosity. It is, therefore, desirable that while communicating the adverse remarks to the

Government servant concerned, the identity of the superior officer making such remarks should not normally be disclosed.

2. If, however, in a particular case, it is necessary to disclose the identity of the superior officer, the authority dealing with the representation may at his discretion allow the identity to be communicated.

3. The Ministry of Finance, etc., may bring the above to the notice of all concerned.

4. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders are issued after consultation with the Comptroller and Auditor-General of India.1

(3) Leakage through the Press of classified information—Safeguards against—Only officers specially authorised should meet the Press:

Instances have come to the notice of Government of leakage of classified information from time to time and their publication in the Press. It is the duty of all Government servants to safeguard the security of all classified information and papers to which they have access in the course of their official duties. In this connection, the relevant provisions in the Manual of Office Procedure and in the Central Civil Services (Conduct) Rules, 1964, and the All India Services (Conduct) Rules, 1954, are reproduced in the Annexure (not reproduced).

2. It would be observed from Paragraph 161 of the Manual of Office Procedure (reproduced in the Annexure below) that only Ministers, Secretaries and other officers specially authorised by the Minister are permitted to meet representatives of the Press and give information. As a future safeguard, it has been decided that, as a general rule, any officer (other than Secretaries) specially authorised by the Minister to give information to the Press, who might have occasion to meet representatives of the Press, should immediately submit a gist of the subject discussed to the Secretary of the Ministry/Department in which he is working.

It is requested that provisions in the Manual of Office Procedure and Conduct Rules, reproduced in the Annexure as well as the decision referred to in the preceding paragraph, may be brought to the notice of all concerned.2

ANNEXURE

Manual of Office Procedure

"154. Communication of information to the Press.—Information to the Press should normally be communicated through the Press Information Bureau by an officer authorised to do so."

1. M. H. A. O. M. No. 51/2/64-Ests (A), dated 30-3-1964.
155. Functions of Information Officer.—Information Officers of the Press Information Bureau are attached to every Ministry of the Government of India. It is the duty of an Information Officer, on the one hand, to arrange to give due publicity to the activities of the Ministry to which he is attached and on the other, to keep the Ministry informed of the popular reactions thereto. In order to discharge his duties properly, the Information Officer will maintain a close liaison with the Ministry to which he is attached and the latter will give him the necessary facilities.”

“161. Communication of information to the Press.—Only Ministers, Secretaries or other Officers, specially authorised by the Minister, may give information or be accessible to the representatives of the Press. Any other Officer, if approached by a representative of the Press, should refer him to the Principal Information Officer of Government of India.”

12. Subscriptions.—No Government servant shall except with the previous sanction of the Government or of the prescribed authority, ask for or accept contributions to, or otherwise associate himself with the raising of, any funds or other collections in cash or in kind in pursuance of any object whatsoever.

Government of India Decisions

(1) Flag Day Collections:

Under Rule 12 of the Central Civil Service (Conduct) Rules, 1964, no Government servant may, except with the previous sanction of the Government or other competent authority, ask for or accept contribution to or otherwise associate himself with the raising of any fund in pursuance of any object whatsoever.

An instance has come to the notice of Government in which the head of an office refused to accept tokens and car flags given to him on Flag Day, for the purpose of raising collections from his office staff for the benefits of ex-service men. The reason given by the official was that the Government Servants Conduct Rules prohibited him from making such collections. The stand taken by the official was, no doubt, correct under the rules. But in view of the object underlying the Flag Day Collections, the Government of India have decided to relax the provisions of the above rule for this purpose and to allow Central Government servants to participate in such collections on a voluntary basis.¹

(2) Sponsoring of public funds by Government servants:

The Government Servants’ Conduct Rules applicable to the late Secretary of States Services, require that no Government servant should, without obtaining the previous permission of the Government, ask for, or accept or in any way participate in the raising of any subscription or other pecuniary assistance in pursuance of any object whatsoever. A copy of the relevant rule is given below for ready reference:

“Except with the previous sanction of the Government, if he is a Commissioner of a Division or a Head of a Department, or of

¹. M. H. A. Memo No. 25/33/55-Ests dated the 31st October 1955.
the Commissioner or the Head of his Department in other cases no Government servant shall ask for, or accept, or in any way participate in the raising of, any subscription or other pecuniary assistance in pursuance of any object whatsoever."

The position under the Conduct Rules applicable to other Government servants is slightly different but it has been decided that the same rule should apply to all Central Government servants, so far as public funds are concerned.

3. This position may please be explained to all the employment of the Ministry of Finance, etc., and their attached and subordinate offices and it may be impressed upon them that they should not sponsor the raising of funds from the public for any purpose whatsoever, without previous permission. It may be added that the mere payment of a subscription to some charitable or benevolent fund would not, by itself, amount to participation in the raising of such fund; and is permissible except in circumstances specified in Rule 23 of the Government Servants Conduct Rules (taking part in politics). 1

(3) Sponsoring of funds by members of service associations to foster the activities of such unions and associations:

Rule 9 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 12) prohibits Government servants from asking for or accepting contributions to or otherwise associating themselves with the raising of any fund in pursuance of any object whatsoever. The question how far the conduct of Government servants who are members of service associations, would be in order in sponsoring collections directly and/or indirectly, on behalf of their associations has been considered. Strictly speaking, in sponsoring such collections without prior permission, the Government servants would be contravening the provisions of the Central Civil Services (Conduct) Rules, 1955. Neither the constitution of the unions which may envisage collection of funds for the purposes of the unions, nor the fact that unions have been registered as trade unions under the Indian Trade Unions Act, 1926, which permits trade unions to raise funds, gives any immunity to Government servants in the matter. This is the legal position, but in order to assist in the smooth working of the unions, as well as to avoid too many references on the subject, it has been decided to grant general permission in the class of cases mentioned below.

The members of a union can freely collect subscription among themselves for welfare activities of the union. So long as their appeal is confined to the members, no permission need be sought. If any approach to the public is made, whether directly or indirectly, such permission should be necessary. Similarly, in a union where a matter affecting the general interest of the members of the union is in dispute and it is permissible under the rules of the union to spend its funds over such a matter, its members should be free to collect funds, especially for that special purpose, from amongst its members. Where, however, action is taken against a person who happens to be a member of the union, in his personal capacity or on grounds which concern him in particular, no funds should be collected from even amongst its members by the Union for his defence. 2

2. M. H. A. O. M. No. 24/20/35-Ests (B), dated 10-8-1955.
(4) **National Defence Fund—Collection of contribution to:**

The nation has responded magnificently to the grave emergency facing it. In this period of crisis people in all walks of life are anxious to contribute to the limit of their capacity towards the national effort. The National Defence Fund has been constituted to receive monetary contributions for the defence of the country. A copy of the Press Note issued by the Government of India announcing the setting up of the Fund and the manner of contributing to it is attached (not reproduced).

2. Rule No. 9 of the C. C. S. (Conduct) Rules/A. I. S. (Conduct) Rules/Railway Services (Conduct) Rules prohibit Government servants, except with the previous sanction of the Government or such authority as may be empowered by it in this behalf, from asking for or accepting contributions to or otherwise associating themselves with the raising of any fund in pursuance of any object whatsoever. So far as Union Territories and Attached and Subordinate Offices under the Home Ministry are concerned sanction is hereby accorded to officers up to the level of Sub-Divisional Officers and Heads of Departments to associate themselves with the raising of the above fund. Heads of Departments and District Magistrates are further empowered under Rule 9 of the A. I. S. (Conduct) Rules/Rule 9 of the C. C. S. (Conduct) Rules to accord sanction to such other officers working under them as they consider suitable, to associate themselves with raising contributions, etc., to the said Fund.

3. The Ministries of the Government of India may accord sanction to the Heads of Departments to associate themselves with the raising of this Fund. Ministries may also empower Heads of Departments to accord similar sanction to such Government servants working under them as may be required to assist them in this connection.²

(5) **Jawaharlal Nehru Memorial Fund—Subscriptions for—Collection by Government servants—Not permissible:**

The Government of India have decided that Government servants should not be allowed to associate themselves with collection of subscriptions for the Jawaharlal Nehru Memorial Fund, though they are free to make their personal contributions to the Fund.²

13. **Gifts.**—(1) Save as otherwise provided in these rules, no Government servant shall accept, or permit any member of his family or any person acting on his behalf to accept, any gift.

Explanation.—The expression “gift” shall include free transport, boarding, lodging or other service or any other pecuniary advantage when pro-

---

vided by any person other than a near relative or personal friend having no official dealings with the Government servant.

*Note I.*—A casual meal, lift or other social hospitality shall not be deemed to be a gift.

*Note II.*—A Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organisations, etc.

(2) On occasions, such as weddings, anniversaries, funerals or religious functions, when the making of a gift is in conformity with the prevailing religious or social practice, a Government servant may accept gifts from his near relatives but he shall make a report to the Government if the value of any such gift exceeds—

(i) Rs. 500/-, in the case of a Government servant holding any Class I or Class II post;

(ii) Rs. 250/-, in the case of a Government servant holding any Class III post; and

(iii) Rs. 100/-, in the case of a Government servant holding any Class IV post.

(3) On such occasions as are specified in sub-rule (2), a Government servant may accept gifts from his personal friends having no official dealings with him, but he shall make a report to the Government if the value of any such gift exceeds—

(i) Rs. 200/-, in the case of a Government servant holding any Class I or Class II post;

(ii) Rs. 100/-, in the case of a Government servant holding any Class III post; and

(iii) Rs. 50/-, in the case of a Government servant holding any Class IV post.

(4) In any other case, a Government servant shall not accept any gift without the sanction of the Government, if the value thereof exceeds—

(i) Rs. 75/-, in the case of a Government servant holding any Class I or Class II post; and

(ii) Rs. 25/-, in the case of a Government servant holding any Class III or Class IV post.
Government of India Decisions

(1) Full details of all gifts received abroad from foreign States to be meticulously reported to the Toshakhana for audit.

Reference to Rule 2(1), of the Government Servants’ Conduct Rules regarding acceptance of gifts by Government servants. Cases have come to notice in which officers sent abroad by the various Ministries, on official duties either individually or with Delegations. Commissions, etc., when given presents by the receiving States, do not always promptly report full details and particulars of the presents received by them. This has attracted the attention of Audit and it is requested that clear instructions may kindly be issued to all officers to furnish in future to the Toshakhana of the Ministry of External Affairs full details and particulars of the presents received by them as promptly as possible.¹

(2) Toshakhana to be informed clearly of the date of receipt of a gift received abroad:

In view of the introduction of a new Stock Register for the Toshakhana articles, it is necessary that along with the full particulars of a present received by a Government servant, the date of the receipt should also be intimated while sending the present for disposal to the Toshakhana.²

(3) Manner of disposal of gifts received from foreign dignitaries—those of trifling or symbolic value may be retained but others to be deposited in the Toshakhana—purchase from Toshakhana on payment of assessed value permissible.

A large number of presents were made to officers of the Central and State Governments by the Soviet leaders, the King of Saudi Arabia and other foreign dignitaries who visited India during the last few months. The manner in which such presents offered by foreign dignitaries should be disposed of has been under consideration and the following decisions have been taken.

2. The presents referred to may be broadly classified into two categories. The first category would include presents which are symbolic in nature and not of any practical use, such as the Sword and the Ceremonial Robe presented by the King of Saudi Arabia. It has been decided that presents of this type may be retained by the recipients.

The second category would be presents which are of trivial value. According to the Central Civil Services (Conduct) Rules, 1955, ‘trivial value, has been defined as value not exceeding Rs. 20. In the case of presents from foreign dignitaries, it has been decided that the limit should be raised to *Rs. 200 and that presents not exceeding this value may be retained by the recipients.

3. The question then arises with regard to the presents which do not come under either of the above categories. It has been suggested that the

¹ M. E. A.; O. M. No. 5531/49, dated 22-10-1949.
² M. E. A., O. M. No. 1. 6 (1); G. 11/51, dated 29-12-1951.
³ Since raised to Rs. 200 vide Govt. of India Decision No. (10) below.
giving of presents by foreign dignitaries is not intended to influence the recipients in the discharge of their duties in favour of the donor. On the other hand, if such presents were to be handed over to Government and Government were to dispose of them by sale or otherwise, the information is likely to get known and the donors are bound to feel seriously offended. As many of the presents may have the names of the donors inscribed on them, their disposal by Government would also cause some embarrassment. At the same time, it is undesirable from the service point of view to allow officers to retain expensive presents which they may happen to get by virtue of their official position. Taking all relevant factors into account, it has been decided that in respect of presents not covered by the two categories referred to earlier, the officers should be asked to deposit them at the Government Toshakhana and the recipients may be given the option to purchase them from the Toshakhana at the prices to be fixed by the authorities in-charge. The presents which are not so purchased by the recipients will remain at the disposal of Government to be utilised for such purposes as Government may decide. It is possible that some of these presents may be of cultural value, which could very well be handed over to a museum or a cultural body, while others may be found suitable for being used as counter-presents by Government or Government officials. Those which are not disposed of in this manner will be kept on deposit in the Government Toshakhana and may even be sold to persons other than the recipients in suitable cases, though indiscriminate sale should certainly be avoided for reasons already stated.

(4) Officers of the Ministry of External Affairs—Detailed instructions given to—
For effective implementation of the principles mentioned above.

The question of evolving a procedure by which the orders contained in Shri R. C. Dutt’s D. O. letter No. 23/49/53-Ests., dated 31-3-1956 (Decision No. 3 above) should be given effect to has been under consideration in this Ministry and the undernoted decisions have been arrived at:—

(i) The orders of the Home Ministry will apply to cases where presents from foreign dignitaries are received by officials in India or by officials working in our Missions abroad.

(ii) When presents are received by Indian officials at places in a foreign country, the ceiling of Rs. 200 (now Rs. 450) will apply to the value of presents received at each place subject to the condition that the donors are different in each case. For example, if an Indian official is given presents in different parts of the country visited, the ceiling of Rs. 200 (now Rs. 450) will apply to the total value of all presents received at one place only, provided the donors at the various places are not the same.

(iii) The responsibility for evaluation of the presents received will be that of the recipients. As and when presents are received, officials of the External Affairs Ministry serving at the Headquarters and all officials serving in the Missions abroad should

---

give details of the presents received, the names of the donors, the occasions for such presentations and the estimated value of each present. Only such of the articles as are of a value exceeding Rs. 200 (now Rs. 450) need be deposited in the Toshakhana.

(iv) Any article, whatever be its monetary value, should be surrendered to the Government provided it is of some artistic value.

2. These decisions apply to all officials serving in this Ministry at Headquarters and to all officials serving in the Missions abroad.1

(5) "Cash Gifts" to visiting Indian Officers by way of expense money by foreign countries:

It has been brought to the notice of Government that some foreign countries have adopted the practice of offering cash gifts to visiting guests by way of 'expense money' in addition to paying for transport, hotel bills, etc. Government have decided that no cash gift should be accepted by any Government servant visiting a country abroad as a guest of that country. Gifts in kind received by a Government servant should be dealt with in accordance with the existing instructions on the subject.

2. This may please be brought to the notice of all concerned.2

(6) Procedure for disposal of gifts received from foreign dignitaries:

This Ministry has for some time been considering the question of laying down the procedure for disposal of articles of gifts received by Government servants, from foreign dignitaries whether in India or while serving abroad or on a tour abroad.

2. Instructions on the subject were issued to the Indian Missions abroad and to the officers in this Ministry in 1956 vide enclosed copies of Memo. No F. 21-T.K./56, dated 15-5-1956 and its enclosures and O.M. No. 20-T.K. (C.-89)/56, dated 13-9-1956 (not reproduced). A meeting between the Ministries of External Affairs, Home Affairs and Finance was held on the 13th March, 1959, to discuss the question of payment of customs duty on presents, auction of Toshakhana articles and other allied matters. A copy of the *minutes of the meeting is enclosed for information.

3. According to the decision now arrived at, no customs duty is leviable on presents received by Government officials if they are within the

---


*Minutes of the meeting held in the Secretary General's Room at 11-30 hours on 13-3-1959 to discuss the question of payment of customs duty on presents, auction of Toshakhana articles, etc.
ceiling limit of Rs. 200 (now Rs. 450) and are permitted to be retained by the recipients. In granting such permission the Head of the Department should satisfy himself about the value of the articles. In case of doubt the presents may be got valuated by the Customs Appraiser, Foreign Post Office, Hardinge Bridge, New Delhi.

4. Presents of a value of more than Rs. 200 (now Rs. 450) should be surrendered to the Toshakhana in this Ministry unless any of the articles is required by the Ministry/Office concerned for official use in which case, the matter should be referred to the Ministry of External Affairs for giving its approval in consultation with the Ministry of Finance. The articles surrendered to the Toshakhana will be disposed of in accordance with the procedure agreed to by the Central Board of Revenue.

5. The Ministries of Home Affairs, etc., are requested to issue suitable instructions to all concerned.

The following decisions were taken:

(i) Customs duty on presents received by Government officials from foreign dignitaries.—It was decided that no customs duty is leviable on presents received by Government officials from foreign dignitaries, which are within the ceiling limit of Rs. 200 (now Rs. 450) and are permitted to be retained by the recipients, as laid down in Para 2 of the Ministry of Home Affairs D. O. 25/49/55-Ests., dated the 31st March, 1956. [Decision No. 3 above] and further clarified in the Ministry of External Affairs Office Memorandum No. F. 20 TK/(C. O. 89)/56 dated the 13th September, 1956 [Decision No. 4 above].

(ii) Presents surrendered to Toshakhana.—It was decided to continue the present practice of transferring, temporarily or permanently, from the Toshakhana articles for use in Rashtrapati Bhavan, New Delhi, Rashtrapati Niwas, Simla, Prime Minister’s official residence, New Delhi, museums, Indian Embassies abroad and Government Departments, in addition to presents made to charitable institutions.

6. Gifts remaining in the Toshakhana, which are not covered under the above sub-paragraph, should be divided into two categories for the purpose of levying customs duty:

(a) those on which customs duties are leviable on ad valorem rates; and

(b) others on which specific rates of duty be levied.

In case of both (a) and (b) customs duties will be charged. In case of (a) the sale proceeds at the auction will be considered as inclusive of customs duty and the amount of customs duty chargeable will be calculated accordingly. In case of (b), the amount of duty leviable will form the reserve price. In cases where even this reserve price is not realisable at the auction, the case will be referred to the C. B. R. for advice.

(iii) Auction of Toshakhana articles.—The consensus of opinion was to permit members of all Ministries and Departments, including those of the Ministry of External Affairs to bid at the Toshakhana auctions. It was,

accordingly, decided to find suitable neutral agency other than the Ministry of External Affairs to conduct auctions in which members of the Ministry of External Affairs could also participate. The Central Board of Revenue was suggested as a possible agency for this purpose. The Chairman, C. B. R., agreed to examine this question and to advise the Ministry of External Affairs accordingly and action will be taken on the receipt of the C. B. R.’s advice.

(iv) Reserve prices.—It was also decided that the fair prices for articles brought to auction for the first time should be the appraised value plus the customs duty calculated on this appraised value. Articles which were not sold in the first auction and were brought for the second auction, should be sold to the highest bidder, at “free value”. (This decision should be referred to the Comptroller and Auditor-General for his concurrence before action is finalised).

(v) Valuation.—For valuation of articles which are to be disposed of through the Toshakhana, other than gifts within the ceiling limit of Rs. 200 (now Rs. 450) which are to be retained by recipients, a Customs Appraiser will be consulted. The actual mechanics of this consultation will be worked out by the C. B. R. in consultation with the Ministry of External Affairs.

(7) Reference this Ministry’s Office Memorandum No. F. 15 (10) GA/39 (EA/60/1/183), dated the 11th October, 1960 [Decision No. 6 above] on the subject mentioned above. It may be clarified that the decisions arrived at in the Inter-Ministerial meeting of March 13, 1959, referred to therein do not apply to presents received by Government servants from foreign dignitaries abroad. Those decisions are applicable in the case of presents received by Government servants from foreign dignitaries in India only. The following further points are also clarified:

(1) The amount of customs duty is not to be added for fixing the value of gift received by a Government servant from a foreign dignitary abroad.

(2) There is no need to send the article of gift to the Toshakhana from abroad, unless specifically asked to do so by this Ministry. The article if not purchased by the recipient, can be kept in the residence of the Head of Mission/Post as an exhibit piece or as an object of article. The action taken in this regard should, however, be intimated to this Ministry in each case.

(8) Reference this Ministry’s 11. O. letter No, 25/49/55-Ests., dated the 31st March, 1956, [Decision No. 3 above] regarding the disposal of presents received from foreign dignitaries by Government servants. In the D. O. letter under reference, it has been provided that gifts which are of a symbolic nature, like a Sword of Honour, Ceremonial Robes, etc., can be retained by Government servants, irrespective of their value, and other gifts, which are not symbolic in nature, can be retained by Government servants if the value does not exceed Rs. 200 (now Rs. 450). If, however, the value of such gifts exceeds Rs. 200 (now Rs. 450) the gifts are required to be deposited with the Government in Toshakhana. The recipients of the gifts have the option to purchase them from the Toshakhana by paying the difference between the value as assessed by the Toshakhana and Rs. 200 (now Rs. 450) if they so desire.

2. The following procedure should be followed in dealing with cases involving gifts, other than those of a symbolic nature, referred to in the proceeding paragraph:

Government servants shall report the receipt of such gifts to Government, indicating their approximate estimated value. The Ministry or Department administratively concerned shall, in cases of doubt or in marginal cases, where the estimated value boards on the prescribed limit of Rs. 200 (now Rs. 450), refer the case to the Toshakhana for valuation of the gifts and also arrange to get such gifts deposited in the Toshakhana so that it can assess their value. If their value is, on assessment by the Toshakhana, found to be within the prescribed limit of Rs. 200 (now Rs. 450) the gifts will be returned to the Ministry for being handed over to the recipient. Gifts whose value is found to exceed the prescribed limit, will be retained in the Toshakhana and the recipients of the gifts will have the option to purchase them from the Toshakhana by paying the difference between the value as estimated by the Toshakhana and Rs. 200 (now Rs. 450).

3. Ministry of Finance, etc. are requested to bring the above decisions to the notice of all concerned.  

(9) Reference Office Memorandum No. 25/13/65-Ests (A), dated the 9th August, 1965 (Decision No. 7 above) in which it is provided that gifts which are of a symbolic nature, like a Sword of Honour, Ceremonial Robes, etc., can be retained by Government servants, irrespective of their value, and other gifts, which are not symbolic in nature, can be retained by Government servants if the value thereof does not exceed Rs. 200. The question of revising this monetary limit in the light of the present day economic conditions has been under consideration for some time past and it has now been decided that gifts, which are not symbolic in nature, can be retained by Government servants if the value thereof does not exceed Rs. 300 (Rupees three hundred only).

2. The following procedure should hereafter be followed in dealing with cases involving gifts, other than those of a symbolic nature.

All such gifts received by Government servants from foreign dignitaries should be produced before the officer-in-charge of the Toshakhana in the Ministry of External Affairs, through the Ministry or Department administratively concerned, for valuation. If, on assessment by the Toshakhana, their value is found to be above the prescribed limit of Rs. 300, the gifts will be deposited in the Toshakhana and the recipients of the gifts will have the option to purchase them from the Toshakhana by paying the difference between the value as estimated by the Toshakhana and Rs. 300.

The procedure laid down in Para 2 of this Ministry’s O. M. of 9th August, 1965 (Decision No. 7 above) may be treated as cancelled. [See Decision No. 10 below],

3. Ministry of finance etc. are requested to bring the above decisions to the notice of all concerned.

(10) The following procedure should hereafter be followed in dealing with cases involving gifts, other than those of a symbolic nature, received from foreign dignitaries by Government servants.

Government servants shall report the receipt of such gifts to the Ministry/Department administratively concerned, indicating their approximate estimated value. The Ministry/Department concerned shall, in cases of doubt or in marginal cases, where the estimated value borders on the prescribed limit of Rs. 300 (now Rs. 450), refer the case to the Toshakhana for valuation of the gifts and also arrange to get such gifts deposited in the Toshakhana so that it can assess their value. If on assessment by the Toshakhana, their value is found to be within the prescribed limit of Rs. 300 (now Rs. 450) the gifts will be returned to the Ministry/Department for being handed over to the recipient. The gifts whose value is found to exceed the prescribed limit of Rs. 300 (now Rs. 450) will be retained in the Toshakhana and the recipients of the gifts will have the option to purchase them from the Toshakhana by paying the difference between the value as estimated by the Toshakhana and Rs. 300 (now Rs. 450).  

(11) Reference Para 1 of this Ministry's O. M. No. 25/13/65-Ests (A), dated the 15th June, 1966. Consequent on the devaluation of the Indian rupee, it has been decided to raise the monetary limit specified in the O.M. under reference from Rs. 300 to Rs. 450 (Rupees four hundred and fifty only). Therefore, in this Ministry's O.M. of even number dated 17-4-1967 (Decision No. 10 above), for the figure "Rs. 300" wherever it occurs, the figure "Rs. 450" may please be substituted.  

(12) Acceptance of gifts by Government servants on the occasion of their transfer or retirement:

Instances have come to the notice of Government in which senior officers and others were presented, on the occasion of their retirement or transfer, with expensive gifts for the purchase of which the members of the staff contributed. Permission of Government under Rule 10 of the Central Civil Services (Conduct) Rules, 1955, to accept these gifts was sought on the ground that these were a token of the esteem and affection in which the officers concerned were held.

2. While a farewell entertainment of a substantially private and informal character may be held in honour of such officers on the eve of retirement or transfer, as permitted under the proviso to Rule 11 of the Central Civil Services (Conduct) Rules, 1955 and gifts of trifling value [as defined in the Explanation to Rule 10(2) of the above rules] presented and accepted on such occasions, it is hardly healthy or desirable to allow the practice of accepting gifts from the staff.

3. The Ministry of Finance, etc. are accordingly requested to bring to the notice of all concerned that entertainments or gifts on such occasions should be strictly confined to the limits permitted under the Conduct Rules.  

(13) Attention is invited to M.H.A., O.M. No. 25/40/58-Ests (A), dated 24-7-1958 (Decision No. 12 above), in which it has been emphasised that while a farewell entertainment of a substantially private and informal character may be held in honour of officers on the eve of their retirement or transfer as permitted under the proviso to Rule 11 of the Central Civil Services (Conduct) Rules, 1955, and gifts of trifling value [as defined in the "Explanation" to Rule 10(2) of the above rules] presented and accepted on such occasions, it is hardly healthy or desirable to allow the practice of accepting gifts from the staff. In spite of these instructions, instances have

come to the notice of Government in which Government servants were presented with gifts of more than trifling value on the occasion of their retirement or transfer and the Government servant concerned asked for permission to accept them. It has, therefore, been decided that in future no Government servant should be given permission to accept gifts of more than trifling value at the time of his transfer. There is, however, no objection to his accepting gifts at the time of his retirement from the members of the staff, subject, however, to prior permission of Government, wherever such permission is necessary.

2. The Ministry of Finance, etc., are accordingly requested to bring the above to the notice of all concerned. 1

(14) Familiarity arising out of private hospitality—Recommendation No. 24 of the Committee on Prevention of Corruption:

Recommendation No. 24, contained in Paragraph 6.11 of the report of the Committee on Prevention of Corruption, has been carefully considered in the light of the comments received from the Ministers/Departments. The following decisions were reached in regard to this recommendation:

(i) The distinction between Economic Ministries and other Ministries may not serve any useful purpose as officers were liable to transfer and a business house may find it worthwhile to invest in an officer even though he were in a non-Economic Ministry, in the hope that this investment would be useful later on.

(ii) It is essential to avoid the familiarity arising out of private hospitality. When in doubt, an officer should abstain from accepting an invitation and he should not accept invitations particularly from persons who have cases pending before him.

2. Attention of the Ministries, etc., is also invited to the provisions contained in Rule 13 of the Central Civil Services (Conduct) Rules, 1964, issued in Ministry of Home Affairs Notification No. 25/4/63-Ests (A), dated 30th November, 1964, particularly to Note (II) under the said rule.

3. A doubt was also expressed whether if a Minister accepts an invitation, it should be incumbent on the official to accept it. If has been decided that in such cases it would not be incumbent on the official to accept the invitation.

4. The Ministries/Departments are requested to bring this to the notice of all concerned.

(15) Invitations for free "inaugural flights"—Acceptance of, by Government servants and members of their families:

The Air India and the Indian Airlines Corporation sometimes extend invitations to Government servants and members of their families to participate, free of cost, in their inaugural flights. Similar invitations may also be received by Government servants and members of their families from foreign air transport companies operating through India. Such invitations amount to 'gift' vide Explanation below Rule 13 (1) of the Central Civil Services (Conduct) Rules, 1964, and acceptance of such gifts will attract the provisions of rule 13 (4) ibid.

2. It is, therefore, necessary to regulate the acceptance of the gifts referred to above, so as to ensure that these favours do not place the Government servants, exercising a measure of discretion on behalf of Government, in a position where their impartial judgment would be affected, or would seem to be so affected to an outside observer. The administrative Ministries/Departments should keep this in view while considering requests of individual officers to permit them or the members of their families to accept invitations for free inaugural flights offered by the Air India, the Indian Airlines Corporation or foreign airlines. The Ministry of Civil Aviation should be consulted in all cases before granting or withholding permission.

3. Cases of officers of the All-India Services serving under the Government of India should be referred to the All-India Services Division of the Ministry of Home Affairs who will decide each individual case in consultation with the Ministry of Civil Aviation.

4. The above instructions may be brought to the notice of all concerned.¹

(16) Acceptance of Dowry by Government servants:

It is provided in this Ministry’s O. M. No. 25/8/57-Ests (A), dated the 25th March, 1957 (not reproduced) that dowry should be regarded as a customary gift which a Government servant may accept without prior sanction and that subject to the provisions of the rules relating to gifts and transactions in immovable and movable property, all such gifts should be reported to the Government or other prescribed authority.

2. The matter has been reviewed in the context of the provisions contained in the Dowry Prohibition Act, 1961. Section 2 of this Act defines dowry as ‘any property or valuable security given or agreed to be given directly or indirectly by one party to a marriage to the other party to the marriage, or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies’. For removal of doubts, Explanation I below Section 2 declares that ‘any presents made at the time of marriage to other party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties’. Persons who are guilty of giving or taking or abetting the giving or taking of dowry, or demanding any dowry, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, are liable to the punishments prescribed in Sections 3 and 4 of the Act. In the circumstances, Government servants should not give or take or abet the giving or taking of dowry; nor should they demand dowry, directly or indirectly, from the parents or guardian of a bride or bridegroom as the case may be. Dowry can, therefore, no longer be treated as ‘customary gift’ as has been stated in this Ministry’s O. M. of 25-3-1957 referred to in Para 1 above (not reproduced). Any violation of the provisions of Dowry Prohibition Act, 1961 by a Government servant will constitute a good and sufficient reason for instituting disciplinary proceedings against him. In addition to such legal action as may be taken against him in accordance with the provisions of the Act.

3. Receipt of presents by Government servants at the time of their marriage, in the form of cash, ornaments, clothes or other articles, otherwise than as consideration for marriage, from relatives and personal friends will be regulated by sub-rules (2) and (3) of Rule 13 of the Central Civil Services (Conduct) Rules, 1964. The receipt of such presents, from persons other than relatives and personal friends, will be regulated by sub-rule (1) of Rule 13 ibid read with sub-rule (4) thereof. Purchases of items of movable property for giving presents at the time of marriage will be regulated by Rule 18 (3) of the Central Civil Services (Conduct) Rules, 1964, like any other transaction in movable property.

4. This Ministry’s O. M. No. 25/8/57-Ests (A), dated 25-3-1957 (not reproduced) may be treated as cancelled.1

(17) Acceptance of passage and hospitality by officers from foreign contracting firms:

Government have had under consideration the question whether an officer may be permitted to accept the cost of passage to a foreign country and hospitality during his stay there by way of free board and lodging, if offered by a foreign firm contracting with the Government either directly or through its agents/representatives in India. The Explanations below Rule 13 (3) of the Central Civil Services (Conduct) Rules, 1964, provide that “gift” shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or personal friend having no official dealings with the Government servant. Note II below the said rule further provides that a Government servant shall avoid accepting lavish hospitality or frequent hospitality from any individual having official dealings with him or from industrial or commercial firms, organisations etc. In the circumstances, Government have decided that officers should neither accept, nor be permitted to accept offers of the cost of passage to foreign countries and hospitality by way of free board and lodging there, if such offers are made by foreign firms contracting with Government either directly or through their agents/representatives in India. The only exception to this will be in respect of facilities for training abroad offered by foreign firms (who obtain reimbursement from the foreign Government concerned) as part of aid programmes.

2. The Ministry of Finance, etc., are requested to bring the contents of this Office Memorandum to the notice of all concerned.2


No Government servant shall, except with the previous sanction of the Government, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour, or in the honour of any other Government servant:

Provided that nothing in this rule shall apply to—

(i) a farewell entertainment of a substantially private and informal character held in honour of a Government servant or any other Government servant on the occasion of his retirement or transfer or any person who has recently quitted the service of any Government; or

(ii) the acceptance of simple and inexpensive entertainments arranged by public bodies or institutions.

Note.—Exercise of pressure or influence of any sort on any Government servant to induce him to subscribe towards any farewell entertainment even if it is of a substantially private or informal character, and the collection of subscription from Class III or Class IV employees under any circumstances for the entertainment of any Government servant not belonging to Class III or Class IV, is forbidden.

Government of India Decisions

(1) Public demonstrations in honour of Government servants—Clarification of the provisions contained in the Conduct Rules:

As Ministries of the Government of India are aware, Rule 11 of the Central Civil Services (Conduct) Rules, 1955, (now Rule 14) prohibits Government servants except with the previous sanction of Government and subject to certain minor exceptions, from receiving any complimentary or valedictory address or accepting any testimonial or attending any meeting or entertainment held in their honour or in honour of any other Government servant. The question has been raised whether it would be in consonance with the spirit of this rule for Government servants to accept invitations to declare buildings etc., open or to lay the foundation stones of new buildings or to allow roads, bridges building parks or public institutions such as hospitals schools or colleges to be named after them. The matter has been considered carefully in consultation with the Comptroller and Auditor-General. The Government of India consider that it would not only be against the spirit of Rule 11 (now Rule 14) of the Government Servants’ Conduct Rules (sic) for Government servants to act in the manner set forth above but would indeed be inappropriate and inconsistent with the role of detached impartiality legitimately expected of Government servants, and that it would generally have an unwholesome effect.

2. While it is possible that there may be occasions when Government servants may have to participate in such functions which have a cultural and sociological significance, especially in remote areas, they should, as far as possible, refrain from associating themselves with such functions. In cases where they are in doubt, they would be well advised to take the prior permission of their superior officers.

3. It is requested that the above decision may be brought to the notice of all Government servants employed in or under the various Ministries.

4. These instructions are issued with the concurrence of the Comptroller and Auditor-General in so far as employees of the Indian Audit and Accounts Department are concerned.1

15. Private trade or employment—(1) No Government servant shall, except with the previous sanction of the Government, engage directly or indirectly in any trade or business or undertake any other employment.

Provided that a Government servant may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character, subject to the condition that his official duties do not thereby suffer; but he shall not undertake, or shall discontinue, such work if so directed by the Government.

Explanation.—Canvassing by a Government servant in support of the business of insurance agency, commission agency, etc., owned or managed by his wife or any other member of his family shall be deemed to be a breach of this sub-rule.

(2) Every Government servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

(3) No Government servant shall, without the previous sanction of the Government, except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force, or any co-operative society for commercial purposes:

Provided that a Government servant may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government servants, registered under the Co-operative Societies Act, 1912 (2 of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860), or any corresponding law in force.

(4) No Government servant may accept any fee for any work done by him for any public body or any private person without the sanction of the prescribed authority.

Government of India Decisions

(1) Participation in Shramdan in activities organised by Government departments or the Lhand Sewak Samaj:

A question was raised recently whether Central Government servants can be permitted to participate in a Shramdan drive organised by a State Government with the object of enabling the participants to dovote some time and labour in gathering of objects and work of public utility. Participation of a Government servant in such activity in his spare time is not only unobjectionable but even welcome subject, of course, to the consideration that such activity does not interfere with the performance of his official
duties. It is in fact considered desirable that Government servants should be encouraged to participate in such activities so long as official duties of the employees concerned are not unduly interfered with.

The Ministry of Finance, etc., are requested to inform the Departments and offices under them accordingly. It should, however, be made clear that these instructions apply only to activities organised by Government departments or the Bharat Sevak Samaj and not by private organisations.1

(2) *Permission to participate in the A.I.R. programmes and to receive honorarium therefor:*

A reference is invited to this Ministry’s Office Memorandum No. 25/5/47-Estts., dated the 16th June, 1947, on the subject mentioned above (not reproduced). With the issue of the Central Civil Services (Conduct) Rules, 1955, Government servants are now not required to obtain any sanction to broadcast on All India Radio if such broadcasts are of a purely literary, artistic or scientific character. In such cases the onus of ensuring that the broadcasts are of such a character rests on the Government servant concerned.

2. A question has, however, arisen whether the permission of competent authority is now necessary for the purpose of acceptance of honorarium under F.R. 46 (6) by a Government servant in such cases. The matter has been considered by this Ministry in consultation with the Ministries of Finance and Information and Broadcasting and it has been decided that in cases in which no sanction is required for such broadcasts, no permission is necessary for Government servants to receive the honorarium.

3. In cases where sanction to broadcast is necessary, such sanction, if given, should be taken to carry with it also the sanction to receive the honorarium.

4. These orders have been issued after consultation with the Comptroller and Auditor-General and are applicable to employees of the Indian Audit and Accounts Department also.2

(3) *Acceptance of part-time employment—Examinership of examination papers set by recognised Universities:*

With reference to the Ministry of Defence’s O.M. No. 3319/A/E-1/3407/D (Est. I), dated 29-7-1957, on the subject mentioned above, the undersigned is directed to say that this Ministry agrees with the proposal contained in Para 4 of the above Office Memorandum subject to the condition that the official duties of the individual concerned do not in any way suffer. The fees received by the individuals concerned in such cases will not be subject to S.R. 12 of the Fundamental Rules.


It is felt that the offers of Examinership are generally of a casual nature, occurring once or twice a year for a few days when the answer

books, etc., may have to be evaluated. There may, therefore, be no serious objection to giving permission in such cases.¹

(4) Part-time lecturership amounts to regular remunerative occupation attracting need for sanction under Rule 15 of the Conduct Rules:

A question has been raised whether a Government servant who is permitted by his Head of Department, in accordance with the powers delegated to the latter under Supplementary Rule 11, to undertake a part-time job of a lecturer in an educational institution, should also obtain sanction of the Government in terms of Rule 12 of the Central Civil Services (Conduct) Rules, 1955, (now Rule 15) before accepting the assignment.

2. It has been decided in consultation with the Comptroller and Auditor-General of India and the Ministry of Home Affairs that the powers delegated under S. R. 11 should only be exercised in cases where a Government servant undertakes to perform some work of a casual or occasional nature but where the work done is of the nature of a regular remunerative occupation, Conduct Rule 12 (now Rule 15) will be attracted and the sanction of Government will be necessary. Accordingly, the acceptance of a part-time lecturership in the case referred to is to be regarded as a regular remunerative occupation which requires the sanction of Government under Conduct Rule 12 [now Rule 15 of the C. G. S. (Conduct) Rules, 1964].²

(5) Acceptance of part-time employment by Government servants after office hours:

Instances have come to notice in which Government servants have been allowed to accept regular part-time employment in other Government, quasi-Government or private institutions. Such employment, even though it is outside office hours, is contrary to the principle embodied in Rule 12 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 15), prohibiting engagement in any trade or undertaking of any employment by a Government servant other than his public duties. It may result in some deterioration in his efficiency because if he does part-time work in addition to his full working hours in his office, he may not get sufficient time for rest and recreation and will, therefore, be unable to give undivided attention to his work even during office hours. Moreover, such part-time work by Government servants leads generally to depriving unemployed people of work which they would otherwise have got.

2. Having regard to all these considerations, it has been decided that while the competent authority may permit a Government servant under S. R. 11 to undertake work of a casual or occasional character, a whole-time Government servant should not ordinarily be allowed to accept any part-time employment whether under Government or elsewhere, even though such employment may be after office hours. In rare cases where it is proposed to give permission to a Government servant to accept part-time employment, prior sanction of Government should be obtained. In this connection a reference is also invited to the Ministry of Finance Office Memorandum No. F. 10 (94-E-II(B)/58, dated 13th September, 1958 on the subject [Decision No. 4].

3. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor-General.¹

(6) **Co-operative Societies—Question whether Government servants can accept remuneration for services rendered to:**

A Government servant was found working as an Honorary Accountant in a registered Co-operative Thrift and Credit Society and receiving a remuneration of Rs. 20 p.m. from the Society for services rendered to it. Though under the proviso to sub-rule (2) of Rule 12 of the central Civil Services (Conduct) Rules, 1955 (now Rule 15), a Government servant may take part in the registration, promotion or management of a Co-operative society without the previous sanction of the Government, the question arose whether he could accept a fee from it for services rendered to it without the sanction of the competent authority as required under S. R. 11 and whether such a fee is subject to a cut under S. R. 12.

2. The Ministries of Home Affairs and Finance have clarified that such cases are not covered by the proviso to sub-rule (2) of Rule 12 of C.G.S. (Conduct) Rules, 1955 (now Rule 15), and that since the Government servant will be engaging himself in private employment regularly, the prior permission of the Government under Rule 12 (now Rule 15) of the said rules is necessary.²

(7) **Medical practice during spare time—Permission to be given to only those holding recognised qualifications:**

The Government of India have had under consideration the question of grant of permission to Central Government servants to practise medicine on a purely charitable basis during their spare time. Since such practice of medicine by unqualified and untrained persons will be harmful to the community, it has been decided that permission to Central Government servants to undertake practice in any system of medicine should not be granted unless they hold recognised qualifications. Only persons holding recognised qualifications in any system of medicine and registered under the relevant law in force in the State or Union Territory concerned, should be allowed to undertake medical practice. Heads of Departments may grant the required permission, provided the practice is undertaken during spare time, on a purely charitable basis, without detriment to the official duties of the Government servant concerned.

2. Past cases, if any, in which permission has been granted to Government servants to undertake medical practice during their spare time, may be reviewed in the light of the above decision.

3. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue in consultation with the Comptroller and Auditor-General of India.³

(8) **Enforcement of the restrictions against canvassing by Government servants of the business of Life Insurance agency, Commission agency owned or managed by members of his family:**

Sub-rule (1) of Rule 12 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 15), _inter alia_ lays down that no Government servant shall,

except with the previous sanction of the Government, engaged directly or 
indirectly in any trade or business or undertake any employment. It has 
been further emphasized in the "Explanation" thereunder that canvassing 
by a Government servant in support of the business of insurance agency, 
commission agency, etc., owned or managed by his wife or any other 
member of his family shall be deemed to be a breach of this sub-rule.

2. In spite of specific provisions of this rule, during the past two 
years quite a number of cases have been reported to the Special Police 
Establishment in which Government servants have been found carrying on 
life insurance business on their own or in the names of their wives or 
dependants. etc.

3. It appears that the Government servants have either not realised 
the full import of the above rule or are wilfully ignoring it. This rule 
should, therefore, be brought to the notice of all Government servants under 
the WHS etc. Ministry and the importance of observing the rule impressed 
on them.¹

(9) Commercial employment—Negotiations for, while in service:

Instances have come to notice where Government servants enter into 
negotiations with private firms to secure commercial employment even while 
they are in service under Government. A Government servant is under an 
obligation to devote his energies whole-heartedly to the performance of his 
duties and not to divide his attention and effort in search of employment 
elsewhere. It is, moreover, likely that in initiating such negotiations, the 
Government servant may in some measure utilise his official position or the 
oficial position of his friends and colleagues to further his interests in 
securing commercial employment or at any rate give reason for an im-
pression that he might have done so. It has, therefore, been decided that 
no Government servant should negotiate for commercial employment with-
out obtaining the prior permission of the Head of Department, or, if he is a 
Government servant serving in a Ministry or Department of the Government 
of India or a Class I Officer serving in an office under its control, of the 
Ministry or Department administratively concerned. It has been further 
decided that such permission should not be given, unless there are any 
special reasons for doing so.²

16. Investment, lending and borrowing.—(1) No Government 
servant shall speculate in any stock, share or other investment.

Explanation.—Frequent purchase or sale or both, of shares, securities 
or other investments shall be deemed to be speculation within the meaning 
of this sub-rule.

(2) No Government servant shall make or permit any member of 
his family or any person acting on his behalf to make, any investment 
which is likely to embarrass or influence him in the discharge of his official 
duties.

¹ M.H.A. D.O. No. 24/40/61-AVD, dated 1-1-1962.
(3) If any question arises whether any transaction is of the nature referred to in sub-rule (1) or sub-rule (2), the decision of the Government thereon shall be final.

(4) (i) No Government servant shall, save in the ordinary course of business with a bank or a firm of standing duly authorised to conduct banking business, either himself or through any member of his family or any other person acting on his behalf,—

(a) lend or borrow money, as principal or agent, to or from any person within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place himself under any pecuniary obligation to such person, or

(b) lend money to any person at interest or in a manner whereby return in money or in kind is charged or paid:

Provided that a Government servant may give to, or accept from, a relative or a personal friend, a purely temporary loan of a small amount free of interest, or operate a credit account with a bona fide tradesman or make an advance of pay to his private employee.

1[Provided further that nothing in this sub-rule shall apply in respect of any transaction entered into by a Government servant with the previous sanction of the Government.]

(ii) When a Government servant is appointed or transferred to a post of such nature as would involve him in the breach of any of the provisions of sub-rule (2) or sub-rule (4), he shall forthwith report the circumstances to the prescribed authority and shall thereafter act in accordance with such order as may be made by such authority.

Government of India Decisions

(I) Wherever any rule stipulates obtaining of prior permission from Government in any matter, such prior sanction must invariably be obtained by Government servants before making any move—Requests for ex post facto sanction to be severely discouraged:

Attention is invited to the provisions of Rule 14 (3) [now rule 16 (4)] and 15 (now Rule 18) of the Central Civil Services (Conduct) Rules, 1955, in which it has been stated that Government servants should not lend money to any person possessing land or valuable property within the local limits of their authority or at interest to any person and that they should not acquire or dispose of any immovable/movable property without the previous sanction of the prescribed authority. Instances have come to the notice of the Government where certain Government servants have entered into transactions regarding movable and immovable property without the previous sanction of the prescribed authority and they have afterwards

1. Insert, by M.H.A. Notification No. 25/46/64-Ests (A), dated 22-6-1965.
sought ex post facto sanction. Such a procedure renders the provisions of
the rules completely ineffective and defeats the purpose for which the rules
have been framed. The Ministry of Finance, etc., are, therefore, requested
to impress upon the Government servants concerned the need to adhere
to the provisions of the rules strictly and to obtain the sanction of the
prescribed authority, wherever necessary, before entering into such
transactions.

2. These instructions will apply, mutatis mutandis to the provisions of the
other rules which require previous knowledge, consent or sanction of the prescribed
authority.¹

(2) Interpretation of the rule regarding lending and borrowing of money by Central
Government servants:

Sub-rules (4), (5) and (6) of Rule 13 of the Central Civil Services
(Conduct) Rules, 1955 (now Rule 16), regulate the lending and borrowing
of money by Government servants. Doubts have often been raised in
regard to the provisions of these sub-rules and the advice of the Ministry of
Home Affairs has been obtained. The clarification given by them on
various points is summed up below for information and guidance:

(i) In the case of officers who do not have a definite territorial
jurisdiction, the term persons “within the local limits of his
authority” would mean the persons with whom the officer has
official dealings.

(ii) It is not possible to define the term ‘small amount’ comprehen-
sively. Each case should be decided on merits, and in deciding
such cases the status of the individual concerned and the
amount involved should be taken into account.

(iii) Purely temporary loans of small amounts, free of interest, can
be taken by a Government servant from personal friends and
relatives even if they reside within the local limits of his author-
ity. No sanction of the Government will be necessary in such
cases. However, if the amount is large, previous sanction of the
Government will be necessary, subject to (iv) below.

(iv) No sanction of the Government will be necessary for borrowing
even large amount of money from personal friends or others
residing outside the local limits of authority of the Government
servant and with whom he is not likely to have any official
dealings. The Government servant should, however, keep in
mind the provisions of Rule 14 (now Rule 17) namely, that “a
Government servant shall so manage his private affairs as to
avoid habitual indebtedness or insolvency”.²

(3) Surety—Senior officers cautioned not to approach their subordinates for standing
surety for loans taken by them or by their relatives:

The Ministry of Home Affairs have examined the question whether it
would be proper for Government servants to stand surety for loans taken
from private sources by their official superiors. Where a Government
servant stands surety for loans taken by his official superiors or their friends

or relatives, it might create an impression that official pressure has been exerted for this purpose. Apart from this, the superior officer will be putting himself under obligation to the subordinate and such a situation is not conducive to efficient office management and maintenance of discipline. It has, therefore, been decided that all officers should be advised not to approach their subordinates for standing surety for loans taken from private sources either by them or by their relatives or friends.1

17. Insolvency and habitual indebtedness.—A Government servant shall so manage his private affairs as to avoid habitual indebtedness or insolvency. A Government servant against whom any legal proceeding is instituted for the recovery of any debt due from him or for adjudging him as an insolvent, shall forthwith report the full facts of the legal proceeding to the Government.

Note.—The burden of proving that the insolvency or indebtedness was the result of circumstances which, with the exercise of ordinary diligence, the Government servant could not have foreseen, or over which he had no control, and had not proceeded from extravagant or dissipated habits, shall be upon the Government servant.

Government of India Decisions

(1) Channel of submission of reports to, and their disposal by Government in matter relating to habitual indebtedness taking part in politics and lending and borrowing:

Rules 4 (2) (Taking part in politics), 13 (6) (Lending and borrowing) and (Habitual indebtedness) of the C. C. S. (Conduct) Rules, 1955 (new Rules 5, 16 and 17), lay down that a Government servant shall make a report to Government of habitual indebtedness or insolvency and certain facts regarding himself or members of his family in the circumstances specified in those rules. Such report should be submitted by the Government servant to his immediate superior who should forward it through the normal channels to the authority competent to remove or dismiss him from service. Except where such authority requires guidance or clarification from a higher authority it shall consider the report and pass appropriate orders on it. If any penalty is to be imposed on the Government servant, the procedure prescribed in the Central Civil Services (Classification, Control and Appeal) Rules will have to be followed. These instructions may be brought to the notice of all Government servants to whom these rules apply.2

18. Movable, immovable and valuable property.—(1) Every Government servant shall on his first appointment to any service or post and thereafter at such intervals as may be specified by the Government, submit a return of his assets and liabilities, in such form as may be prescribed by the Government, giving the full particulars regarding;

(a) the immovable property inherited by him, or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;

(b) shares, debentures and cash including bank deposits inherited by him or similarly owned, acquired, or held by him;

(c) other movable property inherited by him or similarly owned, acquired or held by him; and

(d) debts and other liabilities incurred by him directly or indirectly,

Note I.—Sub-rule (1) shall not ordinarily apply to Class IV servants but the Government may direct that it shall apply to any such Government servant or class of such Government servants.

Note II.—In all returns, the values of items of movable property worth less than Rs. 1,000 may be added and shown as a lump sum. The value of articles of daily use such as clothes, utensils, crockery, books etc. need not be included in such return.

Note III.—Every Government servant who is in service on the date of the commencement of these rules, shall submit a return under this sub-rule on or before such date as may be specified by the Government after such commencement.

(2) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is—

(i) with a person having official dealings with the Government servant; or

(ii) otherwise than through a regular or reputed dealer.

(3) Every Government servant shall report to the prescribed authority every transaction entered into by him either in his own name or in the name of a member of his family in respect of movable property, if the value of such property exceeds Rs. 1,000 in the case of a Government servant holding any Class I or Class II post or Rs. 500 in the case of a Government servant holding any Class III or Class IV post:

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is—

(i) with a person having official dealings with the Government servant; or

---

1. Substituted for the expression "...transaction concerning movable property owned or held by him either in his own name or in the name of a member of his family...." by M. H. A. Notification No. 25/46/64-Ests. (A), dated 22-6-1965.
(4) The Government or the prescribed authority may, at any time, by general or special order, require a Government servant to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the Government or by the prescribed authority, include the details of the means by which, or the source from which, such property was acquired.

(5) The Government may exempt any category of Government servants belonging to Class III or Class IV from any of the provisions of this rule except sub-rule (4). No such exemption shall, however, be made without the concurrence of the Ministry of Home Affairs.

Explanation.—For the purposes of this rule ;

(1) the expression "movable property" includes—

(a) jewellery, insurance policies the annual premia of which exceeds Rs. 1,000 or one-sixth of the total annual emoluments received from Government whichever is less, shares, securities and debentures ;

(b) loans advanced by such Government servants whether secured or not ;

(c) motor-cars, motor-cycles, horses, or any other means of conveyance ; and

(d) refrigerators, radios and radiograms.

(2) "prescribed authority" means,—

(a) (i) the Government, in the case of a Government servant holding any Class I post, except where any lower authority is specifically specified by the Government for any purpose ;

(ii) Head of Department, in the case of a Government servant holding any Class II post ;

(iii) Head of office, in the case of a Government servant holding any Class III or Class IV post ;

(b) in respect of a Government servant on foreign service or on deputation to any other Ministry or any other Government, the parent department on the cadre of which such Government servant is borne or the Ministry to which he is administratively subordinate as member of that cadre.
Government of India Decisions

PERTAINING TO BOTH MOVABLE AND IMMOVABLE PROPERTY

(1) **Charge of corruption to be held to be proved where a Government servant is unable to satisfactorily account for his assets in movable and immovable property**

This Ministry has had under consideration for sometime, in consultation with the Union Public Service Commission, the question whether in a departmental enquiry an officer charged with corruption should be presumed to be guilty of that charge in case he is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, of pecuniary resources or property disproportionate to his known sources of income. It is considered that a presumption of corruption fairly and reasonably arises against an officer who cannot account for large accretion of wealth which he could not possibly have saved from his known sources of income. Such a principle has received statutory recognition in Section 5(3) of the Prevention of Corruption Act, 1947, and it is considered that its application in a departmental enquiry would not be unjust or inequitable. Accordingly, it has been decided that if an officer against whom a departmental enquiry is held, is unable to explain satisfactorily the large wealth amassed by him, the officer holding the enquiry is entitled to act on the presumption that such wealth was amassed by corrupt means.\(^1\)

(2) **Clarification of the provisions in the C. C. S. (Conduct) Rules, 1955 regarding transactions in movable and immovable properties—Detailed probe into the private affairs of Government servants and harassment to them to be avoided—Transactions made out of funds of defendants—How to account for:**

Certain difficulties are being experienced by administrative authorities in interpreting Rules 15(1), 15(2) and 15(3) of the Central Civil Services (Conduct) Rules, 1955, (now Rule 18), relating to transactions of movable and immovable property and submission of property returns, especially in regard to transactions entered into by members of the family of a Government servant.

2. In order to ensure that Government servants do not indulge in *bonami* transactions or ostensible transfers and acquisitions to secret assets illegally earned, and at the same time to ensure that unnecessary restraint is not imposed on either Government servants or their dependants, or harassment caused to them, the following executive instructions are issued for the guidance of the administrative authorities:

(i) All transactions both of immovable and movable property made out of the funds of the Government servant (irrespective of the person in whose name the transaction is made) should be governed strictly by Rules 15(1), 15(2) and 15(3), (now Rule 18), that is:

(a) **Transactions in immovable property:**

In all cases, the transaction should be with the previous knowledge of the prescribed authority. If it is proposed to be made

---

otherwise than through a regular or reputed dealer, it shall require the previous sanction of the prescribed authority.

(b) Transactions in immovable property:

In all cases a full report to the prescribed authority, immediately after completion of the transaction, is necessary; but in respect of transactions proposed to be made otherwise than through a reputed or regular dealer or agent, previous sanction of the prescribed authority, is necessary.

Note.—Cases falling under sub-para (iv) below will not be governed by these instructions.

(ii) All transactions of both immovable and movable property made out of the funds (including stridhan, gifts, inheritance etc.) of the dependents of the Government servants, irrespective of the person in whose name the transaction is made, should be reported in the following manner—

(a) Transactions in immovable property:

These should be reported along with the annual property return, but in a separate form. No other report is necessary.

(b) Transactions in movable property

These should be reported immediately on completion or immediately after the Government servant comes to know of them.

In both the types of cases, prior permission of the prescribed authority is not necessary.

(iii) A Government servant who transfers any immovable property, or movable property exceeding Rs. 1,000 in value, to a member of his family, should report or obtain sanction of the prescribed authority in accordance with Rule 15(1), (2), and (3) of the Central Civil Services (Conduct) Rules, 1955 (now Rule 18).

(iv) Transactions as members of Hindu undivided joint family do not require Government’s prior permission. In such cases, transactions in immovable property should be included in the annual property returns and those in movable property should be reported to the prescribed authority immediately after completion or immediately after the Government servant comes to know of them.

If a Government servant is unable to give an idea of his share of such property, he may give details of the full property and the names of the members who share it.

3. The above instructions may be implemented liberally in order to avoid a detailed probe into the private affairs of the Government servants or their dependants, but cases in which suspicious circumstances exist should be investigated with firmness and speed.

4. The above instructions may be brought to the notice of all concerned.

5. In so far as persons serving in the Indian Audit and Account Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor-General of India.¹

¹ M. H. A. O. M. No. 25/18/59-Ests (A), dated 28-8-1959.
(3) Returns regarding assets and liabilities required to be submitted under the revised C.G.S. (Conduct) Rules, 1964—Suspended temporarily.

Attention of the Ministry of Finance, etc., is invited to Rule 18 (1) of the Central Civil Services (Conduct) Rules, 1964, under which every Government servant (except Government servants holding Class IV posts) has to submit on his first appointment and thereafter at prescribed intervals, a return of his assets and liabilities in such form as may be prescribed by Government. As it will take some time to prescribe the form and the periodicity of the return under the aforesaid rule, returns for the year 1964 relating to immovable property, may be obtained from Class I and Class II officers under Rule 15(3) of the C. G. S. (Conduct) Rules, 1955.]

(4) As it will take some time for finalising the pro forma and the periodicity of the return under Rule 18 (1) of the C. G. S. (Conduct) Rules, 1964, returns for the year 1967, relating immovable property, may be obtained from Class I and Class II officers only, as was being done under Rule 15 (3) of the Central Civil Services (Conduct) Rules, 1955.2

PERTAINING TO IMMOVABLE PROPERTY ONLY

(5) General instructions regarding submission of the return for immovable property—House-building is clearly a transaction in immovable property—"Prescribed" authorities who would exercise authority—Returns to be treated as secret and kept along with character rolls:

Under sub-rule (3) of Rule 15 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 18) every number of Class I and Class II Services shall, on first appointment to Government service and thereafter at intervals of 12 months, submit a return of immovable property owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person. It has been decided that this return shall be submitted in the form attached to this Office Memorandum,* to the authority prescribed in Explanation (a) to sub-rule 15 (1) [now Rule 18 (3) (2)] of these rules within a month of their appointment and subsequently in the month of January every year. The initial return should show the position as on the date of their appointment and subsequent returns as on the 1st January of the year in which they are submitted. In the case of persons already in service, the first return, if one has not already been submitted, shall indicate the position as on the 1st January, 1956.

2. These returns shall be treated as secret and shall, after such scrutiny as may be considered necessary, be kept in the custody of the authority which maintains the character rolls of the officers concerned; they should not, however, be filed in the character roll itself, but kept separately.

3. Reference is invited to Explanation (a) (i) under Rule 15 (1) [now Rule 18 (5) (2)] of the Central Civil Services (Conduct) Rules, 1955. The question has been raised as to which authority in Government should appropriately exercise the functions of the prescribed authority as mentioned in this Explanation. In respect of Class I officers, other than those who are members of services intended to man posts in or under more than one Ministry-administratively concerned with the post or service of which the

* See Annexure on p. 81.
Government servant is a member, should act as the prescribed authority in this connection. In the latter case, the functions of the prescribed authority would be discharged by the Ministry which controls the service in question. An instance of a service of this nature is the Central Secretariat Service which is controlled by the Home Ministry but is intended to man posts in and under the various Ministries. For a Class I officer of this service, therefore, the prescribed authority for purposes of Rule 15 (now Rule 18) would be the Ministry of Home Affairs. In the case of Class II and Class III officers of this and such other services, however, Explanation (a) (ii) and (a) (iii) would apply and the functions of the prescribed authority would be discharged by the head of the department or the head of the office in which he is for the time being employed, as the case may be.

4. A question has also been asked whether construction of a house requires the previous knowledge or sanction, as the case may be, of the prescribed authority under Rule 15 (now Rule 18) of the Conduct Rules. Since such construction results in the acquisition of an immovable property the provisions of this rule are clearly attracted. A Government servant should, therefore, report to, or seek the permission of, the prescribed authority, as the case may be, before commencing the construction of, or addition to, any building.¹

¹ M. H. A. O. No. 25/16/55-Ests (A), dated 12-1-1956.
**ANNEXURE**

**FORM**

*Statement of immovable property on first appointment for the year*.........................

1. Name of Officer (in full) and service to which the officer belongs .........................

2. Present post held..........................

3. Present pay..............................

<table>
<thead>
<tr>
<th>Name of District, Sub-Division, in which property is situated</th>
<th>Name and details of property</th>
<th>If not in own name state in whose name held and his/her relationship to the Government servant</th>
<th>How acquired—Whether by purchase, lease, mortgage, inheritance, gift or otherwise, with date of acquisition and name of person/persons from whom acquired</th>
<th>Annual income from the property</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
</tbody>
</table>

**Signature......................
Date...............................**

*Note*: The declaration form is required to be filled in and submitted by every member of Class I and Class II services under Rule 15 (3) of the Central Civil Services (Conduct) Rules, 1955, on first appointment to the service and thereafter at the interval of every twelve months, giving particulars of all immovable property owned, acquired or inherited by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person. [Vide Government of India Decision No. 4].

(6) *Question whether report of conclusion of a transaction in immovable property should be made forthwith in cases where prior permission to purchase such property was obtained and the amount involved was not indicated*

A point was raised whether it is necessary for a Government servant once he has got permission of Government to the purchase of immovable

Inapplicable clause to be struck out.

1. In cases where it is not possible to assess the value accurately the approximate value in relation to present conditions may be indicated.
2. Includes short-term lease also.
property, to report the actual acquisition of it immediately on the conclusion of the transaction. If the first sanction specifies the details of the transaction and the amount involved, a further report is not necessary but if such details are not furnished at the time of sanction, a further report after the acquisition giving full details should be made. The property should, of course, figure in his subsequent annual returns of immovable property in either case.

(7). Form of report standardised for cases involving purchase of land, construction of building and additions/alterations to an existing building:

In Para 4 of the orders cited at Decision No. 5 it is explained that the construction of a house amounted to acquisition of immovable property for which the previous knowledge or sanction, as the case may be, of the prescribed authority was required under Rule 15 (now Rule 18) of the Central Civil Services (Conduct) Rules. A question has been raised whether the purchase of movable property required for the construction of the house comes within the scope of Rule 15 (2) [now Rule 18 (3)] of the Central Civil Services (Conduct) Rules, which requires that a report of such transactions shall forthwith be sent to the prescribed authority. It would obviously be cumbersome and inconvenient if such reports have to be made in respect of purchases made in connection with the building of the house. At the same time, the purpose of the rule would be defeated if a check is not kept on such purchases merely because permission has been given for the building of the house just before the construction begins. It has, therefore, been decided that whenever a Government servant wishes to build a house, the following procedure should be followed.

Before starting construction of the house, he should report or seek permission, as the case may be, in Form I and after completion of the house, he should report in Form II to the prescribed authority:

(8) Reference this Ministry's O. M. No. 25/21/57-Ests (A), dated the 11th June, 1957, (Decision No. 7 above), on the above subject, the attached Form I may be substituted for the Form I circulated with the O. M. under reference. (See Annexures below.)

ANNEXURES

FORM I

[As amended by the Ministry of Home Affairs O. M. No. 25/2/64-Ests (A), dated 31-1-1964]

Form of report/application (for permission, to the prescribed authority for the building of, or addition to, a house)

Sir,

This is to report to you that I propose to build a house/to make an

This is to request that permission may be granted to me for the building addition to my house

The estimated cost of the land and of a house/the addition to the house.

materials for the construction/extension are given below:

*See Annexure on Pages 83-85.

Land

(1) Location (survey numbers, village, district, State).
(2) Area.
(3) Cost.

Building Materials, etc.

(1) Bricks (Rate/quantity/cost).
(2) Cement (Rate/quantity/cost).
(3) Iron and steel (Rate/quantity/cost).
(4) Timber (Rate/quantity cost).
(5) Sanitary Fittings (cost).
(6) Electrical Fittings (cost).
(7) Any other special fittings cost).
(8) Labour charges.
(9) Other charges, if any.

Total Cost of Land and Building:

I do not have any official dealings with the contractor nor did I have any
I have/had official dealings with the contractor and the nature of my dealings/
official dealings with him in the past.

with him/is/was as under:

Yours faithfully

FORM II

[Form of report to the prescribed authority
after completion of the building/
extension of a house]

Sir,

In my letter No................., dated............., I had reported

Permission was granted to me in Order No................., dated.............
that I proposed to build a house. The house has since been completed and I,
for the building of a house.

1. Strike out portions not applicable.
2. Enter the name and place of business of the contractor.
enclose a Valuation Report, duly certified to by..............................................
(A firm of Civil Engineers or a Civil Engineer of repute)

.................................................................

Yours faithfully,

(Signature)

Date:

--- Valuation Report ---

I/We hereby certify that I/we have valued House......................
(Here enter details of the house)

.................................................................

constructed by Shri/Srimati........................................
(Here enter name etc. of the Government servant)

.................................................................

and I/we give below the value at which we estimate
the cost of the house under the following headings:

<table>
<thead>
<tr>
<th>Headings</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bricks</td>
<td></td>
</tr>
<tr>
<td>2. Cement</td>
<td></td>
</tr>
<tr>
<td>3. Iron and steel</td>
<td></td>
</tr>
<tr>
<td>4. Timber</td>
<td></td>
</tr>
<tr>
<td>5. Sanitary fittings</td>
<td></td>
</tr>
<tr>
<td>6. Electrical fittings</td>
<td></td>
</tr>
<tr>
<td>7. All other special fittings</td>
<td></td>
</tr>
<tr>
<td>8. Labour charges</td>
<td></td>
</tr>
<tr>
<td>9. All other charges</td>
<td></td>
</tr>
</tbody>
</table>

  Total cost of the building ...

Date:  

(Signature of the Valuation Authority)

--- Reference Ministry of Home Affairs O. M. No 25/21/57-Ests (A) dated the 11th June, 1957 (Decision No. 7 above). It has further been decided that—

(i) the details in the pro forma prescribed should be furnished whenever it is possible to do so. Where, however, it is not possible to furnish these details, the Government servant concerned should mention the covered area on which the building is proposed to be erected and the estimated cost of the building;

(ii) in cases where the expenditure to be incurred on repairs or minor construction work in respect of any immovable property belonging to a Government servant is estimated to exceed Rs. 1,000 sanction of the prescribed authority is necessary and the provisions of the Office Memorandum mentioned above will also apply to such cases;
(iii) the existing caption in Form I may be amended as follows:

"[Form of report/application (for permission) to the prescribed authority for the building or addition to a house:]"

and

the existing caption in Form II as—

"[Form of report to the prescribed authority after completion of the building/extension of a house]"

(10) Valuation Report—Authorities from whom it may be accepted:

In accordance with the instructions contained in the Ministry of Home Affairs Office Memorandum No. 25/21/57-Ests (A), dated the 11th June, 1957, (Decision No. 7 above) a Government servant is required to submit, after the completion of the construction of a house or additions and alterations to an existing house, a valuation report in Form II prescribed therein, signed by a firm of Civil Engineers or a Civil Engineer of repute. Doubts were expressed whether the valuation certificate could be accepted from engineers working in the same or other departments or as public servants elsewhere. The matter has been considered in consultation with the Ministry of Home Affairs and the advice given by them in individual cases is summarised below:

(1) For buildings constructed at a cost not exceeding Rs. 10,000 in villages and town areas, a certificate from a Tehsildar could be accepted. Certificates from Overseers should not be accepted.

(2) Even if the Government servant who has constructed a house, is himself a qualified engineer, a certificate of valuation given by him cannot be accepted as he is a party to the transaction. He should be asked to produce a certificate from an independent Civil Engineer.

(3) Certificates issued by an engineer employed in the same department where the Government servant concerned is employed, cannot be accepted.

(4) Certificates issued by engineers who are public servants and are employed in a department other than the department of the Government servant concerned, with whom the Government servant has no direct official dealings, can be accepted.

(5) Valuation certificates from retired engineers of the Government with whom the Government servant might have worked, can be accepted, provided the retired engineers are engaged in regular private practice.

(11) No regular and continuous scrutiny necessary in case of returns of immovable property submitted by officers of the Central Secretariat Service and the Central Secretariat Stenographers Service

Paragraph 2 of this Ministry’s Office Memorandum No. 25/10/55-Ests. (A), dated the 12th January, 1956, (Decision No. 5, above) stated that the returns of immovable property required to be submitted under Rule 15 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 18), shall be treated as secret and shall, after such scrutiny as may be considered necessary, be kept in the custody of the authority which maintains the Character Rolls of

the officers concerned. It has now been decided that in so far as the Central Secretariat Service and the Central Secretariat Stenographers' Service are concerned there need be no regular and continuous scrutiny of the property returns submitted by the officers of these services and that the returns need be scrutinised only if and when there is ground for suspicion in any particular case. The Ministries etc. need not, therefore, undertake any regular scrutiny of these returns when submitted by the officers and the returns may, as and when they are received from the officers, be passed on to the authority which maintains the Character Rolls of the officers.

2. As the Character Rolls of officers of the Selection Grade and Grades I—III of the Central Secretariat Service, and also those of officers of Grade I of the Central Secretariat Stenographers' Service are maintained by the Establishment Officer to the Government of India (Ministry of Home Affairs), the returns of immovable property of these officers should, on receipt from the officers, be directly transmitted to the Office of the Establishment Officer for record.¹

(12) In the Ministry of Home Affairs Office Memorandum No. 25/2/59 Ests (A), dated the 7th February, 1959, (not reproduced) powers were delegated to the administrative Ministries/Departments to deal with certain matters relating to the application of the Central Civil Services (Conduct) Rules, 1955, in respect of officers of the Services controlled by the Ministry of Home Affairs. It has now been decided that cases relating to the acquisition/disposal of immovable property by Class I Officers of the Central Secretariat Service, which are, under the existing instructions, required to be referred to this Ministry, may also be dealt with and finally decided by the administrative Ministries/Departments concerned.

2. The intention underlying the provision in the C. G. S. (Conduct) Rules, 1955 [vide Rule 15 (1) (now Rule 18 (2))] laying down that no transactions relating to immovable property shall be entered into by officers, subject to these rules except with the previous knowledge of the prescribed authority and, in the case of transactions made otherwise than through a regular or reputed dealer, with the prior sanction of such prescribed authority, is to ensure that—

(i) the transaction proposed to be entered into is for bona fide purposes;

(ii) the acquisition/sale of the property in question is at fair prevailing market prices and does not involve any element of profiteering or speculation;

(iii) there is no reasonable ground to hold that the transaction in question is the result of the exercise of any undue official influence by the officers (e. g. in return for any official favours conferred or likely to be conferred on the prospective seller/buyer of the property) ; and

(iv) there is nothing otherwise objectionable in relation to the proposed transaction.

Ministries/Departments may therefore deal with the individual references relating to transactions in respect of immovable property in entered into or proposed to be entered into by Class I officers of the C. G. S. serving under them, in the light of the above guiding principles. Annual Returns of immovable property owned by officers of the Selection Grade and Grades I—III

of the Central Secretariat Service should, however, as at present, continue
to be sent regularly to the Ministry of Home Affairs (Office of the
Establishment Officer) for purposes of record.¹

(13) Where no changes take place during the year in the holdings of a Government
servant, the annual return may be simply endorsed with the words "No change",
or "Same as last year" instead of repeating the earlier report:

Under Rule 15(3) of the Central Civil Services (Conduct) Rules, 1955,
every member of Class I and Class II Services is required, on first appoint-
ment in the Government service and thereafter at an interval of every
12 months, to submit a return in such form as the Government may
prescribe in that behalf, of all immovable property owned, acquired or
inherited by him or held by him on lease or mortgage, either in his own
name or in the name of any member of his family or in the name of any
other person. A question arose whether annual returns of immovable
property submitted by Class I and Class II officers should indicate every
year all the properties possessed by them or whether it would be enough if
these should indicate the acquisitions/disposals made in the course of the
year and, if no such acquisitions/disposals were effected during the year to
which the return relates, it would be enough if the officer concerned
indicated "No change" in the return. The Ministry of Home Affairs were
consulted and they have advised that if there is any acquisition or disposal
or any other change resulting in changes in the particulars of the property
held, it would be necessary for the officer concerned to indicate full details
of the property, explaining the changes suitably. They have further advised
that, in cases where there are no changes to account for, no useful purpose
would be served by the reproduction of the details given in the previous
year and that in such cases, the entry "No change" or "Same as last year"
would serve the purpose equally well.²

(14) "Pugri" charged by Government servants in renting their houses and flats—
Amounts to corruption:

Recommendation No. 32, contained in Para 6.19 of the Report of the
Committee on Prevention of Corruption reads as follows:

"32. To buy and sell properties at prices much greater than those
recorded in the conveyance deeds has become a common
method of cheating the Central Government of income-tax
and other taxes and the State Government of the stamp duty
and a convenient method of transferring black money. If, in
some manner, the Central and State Governments, or some
special corporations set up for the purpose, can be empowered
to step in and acquire such properties at the stated value, or
even at a small premium when it is considered that the prop-
erties have been deliberately undervalued, it will strike a blow
against black money.

"The habit of charging 'Pugri' or 'premium' for renting houses and
flats is a similar source of corruption for which some drastic
steps have to be taken."

2. This recommendation has been considered carefully in the light of
the comments received from Ministries/Departments etc. Government of
India's decision on the recommendation is as follows:

The changes made in the Income-tax Act in 1964 substantially achieve the purpose underlying a part of the recommendation. Government are, however, advised on legal and constitutional grounds that it would not be possible to accept the part of the recommendation regarding the setting up of special corporations for the acquisition of such properties.

As regards the part of the recommendation relating to "Fugri," the State Governments have been requested to take appropriate action in the matter.¹

PERTAINING TO MOVABLE PROPERTY

(15) Crossword puzzles—Cash prizes—To be regarded as transaction in movable property:

The advice of the Ministry of Home Affairs was recently sought on the question whether it was necessary for a Government servant to make a report, as required under Rule 15(2) of the C.C.S. (Conduct) Rules, 1955 [now Rule 18(3)], to the prescribed authority concerned, of a cash prize won by his wife in a crossword puzzle competition. That Ministry has now advised that the winning of cash prizes from competitions etc. exceeding Rs. 1,000 in value should be regarded as 'transactions' for the purpose of the said rule and that irrespective of whether the rules require such transactions of a Government servant's dependants to be reported or not, it is a matter of ordinary caution for a Government servant to do so.²

(16) No need to report receipt of amount of Life Insurance Policy on maturity:

A point has been raised whether it is necessary for a Government servant to report to the prescribed authority the fact that he has received the sum assured on the maturation of an assurance policy. It is clarified that if the amount so received is not invested in any transaction and is merely deposited in a Saving Bank Account, the act of receiving the amount cannot be construed as "entering into any transaction" within the meaning of Rule 15(2) [now Rule 18(3)] of the Central Civil Services (Conduct) Rules, 1955 and it is not, therefore, necessary to report this fact to the prescribed authority.³

(17) Sale of a car purchased on an advance from the Government of India, requires two sets of sanctions—One under the G. F. Rs. and the other under the C. C. S. (Conduct) Rules.

A question has been raised whether the sanction of the competent authority under Para 256 (9) of the General Financial Rules for the sale of a car or other conveyance purchased with advance from Government, before repayment of the advance together with interest, can be deemed to carry with it the permission of the competent authority under Rule 15 (2) [now Rule 18(3)] of the Central Civil Services (Conduct) Rules, 1955, relating to transactions of movable property.

2. The matter has been considered by this Ministry in consultation with the Comptroller and Auditor-General and the Ministry of Finance since the objects of according sanctions under the two sets of rules are quite different. It has been decided that separate sanctions under the General Financial Rules and under the Conduct Rules should be taken by a Government

---

servant when the sale of the conveyance is made otherwise than through a regular or reputed dealer or agent.

3. In all cases, whether the sanctioning authorities under the two sets of rules are the same or different, in order to obtain the required sanctions expeditiously, the Government servant will be well-advised to obtain first the sanction under the General Financial Rules, as at that stage he will not be required to furnish details of the prospective purchaser, sale price etc., which would be required before the permission under the Conduct Rules is given. After obtaining this sanction, he may settle the details with the intending purchaser and apply for permission under the Conduct Rules stating clearly that necessary sanction under the General Financial Rules had already been obtained. The authority issuing sanction under the General Financial Rules should specify in the sanction itself that the actual sale of the car, if made otherwise than through a reputed or regular dealer or agent, would be subject to the condition that the Government servant also obtains the prior sanction of the competent authority under the Conduct Rules for the sale of his car, so that this requirement is not overlooked by the Government servant.

4. The Ministry of Finance, etc., are requested to bring the above instructions to the notice of all concerned.1

5. In so far as the personal serving in the Indian Audit and Accounts Departments are concerned, these instructions have been issued after consultation with the Comptroller and Auditor-General.

(18) Auctions—Bidding by Government servants prohibited where auctions are arranged by their own offices

A question has been raised whether a specific provision should be added to the Central Civil Services (Conduct) Rules regarding participation by Government servants in auctions of property owned or confiscated by Government. Even if the transaction is, in fact, free of any element of undue influence or dishonesty, the suspicion that all is not above board is bound to arise in cases where property sold at Government auction is purchased by Government servants, particularly by buyers belonging to the same Ministry or Department as the one by which or under whose orders the auction is conducted. While, therefore, it may not be necessary to frame a specific Conduct Rule for the purpose, it is obviously undesirable for Government servants to bid at auctions arranged by their own Ministries or Departments. Any Government servant who does so would be regarded as indulging in conduct unbecoming of a Government servant within the meaning of the Conduct Rules.

2. The Ministry of Finance, etc., are requested to bring this to the notice of all Central Government servants serving under their control.2

(19) Intimation regarding Bank Deposits (Current and Savings) and investments in National Savings/Plan Certificates, Unit Trust, Fixed Deposits etc

Rule 15 (2) [now Rule 18 (3)] of Central Civil Services (Conduct) Rules, 1955, provides that a Government servant who enters into any transaction concerning any movable property exceeding one thousand rupees in value, whether by way of purchase, sale, or otherwise, shall forthwith report such transaction to the prescribed authority.

A question had arisen whether transactions in any of the Small Savings Schemes and fixed deposits in a Bank by a Government servant require intimation to Government. It is clarified that while fixed deposits in a Bank or deposits in a Savings Bank Account made by a Government servant from out of his salary or accumulated savings would not come within the scope of Rule 15 (2), it would be necessary for the officer to report to Government the purchase of Postal or National Savings Certificates exceeding Rs. 1,000 in value from such accumulated savings or deposits in Bank or Post Offices, as these come in the same category as Insurance Policies, securities and debentures mentioned in explanation (a) below Rule 15 (2). Purchases of Postal or National Savings Certificates exceeding one thousand rupees at a time, made in the past, should, therefore, be reported. Encashment of such Certificates, however, is not required to be reported as this is not a separate transaction but is a consequence to the initial transaction of the purchase of the Certificates.  

(20) It has been decided that Current Accounts Savings Bank Accounts and fixed deposits with Banks need not be reported by Government servant (s) under Rule 18 (3) of the C. C. S. (Conduct) Rules, 1964. Such transactions will be covered by Rule 18 (1) (6) of those Rules, as and when the form and the intervals mentioned in Rule 13 (1) of those Rules are prescribed specified by the Government.

2. A question was also raised whether purchase of National Savings/Plan Certificates, Units of the Unit Trust of India etc., which are investments of speculative nature involving practically no element of hazard, need at all be reported to the prescribed authority by the Government servant (s) making such investments. It has been held that the purchase of National Savings/Plan Certificates, Unit of Unit Trust of India, etc., exceeding the monetary limits laid down in Rule 18 (3) of the C. C. S. (Conduct) Rules, 1964 should be reported by the Government servant concerned to the prescribed authority, as such Certificates, Units, etc. are “Securities” within the meaning of Explanation (1) (a) below Rule 18 of the C. C. S. (Conduct) Rules, 1964.

(21) Movable property—Whether sale by advertisement in a newspaper can be regarded as a transaction through a reputed dealer;

A question was raised whether sale of movable property to a party not officially connected with the Government servant concerned, after advertisement in a newspaper, could be regarded as a transaction through a regular dealer for the purposes of Rule 18 (3) of the C. C. S. (Conduct) Rules, 1964. It has been held that even if the sale is effected through an advertisement in newspapers, the Government servant concerned is required to comply with the provisions of the Conduct Rules in regard to the sale of movable property otherwise than through a reputed dealer.

19. Vindication of acts and character of Government servants.—

(1) No Government servant shall, except with the previous sanction of the Government, have recourse to any court or to the press for the vindication of any official act which has been the subject-matter of adverse criticism or an attack of a defamatory character.

(2) Nothing in this rule shall be deemed to prohibit a Government servant from vindicating his private character or any act done by him in his private capacity and where any action for vindicating his private character or any act done by him in private capacity is taken, the Government servant shall submit a report to the prescribed authority regarding such action.

**Government of India Decisions**

(1) **Allegations made in the Press or by individuals against a Government servant in respect of his official conduct—Procedure for dealing with:**

The First Five Year Plan contained a suggestion that when specific allegations were made in the Press against individual public officers, they should be asked to clear their names in court. This was accompanied by a recommendation that the legal expenses in such cases should be sanctioned by Government on the understanding that if the officer lost his case, he would have to reimburse Government and if damages were awarded to him, the cost of legal proceedings would be the first charge on them. These suggestions have been carefully considered and the following conclusions have been reached.

2. When allegations are made in the Press or by individuals against a Government servant in respect of his conduct in the discharge of his public functions, a preliminary confidential enquiry by a senior officer should be ordered by Government.

3. If such an enquiry leads to the conclusion that the allegations are based on ignorance, insufficient information or even malice, it should be further considered whether, having regard to the nature and circumstances of the case, any action in a court of law is necessary to vindicate the conduct of the Government servant concerned, for in some cases, mere publication of the results of the enquiry may not always carry conviction with the public. If it is decided to have resort to a court of law, it should also be considered whether Government should themselves initiate proceedings in a court of law against the party which made the allegations or whether the Government servant should be required to initiate such proceedings. If, on the other hand, it is considered as a result of the enquiry that there are reasonable grounds to doubt the propriety and correctness of the conduct of the Government servant, or if the enquiry is not conclusive, Government may entrust the case to the Special Police Establishment for investigation or order a full departmental enquiry under the Central Civil Services (Classification, Control and Appeal) Rules, or require the officer to vindicate his conduct by resorting to a court of law.

4. In cases where Government decide to initiate criminal proceedings themselves, the provisions of Section 194-B of the Cr. P. C. should be made use of. According to these provisions, the complaint can be filed within six months of the date of the alleged offence, by the Public Prosecutor directly in a Court of Sessions with the previous sanction of the Government and the case will thereafter be pursued by Government. Where the Government decide to institute civil proceedings, the usual procedure for institution of civil proceedings by Government may be followed.

5. In cases where the Government servant is required to vindicate his conduct in a court of law, Government will give financial assistance
as laid down in sub-paragraph 2(d) of M. H. A. O. M. No. F. 45/5/53-Ests. (A), dated the 3th January, 1959 (Decision No. 2 below).

6. When a Government servant desires to institute proceedings suo motu to vindicate his conduct in the course of the discharge of his official duties, he will have to obtain the previous sanction of the Government as required in Rule 16 of the Central Civil Services (Conduct) Rules, 1955 (now Rule 19).

If Government decide to grant such sanction, no question of reimbursement of any expenses to the Government servant will arise, but advances may be granted as laid down in sub-paragraph (e)(ii) of Paragraph 2 of Ministry of Home Affairs O. M. No. F. 45/5/53-Ests (A), dated the 8th January, 1959 (Decision No. 2 below).

7. The appropriate authority for taking a decision in each case will be the Administrative Ministry of the Government of India concerned who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor-General of India will exercise the powers of an administrative Ministry in respect of the Indian Audit and Accounts Department.

8. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor-General.¹

(2) Legal and financial assistance to Government servants involved in law suits arising out of their official work and conduct:

The question has been raised whether, and if so, under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions, which have been taken in consultation with the Ministries of Law and Finance and the Comptroller and Auditor-General are circulated for information and guidance.

(2) (a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant:

Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal instituted against him by the State in respect of matters arising out of, or connected with, his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government will entertain his claim for reimbursement of costs incurred by him for his defence, and if Government are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence should be reimbursed to him.

(2) (b) Proceedings in respect of matters not connected with official duties or position of the Government servant:

Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not arising out of or connected with, his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Government servant or vice versa.

(2) (c) Proceedings instituted by a private party against a Government servant in respect of matters connected with his official duties or position:

(i) If the Government on consideration of the facts and circumstances of the case, consider that it will be in the public interest that Government should themselves undertake the defence of the Government servant in such proceedings and if the Government servant agrees to such a course, the Government servant should be required to make a statement in writing as in Annexure 'A' and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(ii) If the Government servant proposes to conduct his defence in such proceedings himself, the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings conclude in his favour. In determining the amount of costs to be so reimbursed Government will consider how far the court has vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his defence, Government may sanction, at their discretion an interest-free advance not exceeding Rs. 500 or the Government servant's substantive pay for three months whichever is greater, after obtaining from the Government servant a bond in the form reproduced as Annexure 'B'. The amount advanced would be subject to adjustment against the amount, if any, to be reimbursed as above.

The Government servant may also be granted from any provident fund to which he is a subscriber, an advance not exceeding three months' pay or one-half of the balance standing to his credit, whichever is less; this advance will be repayable in accordance with the rules of the Fund.

(2) (d) Proceedings instituted by a Government servant on his being required by Government to vindicate his official conduct:

A Government servant may be required to vindicate his conduct in a Court of law in certain circumstances [vide Ministry of Home Affairs O. M. No. F. 25/32/54-Ests (A), dated 8th January, 1959], (Decision No. 1). The question whether costs incurred by the Government servant in such cases should be reimbursed by the Government and if so, to what extent, should be left over for consideration in the light of the result of the proceedings Government may, however, sanction an interest-free advance, in suitable instalments, of an amount to be determined by them in each case on the execution of a bond by the Government servant in the form reproduced in Annexure 'B'.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, the Government will consider to what extent the Court has indicated the Acts of the Government servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

(2) (e) Proceedings instituted by a Government servant sou motu, with the previous sanction of Government to vindicate his conduct arising o.t of or connected with his official duties or position:

If a Government servant resorts to a Court of law with the previous sanction of Government to vindicate his conduct arising out of, or connected
with, his official duties or position, though not required to do so by Government, he will not ordinarily be entitled to any assistance but Government may, in deserving cases, sanction advances in the manner indicated in sub-para (e) (ii) above, but no part of the expenses incurred by the Government servant will be reimbursed to him, even if he succeeds in the proceedings.

3. Sub-clause (d) of Article 320 (3) of the Constitution requires consultation with the Union Public Service Commission on any claim by a Government servant for the reimbursement of the costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty. In other cases, consultation with the Union Public Service Commission is not obligatory, but it will be open to Government to seek the Commission’s advice, if considered necessary.

4. The question whether a case falls under Article 320 (3) (d) of the Constitution so as to require consultation with the Commission may at times be difficult to determine. It may be stated generally that though consultation is obligatory in a case where a reasonable connection exists between the act of the Government servant and the discharge of his official duties, the act must bear such relation to the official duties that the Government servant could lay a reasonable but not a pretended or fanciful claim that he did it in the course of the performance of his duties.

5. The appropriate authority for taking decisions in each case will be the Administrative Ministry of the Government of India concerned who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor-General of India will exercise the powers of an administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor-General.

ANNEXURE “A”

(Here enter description of the proceeding)

The Government of India having been pleased to undertake my defence in the above proceedings, I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in a decision adverse to me.

Date.................

Signature of the Government servant.

ANNEXURE “B”

[This has been substituted vide decision No. (3) below1]

(3) Attention is invited to the instructions issued in this Ministry’s Office Memorandum No. F. 45/5/53-Ests (A), dated the 8th January, 1959 (Decision No. 2) regarding the grant of legal and financial assistance to the Government servants involved in legal proceedings. In connection with these instructions, the following decisions have been taken and are circulated for information and guidance:

(i) where, in a civil suit a Government servant is sought to be made liable for damages for acts or negligence in discharge of his official duties of civil nature and Government is impleaded on the ground of vicarious liability, the Government should arrange for the defence of the Government servant also, provided the defences of the Government and the Government servant are substantially the same and there is no contract of interest. Each case should be examined in consultation with the Law Officers before undertaking common defence. If it is decided to arrange for the defence of the Government servant, the Government servant should be required to make a statement in writing as in Annexure ‘A’ of this Ministry O. M. referred to above (Decision No. 2 above).

(iii) In cases falling under Para 2 (i) of the O.M. referred to above the amount of the interest-free advance will also not exceed Rs, 500 or the Government servant’s substantive pay for three months whichever is greater.

(iii) The authority competent to sanction the advances under Para 2 (c) (ii), 2 (d) and 2 (e) of the above O.M. will be the Administrative Ministry concerned or the Comptroller and Auditor-General in respect of staff serving under him.

(iv) No second advance in respect of the same proceedings will be admissible. There will, however, be no objection to the grant of more than one advance if they relate to different proceedings against a Government servant.

(v) The recovery of the advance may be made in not more than twenty-four equal monthly instalments, the exact number being determined by the sanctioning authority provided the advance is recovered before the date of retirement. The recovery of the advance should commence on the first issue of pay, leave salary, subsistence allowance following the month in which the advance is drawn. The advance is recoverable from each issue of pay, leave salary, subsistence allowance till it is repaid in full. At the time of reimbursement of legal expenses, the entire balance of advance outstanding against the Government servant should be recovered from the amount reimbursed to him. If the amount reimbursed is less than the outstanding balance of the advance, the remaining amount will be recovered in instalments as already fixed. In the case of grant of more than one advance, the recovery of such advances should run concurrently.

(vi) Where advance under the above instructions is sanctioned to a temporary/quasi-permanent Government servant, he should be asked to furnish a surety of a permanent Central Government servant of equivalent or higher status in the attached form (Annexure ‘C’).

(vii) The amount of advance sanctioned under the above instructions is debitable under the minor head ‘Other Advances’ subordinate to major head ‘Loans and Advances by the Central Government’.

(viii) The form of the bond at Annexure ‘B’ to the instructions of the 8th January, 1959 (desision No. 2 above) is hereby substituted by the one attached herewith.
2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued in consultation with the Comptroller and Auditor-General of India.

ANNEXURE "B"

By this Bond I*..................................................having taken an advance of Rs..................(Rupees)................................only from the President of India (hereinafter called the 'Government') promise to pay to the Government the sum of Rs..................in**........................equal monthly instalments of Rs..................payable by the 10th of every month commencing from***..........................

2. And I agree that in case I cease to be in Government service for any reason whatsoever, the entire balance of the amount shall become due and payable and that in case I fail to pay the same before the date of expiry of six months from the date I cease to be in Government service or before the date on which the payment of the last instalment under this bond would have become due but for my ceasing to be in Government service, whichever date is earlier, the Government, without prejudice to any other right to which it shall be entitled under any law for the time being in force, shall recover the entire balance of the amount from me.

Dated this...........................day of..............19.

(Signature of Government servant)

Witnesses to Signature
1. Accepted
2. 

Signature
(Designation)

For and on behalf of the President of India.

*Here give the name and other particulars of Government servant including the post held by him.

** Here mention the number of instalments.

*** Here mention the date of commencement of the first instalment.

† Here mention the designation of the officer who is authorised to execute the bond under Article 299 (1) of the Constitution.

ANNEXURE "C"

(Surety Form)

Know all men by these presents that I.......................—son of Sri............................................resident of..............................................in the District of..............................................at present employed as a permanent..............................................in the..............................................(hereinafter called 'the surety') am held and firmly bound to the President of India (hereinafter called 'the Government') which expression shall include his successors and assignees in the sum of Rs..................(Rupees).............................................................only) with all costs between attorney and client and all charges and expenses that shall or may have been incurred by or occasioned to the Government to be paid to the Government for which payment to be well and truly made I hereby bind myself, my heirs, executors,

Administrators and representatives firmly by these presents. As witness my hand this                        day of                        one thousand nine hundred and                        

Whereas the Government has agreed to grant to Sri                        son of Sri                        a resident of                        in the District of                        at present employed as temporary/ quasi permanent in the                        (hereinafter called 'the Borrower') at the borrower's own request an advance of Rs                        (Rupees                        only) for                        and whereas the borrower has undertaken to repay the said amount in                        equal monthly instalments.

And whereas in consideration of the Government having agreed to grant the aforesaid advance to the borrower the surety has agreed to execute the above bond with such condition as hereunder is written.

Now the condition of the above written bond is that if the said borrower shall, while employed in the said                        duly and regularly pay or cause to be paid to the Government the amount of the aforesaid advance owing to the Government by instalments, then this bond shall be void otherwise the same shall be and remain in full force and virtue.

But so nevertheless that if the borrower shall die or become insolvent or at any time cease to be in the service of the Government the whole or so much of the said sum of Rs                        (Rupees                        only) as shall remain unpaid shall immediately become due and payable to the Government and be recoverable from the surety in one instalment by virtue of this bond.

The obligation undertaken by the surety shall not be discharged or in any way affected by an extension of time or any other indulgence granted by the Government to the said borrower whether with or without the knowledge or consent of the surety.

The Government have agreed to bear the stamp duty, if any, for this document.

Signed and delivered by                        Signature of Surety
the said                        Designation
at                        Office to which attached
this                        in the presence of:
of                        1.
                        2.

Accepted
(Signature)
[Designation]

Signature
Address and occupation                      For and on behalf of the President of India.

20. Canvassing of non-official or other influence.—No Government servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government.
Government of India Instructions

(1) *Pressure through Members of Parliament and other influential outsiders to secure out-of-turn allotment of residential accommodation—Violative of rules of conduct and calls for disciplinary action*:

There is a very great shortage of Government residential accommodation for Government servants posted in Delhi and other cities such as Calcutta, Bombay Madras, Nagpur, Simla, etc. In Delhi, out of a total requirement of over one lakh units of housing, we have only about 37,000 units in the general pool and the position in other cities is even worse. Government are endeavouring to build as many houses as possible to make up this shortage, but it will inevitably take many years to reach satisfaction. There are difficulties of finance as well as of the cement, steel and other materials. In the meanwhile, the existing accommodation has to be utilised in as fair a manner as possible. For this purpose, allotment rules provide for provision of houses to individual officers on the basis of their priority dates. Allotments are made strictly in order of seniority on the waiting list and, with rare exceptions, no out-of-turn allotments are made or queue-jumping allowed. Any out-of-turn allotment to favour any particular officer inevitably means differentiation against other officers senior in the waiting list. Since all officers have equal claims for allotment of accommodation and since an officer senior on the list has a better claim than one lower down in the list, there is naturally resentment against queue-jumping and Government are anxious to ensure that every officer receives equal treatment and is dealt with very fairly in this respect.

2. Lately it has been noticed that many letters for out-of-turn allotment of accommodation, or for a departure from the allotment rules are received from Members of Parliament, prominent persons, politicians and others recommending the cases of individual officers or members of the staff. Such recommendatory letters are obviously intended to put pressure on the Ministry to depart from the allotment rules. Such letters, on the one hand, are a source of embarrassment to the dealing officers in the Ministry and, on the other, create the impression in the mind of disciplined officers and staff, who do not indulge in such practices, that the rules can be broken by the adoption of such pressure tactics. A more serious aspect of the matter is that those persons who resort to such approaches by influential persons, cannot be expected to maintain independence of judgment and absolute integrity in their dealings with matters in which such prominent persons may be interested and regarding which they, in turn, may approach such officers and staff. Another effect of this practice is a very large increase in the correspondence and paper work in the Ministry which is by and large infructuous and unnecessary.

3. Any officer or a member of the staff who feels that his case for allotment has not been properly dealt with, has a right to represent his case and can certainly approach his own Secretary, or even his Minister, to take up his case at their level to ensure that it receives proper consideration. An approach to anyone outside his own Ministry, however, is to be deprecated for several reasons, the most important of which is the disciplinary aspect under the Government Servants' Conduct Rules.

4. This question has assumed such large dimensions that Government are constrained to request that officers and staff in the Ministry/Department should be advised to strictly refrain from such action. It is also proposed that, in future, whenever a similar occasion arises, the name of the officer
or member of the staff concerned will be brought to the notice of the Head of the Department for such disciplinary action as he may consider necessary.¹

(2) Medical Officers of the C. G. H. S.—Cautioned that an adverse entry in the C. R. may result from attempts to canvass non-official influence in service matters in violation of C. C. S. (Conduct) Rules, 1964:

In Paragraph 6 of this Ministry's letter No. F. 32-42/66-CHS, dated the 16th August, 1966 (not reproduced), attention of the Medical Officers was specially invited to the provisions of Rules 3, 7, 8 and 9 of the Central Civil Services (Conduct) Rules, 1964, extracts of which were attached as enclosures to that letter. It was made clear in that letter that breaches of these rules were punishable under the Central Civil Services (Classification, Control and Appeal) Rules, 1963. The Government of India are constrained to note that in spite of the instructions already issued, a large number of Central Health Service Officers are continuing to bring political pressure in the matter of their transfer and promotions. This is a very disturbing and unhealthy trend which is contrary to the provisions of the Central Civil Services (Conduct) Rules, 1964. Such pressure embarrasses not only the Government but also the persons who are made to exert the pressure; it also creates a lot of administrative difficulties and complications. It is, therefore, necessary to curb this tendency.

Rule 20 of the aforesaid Conduct Rules is reproduced below:

"No Government servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his services under the Government."

The provisions may kindly be brought again to the notice of all the Central Health Service Medical Officers. It may also be made clear to them that in the event of a breach of this rules, an appropriate entry will be made in the confidential report of the officer concerned in addition to such disciplinary action as may be taken against him.²

321. Bigamous marriages.—(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that—

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

³ Subs. by MHA Notification No. 25/17/68-Ests (A), dated 17-9-1968. Before substitution the provisions were as follow:  

**(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

56
Government of India Decisions

(1) Procedure for dealing with requests from Government servants for permission to remarry while first wife is still living:

Cases under this rule have been referred to the Home Ministry for advice whether the permission sought should be given, without any preliminary enquiry into the facts alleged. Such references have caused unnecessary loss of time as no advice can be given without ascertaining to what extent the facts alleged are correct. It is, therefore, requested that before such cases are referred to the Home Ministry, the Ministry or Department concerned should cause an enquiry to be made on the following lines:

The first point to be scrutinised when an application for permission is received, is whether such marriage is permissible under the personal law applicable to the applicant. If so, the question arises whether there are sufficient grounds for allowing an exception to Government's general policy. The alleged grounds given in support of the request should be scrutinised to see whether the allegations are true and well-founded. In case the wife also joins the application, it should be ascertained whether she has willingly consented and whether any letter, etc., purporting to proceed from her is genuine and is the outcome of her own free will. For this purpose, higher officers in the department concerned may, if necessary, send for the applicant and his wife and make personal enquiries. Where the first wife's views have not been stated, they should, if possible, be ascertained. If permission is sought on grounds of alleged sickness of the wife, as much information as possible should be obtained in consultation with the medical authorities. The arrangements made by the husband for the maintenance of the first wife should also be ascertained and it should be examined whether they are satisfactory.

It is requested that the procedure suggested should be brought to the notice of all subordinate authorities who may have occasion to deal with such cases.

(2) Inclusion of a provision in all rules of recruitment to the effect that the restrictions against bigamy will apply to female Government servants also:

The Central Civil Services (Conduct) Rules, 1955 have now been amended by incorporating therein the following further provision as Rule 18 (2):

"No female Government servant shall marry any person who has a wife living without first obtaining the permission of Government."

2. The above principle should govern the recruitment and conditions of service of Central Government servants. Accordingly, a provision to the effect that no female candidate who has married a person having already a wife living, will be eligible for recruitment to a service or post unless Government specially exempt such a candidate from the operation of this

---

provision, may be added by the Ministries etc., in rules or orders relating
to recruitment to services and posts with which they are concerned.\(^1\)

(3) **Form of declaration to be obtained from new entrants regarding their having one
or more than one wife:**

Attention is invited to Paragraph 3 of this Ministry's Office Memo-
randum No. 219/51-Ests, dated the 16th October, 1954 (not reproduced)
regarding plural marriage of Government servants. It was prescribed
therein that candidates for employment should be asked to indicate whether
they had more than one wife living and that, if it transpired that a declara-
tion in the negative given by a Government servant was incorrect, he would
be liable to be dismissed from service. A model form for obtaining a
declaration from new entrants is attached to this Office Memorandum. It
will be seen that the declaration will apply to new entrants of both sexes.
It is, accordingly, requested that necessary instructions may be given to
appointing authorities under the control of the Ministry of Finance, etc., that
a declaration as in the attached form should be obtained from every entrant
to Government service hereafter.\(^2\)

*DECLARATION*

[As amended by M.H.A. O.M. No. 25/35/60-Ests (A), dated 9-12-1960
(vide Decision No. 4 below)]

I, Sri/Srimati/Kumari........................................................
declare as under:

(i) That I am unmarried/a widower/a widow;

(ii) That I am married and have only one wife living;

(iii) That I am married and have more than one wife living. Application
      for grant of exemption is enclosed;

(ai) That I am married and that during the lifetime of my spouse, I
      have contracted another marriage. Application for grant of
      exemption is enclosed;

(v) That I am married and my husband has no other living wife,
     to the best of my knowledge;

(vi) That I have contracted a marriage with a person who has
     already one wife or more living. Application for grant of
     exemption is enclosed.

**2.** I solemnly affirm that the above declaration is true and I under-
stand that in the event of the declaration being found to be incorrect after
my appointment, I shall be liable to be dismissed from service.

Date........................................ Signature...........................

*Please delete clauses not applicable.*

**Applicable in the case of clauses (i), (ii) and (v) only.

Application for Grant of Exemption

[Vide Para I (iii)/(ii), I (vi) of the Declaration]

---

To

The........................................

........................................

Sir,

I request that in view of the reasons stated below, I may be granted exemption from the operation of restriction on the recruitment to service of one having more than one wife living/a woman who is married to a person already having one wife or more living.

Reasons

Yours faithfully,

Dated.................................

Signature.............................

(4) In accordance with the existing orders (vide Decision No. 2)—

(i) No person who has more than one wife living shall be eligible for appointment to the service:

Provided that the Central Government may if satisfied that there are special grounds for doing so, exempt any person from the operation of this sub-rule;

(ii) No female candidate who has married a person having already a wife living, will be eligible for, recruitment to a service or post, unless Government specially exempts such a candidate from the operation of this provision.

A question has been raised whether the rules prohibiting bigamous marriage are at all attracted by a case in which a male candidate for Government service contracts a second marriage but the woman with whom the second marriage is contracted does not, under the law, acquire the status of a wife or when a female candidate contracts a marriage with a person which is void by reason of his already having a wife living. It is hereby clarified that even a marriage which is legally null and void by reason of there being a spouse living at the time of the marriage, would disqualify the person concerned for appointment to Government service.

2. It is, therefore, suggested that the recruitment rules for various services may be amended to provide as follows:

(a) No person who has more than one wife living or who having a spouse living, marries in any case in which such marriage is void by reason of its taking place during the lifetime of such spouse, shall be eligible for appointment to service; and

(b) No woman whose marriage is void by reason of the husband having a wife living at the time of such marriage or who has married a person who has a wife living at the time of such marriage, shall be eligible for appointment to service:

Provided that the Central Government may, if satisfied that there are special grounds for so ordering exempt any person from the operation of this rule.

3. The standard form of declaration which was circulated with this Ministry's Office Memorandum No. 25.52/57-Estts, (A) dated 2nd January, 1958 [Decision No. 3 above] may also be modified accordingly on the lines indicated below:
[See amended for under Decision No. 3]

(i) item (iv) may be renumbered as item (iii);

(ii) the following may be added as item (iv):

"(iv) that I am married and that during the lifetime of my spouse I have contracted another marriage. Application for grant of exemption is enclosed;

(iii) the existing items (iii) and (v) may be renumbered as items (v) and (vi);

(iv) the words ‘am married to’ in (v) may be replaced by the words ‘have contracted a marriage with’.

4. The Ministry of Finance, etc., are requested to take necessary action in so far as the rules relating to services under their administrative control are concerned.

22. Consumption of intoxicating drinks and drugs.—A Government servant shall—

(a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;

(b) not to be under the influence of any intoxicating drink or drugs during the course of his duty and shall take due care that the performance of his duties at any time is not affected in any way by the influence of such drink or drug;

(c) not appear in a public place in a state of intoxication;

(d) not use any intoxicating drink or drug to excess.

23. Interpretation.—If any question arises relating to the interpretation of these rules, it shall be referred to the Government whose decision thereon shall be final.

Government of India Decisions

(1) Government of India fully competent to modify relax or dispense with any rules to prevent hardship in any individual case:

Where the Central Government is satisfied that the operation of any rule regulating the conditions of service of Union Government servants, or any class of such Government servants, causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary, for dealing with the case in a just and equitable manner.

In this rule, the expression "Union Government servants" means all persons whose conditions of service may be regulated by rules made by the President under the proviso to Article 309 or clause (5) of Article 148 of the Constitution.

(2) Under the proviso to Article 309 of the Constitution, the power to make rules regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union vests in the President or such persons as he may direct. It is automatic that the authority which is competent to make rules is competent also to amend or interpret them. The Government of India Act, 1935 expressly recognised the principle that the highest Government authority has the inherent power to relax the provisions of any service rule in individual cases of hardship where some allowance or concession, not permissible under the strict terms of the rule, is justified. Sub-section (5) of Section 241 of the Government of India Act, 1935, accordingly provided:

"No rules made under this section shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule... ...""

The absence of a similar provision in the Constitution created some doubt as to whether such inherent power is not enjoyed by the President. In order, therefore, to remove any doubts and to make the position in this respect clear, the rule was promulgated in the Ministry of Home Affairs Notification No. 108/54-Ests (A), dated the 20th November, 1954 (Decision No. 1 above) making express provisions on the lines of sub-section (5) of Section 241 of the Government of India Act, 1935.

3. This rule does not introduce a new principle or procedure which was not already in vogue, but merely serves to make explicit the position which was assumed to have prevailed heretofore. The power of the Central Government to relax rule as and when considered necessary to deal with any particular case in a just and equitable manner is intended, as in the past, to be invoked only in rare and exceptional cases. Such action should only be taken in accordance with the accepted procedure hitherto followed in dealing with such cases. Before an order of relaxation is passed in any case, the Ministry which made the rule proposed to be relaxed, and other Ministries, e.g., Ministry of Home Affairs and/or Ministry of Finance, as may be appropriate with reference to the facts and circumstances and subject-matter of each case, should be consulted and any existing rules of business or procedure of the Government of India Secretariat having a bearing on the subject, should be complied with.

4. In any case in which it is agreed by the Ministry or Ministries concerned that it is a fit case in which the power to relax any rule should be exercised by the Central Government, the reasons for such relaxation should be placed on record on the appropriate file, but these should not form part of the formal order itself to be issued by the Central Government in this behalf.

5. It should be noted that any order of the Central Government which may be issued dispensing with or relaxing the requirement of any rule in any particular case should be authenticated as an order of the President in accordance with the requirements of Article 77 of the Constitution.¹

**24. Delegation of powers.**—The Government may, by general or special order, direct that any power exercisable by it or any head of department under these rules (except the powers under rule 23 and this rule) shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be specified in the order.

### Government of India Decisions

[See also Appendix VI]

(1) *Delegation of powers to the Chief Administrative Officer and others in respect of civilians in the Defence Services* :

²[ORDER]

In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby direct that the powers exercisable by it under sub-rule (2) of Rule 8, Rule 13, clause (ii) of sub-rule (4) of Rule 16 and sub-rules (2) and (3) of Rule 18 of the said rules shall, subject to any general or special instructions issued in this behalf, be exercisable also by the authorities specified in column 2 of the Table below in respect of such civilian personnel belonging to Class II, Class III and Class IV Services in the Armed Forces Headquarters and Inter-Service Organisations, as are specified in the corresponding entry in column 3 of the said Table:

* TABLE *

<table>
<thead>
<tr>
<th>Rule</th>
<th>Competent authority</th>
<th>Categories of civilian personnel in respect of whom power is delegated</th>
</tr>
</thead>
<tbody>
<tr>
<td>8(2)</td>
<td>Chief Administrative Officer, Ministry of Defence</td>
<td>Classes II, III &amp; IV Services in Armed Forces Headquarters and Inter-Service Organisations.</td>
</tr>
<tr>
<td>13</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td>16(4)(ii)</td>
<td>Ditto</td>
<td>Ditto</td>
</tr>
<tr>
<td>18 (2) and 18 (3)</td>
<td>Ditto</td>
<td>Class II Services in Armed Forces Headquarters and Inter-Service Organisations.</td>
</tr>
<tr>
<td></td>
<td>Assistant Chief Administrative Officers, Ministry of Defence</td>
<td>Classes III and IV Services in Army Headquarters and Inter-Service Organisations.</td>
</tr>
<tr>
<td></td>
<td>Director of Civilian Personnel Naval Headquarters</td>
<td>Classes III and IV Services in Naval Headquarters.</td>
</tr>
<tr>
<td></td>
<td>Deputy Director of Personnel (Civilians), Air Headquarters</td>
<td>Classes III and IV Services in Air Headquarters.</td>
</tr>
</tbody>
</table>

(2) **Delegation of powers to the D. G. T. D. in respect of Class I Officers in regard to transactions in movable and immovable property:**

The Central Government hereby directs that the powers exercisable by it under sub-rules (2) and (3) of Rule 18 of the said rules shall also be exercisable by the Director-General of Technical Development in respect of Class I Officers serving under his control, subject to the conditions that all cases of sanctions accorded by him shall be reported to the Central Government.¹

**UNION TERRITORIES**

(3) **Delegation of powers to the Administrators of Union Territories:**

The powers exercisable by Central Government under sub-rule (2) of Rule 8, Rule 10, Rule 13, Rule 14, sub-rule (1) to sub-rule (3) of Rule 15, and sub-rule (2) of Rule 19 of the Central Civil Services (Conduct) Rules, 1964, shall, subject to any general or special instructions issued in this behalf, be also exercisable by the Administrators of each of the Union Territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Delhi, Goa, Daman and Diu, Himachal Pradesh, Laccadive, Minicoy and Amindiivi Islands, Manipur and Tripura in respect of persons holding Central Civil posts in the departments and offices under their control, other than Class I Officers of Central Government on deputation to the Union Territories.²

(4) The powers exercisable by Central Government under sub-rule (2) of Rule 4 and Explanation 2 (a) (i) to Rule 18 of the Central Civil Services (Conduct) Rules, 1964, shall subject to any general or special instructions issued in this behalf, be also exercisable by the Administrators of each of the Union Territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Delhi, Goa, Daman and Diu, Himachal Pradesh, Laccadive, Minicoy and Aminidiivi Islands, Manipur and Tripura, in respect of persons holding Central Civil posts, Class I, in the departments and offices under their control, other than officers of the Central Civil Service, Class I and holders of Central Civil posts, Class I, who are serving on deputation in the Union Territories.³

(5) In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (1) of Rule 8 and sub-rule (4) of Rule 16 of the Central Civil Services (Conduct) Rules, 1964, shall, subject to any general or special instructions issued in this behalf, be also exercisable by the Administrators of each of the Union Territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Delhi, Goa, Daman and Diu, Himachal Pradesh, Laccadive, Minicoy and Aminidiivi Islands, Manipur and Tripura in respect of persons holding Central Civil posts, Class I, Class II, Class III and Class IV in Departments and Offices under their control.⁴

(6) In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (2) of Rule 4 and Explanation 2 (a) (i) to Rule 18 of the Central Civil Services (Conduct) Rules, 1964, shall,

¹ M. H. A. O. M. No. 25/25/65-Estts (A), dated 8-6-1965.
³ M. H. A. Order No. 25/30/2(69-Estts (A), dated 8-9-1965.
subject to any general or special instructions issued in this behalf, be also exercisable by the Administrators of each of the Union Territories of Andaman and Nicobar Islands, Dadra and Nagar Haveli, Delhi, Goa, Daman and Diu, Himachal Pradesh, Laccadive, Minicoy and Aminidivi Islands, Manipur and Tripura, in respect of persons holding Civil Service posts, Class I, in the Departments and Offices under their control other than officers of the Central Civil Services, Class I, and holders of Central Civil posts, Class I, who are serving on deputation in the Union Territories.¹

(7) In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, the Central Government hereby directs that the powers exercisable by it under sub-rule (4) of Rule 13 and clause (i) of sub-rule (4) of Rule 16 of the said rules shall, subject to any general or special instructions issued by Government in this behalf, be exercisable also by Heads of Departments in respect of Class II, Class III and Class IV Government servants under their control.²

(8) The 'prescribed authority' under the various rules of the Central Civil Services (Conduct) Rules, 1964, will be as under:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Prescribed Authority</th>
</tr>
</thead>
</table>
| Rule 4(2) (iii) and Rule 8(2) | All Government servants serving in Ministries or Departments of the Government of India and Class I Officers serving in offices under their control — “The Administrative Ministry or Department”.
| Any other Government servant — “Head of Department”. |
| Rule 15 (4) | Authority competent under Supplementary Rule 11. |
| Rule 16 (4) (ii) | All Government servants — “Authority competent to remove or dismiss the Government servant from service, i.e., the Appointing Authority”. |
| Rule 19 (2) | All Government servants serving in Ministries or Departments of the Government of India and Class I Officers serving in offices under their control — “The Administrative Ministry or Department”. |
| Any other Government servant — “Head of Office”. |

It is not proposed to specify any authority as "prescribed authority" under Rule 12 (Subscriptions) of the C. C. S. (Conduct) Rules, 1964. Accordingly, the power under this rule will be exercisable by the Administrative Ministry or Department concerned, in the case of all Government servants.

¹. M.H.A. Notification No. 25/30 (2)65-Ests (A), dated 6-10-1965.
2. The "prescribed authority" for purposes of the rules mentioned above in relation to a Government servant on foreign service, or on deputation to any other Ministry, or to any other Government will be the appropriate authority in his parent Ministry or Department.¹

3. Ministry of Finance, etc., are requested to bring the contents of this Office Memorandum to the notice of all concerned.

(9) The authorities competent to receive various reports which are required to be submitted by Government servants to "Government" under different rules of the Central Civil Services (Conduct) Rules, 1964, shall be as under:

<table>
<thead>
<tr>
<th>Rule</th>
<th>Authority competent to receive reports in the Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rules 5 (a)</td>
<td>... All Government servants—</td>
</tr>
<tr>
<td>Sub-rules (2) and (3) of... Rule 13, and sub-rule (2) of Rule 15.</td>
<td>&quot;Authority competent to dismiss or remove the Government servant, i.e., the Appointing Authority&quot;.</td>
</tr>
<tr>
<td>Rule 17</td>
<td>... All Government servants—</td>
</tr>
<tr>
<td></td>
<td>&quot;The Administrative Ministry or Department&quot;.</td>
</tr>
<tr>
<td></td>
<td>Any other Government servant except Class IV Government servants—</td>
</tr>
<tr>
<td></td>
<td>&quot;Head of Department&quot;.</td>
</tr>
<tr>
<td></td>
<td>Class IV Government servants—</td>
</tr>
<tr>
<td></td>
<td>&quot;Head of Office&quot;.</td>
</tr>
<tr>
<td></td>
<td>&quot;Authority competent to remove or dismiss the Government servant, i.e., the Appointing Authority&quot;.</td>
</tr>
</tbody>
</table>

2. Ministry of Finance, etc., are requested to bring the contents of this Office Memorandum to the notice of all concerned.²

(10) In exercise of the powers conferred by Rule 24 of the Central Civil Services (Conduct) Rules, 1964, and after consultation with the Comptroller and Auditor-General of India in relation to persons serving in the Indian Audit and Accounts Department, the Central Government hereby directs that the powers exercisable by it and the Comptroller and Auditor-General of India under sub-rules (2) and (3) of Rule 18 of the said rules shall, subject to any general or special instructions issued by the Central Government in this behalf, be also exercisable by the Heads of Department in respect of Class I officers serving under their control, subject to the following conditions, namely:

(a) In relation to the Heads of Department themselves, the said powers shall continue to be exercised by the Central Government

¹ M.H.A. Order No. 25/36(2)/65-Ests (A), dated 6-10-1965.
² M.H.A. Order No. 25/36(3)/65-Ests (A), dated 6-10-1965.
or the Comptroller and Auditor-General of India, as the case may be; and

(b) All cases of sanction accorded by the said Head of Department shall be reported to the Central Government or the Comptroller and Auditor-General of India, as the case may be.¹

25. Repeal and Saving.—Any rules corresponding to these rules in force immediately before the commencement of these rules and applicable to the Government servants to whom these rules apply are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

²[Provided further that such repeal shall not affect the previous operation of the rules so repealed and a contravention of any of the said rules shall be punishable as if it were a contravention of these rules.]

THE CENTRAL CIVIL SERVICES (CLASSIFICATION
CONTROL AND APPEAL) RULES, 1965

PART I—General

1. Short title and commencement.—(1) These rules may be called
the Central Civil Services (Classification, Control and Appeal) Rules, 1965,
(2) They shall come into force on the 1st December, 1965.

2. Interpretation.—In these rules, unless the context otherwise,
requires,—

(a) ‘appointing authority’, in relation to a Government servant means :
(i) the authority empowered to make appointments to the Service of
which the Government servant is for the time being a member or
to the grade of the Service in which the Government servant
is for the time being included, or
(ii) the authority empowered to make appointments to the post which
the Government servant for the time being holds, or
(iii) the authority which appointed the Government servant to such
Service, grade or post, as the case may be, or
(iv) where the Government servant having been a permanent member
of any other Service or having substantively held any other
permanent post, has been in continuous employment of the
Government, the authority which appointed him to that Service
or to any grade in that Service or to that post,
whichever authority is the highest authority ;

(b) ‘Cadre authority’, in relation to a Service, has the same meaning as
in the rules regulating that Service ;

(c) “Central Civil Service and Central Civil Post” includes a civilian
Service or civilian post, as the case may be, of the corresponding class in the
Defence Service ;

(d) ‘Commission’ means the Union Public Service Commission ;

(e) ‘Defence Service’ means services under the Government of India in
the Ministry of Defence, paid out of the Defence Services Estimates, and not
subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957)
and the Air Force Act, 1950 (45 of 1950) ;

(f) ‘Department of the Government of India’ means any establishment
or organization declared by the President by a notification in the official
Gazette to be a department of the Government of India ;

(g) ‘Disciplinary authority’ means the authority competent under these
rules to impose on a Government servant any of the penalties specified
in rule 11 ;

(h) ‘Government Servant’ means a person who :
(i) is a member of a Service or holds a civil post under the Union,
and includes any such person on foreign service or whose services
are temporarily placed at the disposal of a State Government, or
a local or other authority ;

1. Published wide G. I. M. H. A., Notification No. F.:—7-2-63-Estts. (A), dated the 20th

( 452 )
(ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government.

(i) 'Head of the department' for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the department under the Fundamental and Supplementary Rules or the Civil Service Regulations, as the case may be;

(j) 'Head of the office', for the purpose exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the office under the General Financial Rules;

(k) 'Schedule' means the Schedule to these rules;

(ii) 'Secretary' means the Secretary to the Government of India in any Ministry or Department, and includes:

(i) a Special Secretary or an Additional Secretary,

(ii) a Joint Secretary placed in independent charge of a Ministry or Department,

(iii) in relation to the Cabinet Secretariat, the Secretary to the Cabinet,

(iv) in relation to the President's Secretariat, the Secretary to the President, or as the case may be, the Military Secretary to the President;

(v) in relation to Prime Minister's Secretariat, the Secretary to the Prime Minister; and

(vi) in relation to the Planning Commission, the Secretary to the Planning Commission;

(m) 'Service' means a civil service of the Union.

3. Application.—(1) These rules shall apply to every Government servant including every civilian Government servant in the Defence-Services, but shall not apply to:

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b) any member of the All-India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month’s notice;

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.
(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within exception (a) or (c) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises,—

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs to a particular Service,

the matter shall be referred to the President who shall decide the same.

**Government of India’s Orders**:

**Order (1). Persons to whom not applicable.**—In exercise of the powers conferred by sub-rule (2) of Rule 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 (now 1965), the President hereby directs that the following Class of Government servants shall be wholly excluded from the operation of the said rules, namely:

**MINISTRY OF EXTERNAL AFFAIRS**

Locally recruited staff in Missions abroad.

**MINISTRY OF COMMUNICATION**

*Posts and Telegraphs Department*

(i) Extra-Departmental Agents.

(ii) Monthly-rated staff paid from contingencies other than those brought on to regular establishment.

(iii) Monthly-rated work-charged and other employees not on regular establishment.

(iv) Daily-rated staff paid from contingencies.

(v) Daily-rated workmen paid by the day, week, month, etc.

(vi) All hot weather and monsoon establishment.

(vii) Non-departmental telegraphists and telephone operators.


**MINISTRY OF HOME AFFAIRS**

Police Officers up to the rank of Inspector of Police Delhi Special Police Establishment.


**Order (2). Persons to whom not applicable.**—In pursuance of sub-rule (2) of rule 3 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby directs that the work-charged
personnel of the Mangalore Projects and the Tuticorin Harbour Project shall be excluded from the operation of all of those Rules.

[G.I., M.H.A., Notification No. 7/1/66-Ests. (A), dated the 11th April, 1966.]

Government of India’s Instructions:

Instructions (1), Alterations in conditions of recruitment and service to be notified by formal amendment to statutory rules and not by mere executive orders.—Under the Constitution the conditions of service of the Central Government servants are to be regulated by an Act of Parliament, by rules made by the President of such person as he may direct. The corresponding rules which were in force at the commencement of the Constitution have also continued in force in so far as they are not inconsistent with the provisions of the Constitution. All the statutory rules have the force of law, and no amendment in any such rule acquires legal validity unless it is formally made and notified in the same manner as the original rules concerned.

During the past few years there have been several occasions for amending in different respects the conditions of service prescribed by the various statutory rules. It has been noticed that in some of these instances the changes were effected only by an executive order and not by a formal amendment of the relevant rules although the validity of any alterations in the conditions of service made by executive orders alone remains open to challenge in a court of law.

All concerned are, therefore, requested to note and observe the following instructions in this regard:

(i) In all cases in which conditions of service already embodied in rules are to be altered, such alteration should invariably be made by a formal amendment of the rules made and notified in the appropriate manner.

(ii) Where the intention of the alteration is to liberalise the rules in favour of the Government servants, there may be no objection to giving effect to the intention by means of an executive order in advance of the formal amendment of rules. But the formal amendment should invariably be made as soon as possible.

The Ministry of Finance, etc., are also requested to examine whether in regard to the various statutory rules regulating the recruitment and conditions of service of Government servants issued by them, any alterations have been given effect to by executive order alone. If so, immediate action should be taken to make and promulgate formal amendments in the relevant statutory rules.


PART II—Classification

4. Classification of Services.—(1) The Civil Services of the Union shall be classified as follows:

(i) Central Civil Services, Class I;

(ii) Central Civil Services, Class II;

(iii) Central Civil Services, Class III;

(iv) Central Civil Services, Class IV.
5. Constitution of Central Civil Service.—The Central Civil Services, Class I, Class II, Class III and Class IV shall consist of the Services and grades of Services specified in the Schedule.

6. Classification of Posts.—(1) Civil posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall by a general or special order of the President, be classified as follows:

(i) Central Civil Posts, Class I;
(ii) Central Civil Posts, Class II;
(iii) Central Civil Posts, Class III;
(iv) Central Civil Posts, Class IV.

(2) Any order made by the competent authority, and in force immediately before the commencement of these rules, relating to classification of civil posts under the Union shall continue to be in force until altered, rescinded or amended by an order made by the President under sub-rule (1).

Government of India's Orders:

Order (I). Guiding principle for classifying posts created in new cadres.—The President hereby directs that, with effect from the date of issue of this order, all civil posts under the Union, other than posts created as specific additions to existing cadres which have already been classified, shall in the absence of any general or special order to the contrary, be classified as follows:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description of posts</th>
<th>Classification of posts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>A Central Civil post carrying a pay or a scale of pay with a maximum of not less than Rs. 950.</td>
<td>Class I</td>
</tr>
<tr>
<td>2.</td>
<td>A Central Civil post carrying a pay or a scale of pay with a maximum of not less than Rs. 575 but less than Rs. 950;</td>
<td>Class II</td>
</tr>
<tr>
<td>3.</td>
<td>A Central Civil post carrying a pay or a scale of pay with a maximum of over Rs. 110 but less than Rs. 575.</td>
<td>Class III</td>
</tr>
<tr>
<td>4.</td>
<td>A Central Civil post carrying a pay or a scale of pay the maximum of which is Rs. 110 or less.</td>
<td>Class IV</td>
</tr>
</tbody>
</table>

Note 1. For the purposes of this order:
(i) 'pay' has the meaning assigned to it in F. R. 9-(21) (a) (i).
(ii) the pay or scale of pay of a post means the pay or scale of pay prescribed under the Central Civil Services (Revision of Pay) Rules, 1960.

Note 2.—Any post created or deemed to have been created in the revised scale of pay on or after the 1st July, 1959, but before the date of issue of this order otherwise than as a specific addition to an existing cadre which has already been classified and having a classification higher than the one envisaged by this order, shall be reclassified under this order but without prejudice to the existing incumbent of such post.
7. General Central Service.—Central Civil posts of any class not included in any other Central Civil Service shall be deemed to be included in the General Central Service of the corresponding class and a Government servant appointed to any such post shall be deemed to be a member of that Service unless he is already a member of any other Central Civil Service of the same class.

PART III—Appointing Authority

8. Appointments to Class I Services and Posts—All appointments to Central Civil Services, Class I, and Central Civil Posts, Class I, shall be made by the President:

Provided that the President may by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments.

Government of India’s Orders:

Order (1). Delegation of powers to Lieutenant Governor of Himachal Pradesh and Chief Commissioners of Delhi, Manipur and Tripura.—In pursuance of the proviso to rule 8 of the Central Services (Classification, Control and Appeal) Rules, 1965 the President hereby orders that all appointments to Central Civil Services and posts, Class I, under the Himachal Pradesh Administration shall be made by the Lieutenant Governor of Himachal Pradesh and all appointments to Central Civil Services and posts, Class I, under the Delhi, Manipur and Tripura Administrations shall be made by the Chief Commissioner of Delhi, Manipur and Tripura respectively:

Provided that no appointment to the post of Chief Secretary or Finance Secretary or Inspector General of Police or Development Commissioner or any other post which carries an ultimate salary of rupees two thousand per mensem or more shall be made except with the previous approval of the Central Government.


Order (2). Delegation of powers to Administrator of Goa, Daman and Diu.—In pursuance of the proviso to rule 8 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby orders that all appointments to Central Civil Services and posts, Class I, under the Government of Goa, Daman and Diu shall be made by the Administrator of Goa, Daman and Diu:

Provided that no appointment to the post of Chief Secretary, Finance Secretary, Inspector General of Police, or Development Commissioner or any other post which carries an ultimate salary of rupees two thousand per mensem or more shall be made except with the previous approval of the Central Government.

[G.I., M.H.A., Order No. 7/1/65-Ests. (A), dated the 10th February, 1965.]

All appointments to Central Civil Services Class I and Central Civil posts Class I under the Andaman and Nicobar Islands Administration shall be made by the Administrator of the Union Territory of Andaman and Nicobar Islands:
Provided that no appointment to the post of Chief Development-cum-Rehabilitation Commissioner, Chief Secretary, Development Commissioner-cum-Development Secretary, Secretary (Finance) to the Chief Commissioner, Deputy Commissioner, Additional Deputy Commissioner, Superintendent of Police, Chief Conservator of Forests or Conservator of Forests shall be made except with the previous approval of the Central Government.

[G.I.M.H.A. Order No. 4/83/68-AN 2, dated 2-1-1969.]

9. **Appointments to other Services and Posts.**—(1) All appointments to the Central Civil Services (other than the General Central Services) Class II, Class III and Class IV, shall be made by the authorities specified in this behalf in the Schedule.

Provided that in respect of Class III and Class IV civilian services, or civilian posts in the Defence services appointments may be made by officers empowered in this behalf by the aforesaid authorities.

(2) All appointments to Central Civil Posts, Class II, Class III and Class IV included in the General Central Services shall be made by the authorities specified in that behalf by a general or special order of the President, or, where no such order has been made, by the authorities specified in this behalf in the Schedule.

**PART IV—Suspension**

19. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general special order may place a Government servant under suspension;—

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service) where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(ad) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority;—

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

**Explanation.**—The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprison-
ment after the conviction and for this purpose, intermittent periods of imprisonment if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal, or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this rule shall remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such of proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Government of India's instructions:

Instruction (1). How suspension is to be regulated during pendency of criminal proceedings, arrest, detention, etc.—The cases of suspension during pendency of criminal proceedings or proceedings for arrest, for debt or during detention under a law providing for preventive detention, shall be dealt with within the following manner hereafter:

(a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further order as contemplated in rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. A Government servant who is undergoing a sentence of imprisonment shall be also dealt with in the same manner pending decision on the disciplinary action to be taken against him.
(b) A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension by an order of the competent authority under clause (b) of Rule 10 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.

(c) A Government servant against whom a proceeding has been taken for arrest for debt but who is not actually detained in custody may be placed under suspension by an order under clause (a) of Rule 10 (1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, i.e., only if a disciplinary proceeding against him is contemplated.

(d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in clause (a) or who is suspended in circumstances mentioned in clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F. R. 54, i.e., in event of his being acquitted of blame or his proceeding against him was for his arrest for debt or its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly unjustified, the case may be dealt with under F. R. 54 (2), otherwise it may be dealt with under F. R. 54 (3).

[G. I., M. F. O. M. No. F. 15 (8) E. IV/57, dated the 28th March, 1959.]

Instruction (2). Special instructions about the pay and allowances of reinstated Government servants.—1. The following questions in connection with the reinstatement of dismissed/removed/discharged Government servants whose services had been terminated, came up for consideration:

(a) Whether before the Government of India decide to reinstate an individual on grounds of equity, concurrence of the Ministry of Finance should be obtained for payment of pay and allowances for the intervening period; or whether the administrative authorities could themselves, after following the prescribed procedure (e.g., consultation with the U. P. S. C., etc.), reinstate the person and sanction payment of pay and allowances under F. R. 54,

(b) Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution the payment of full pay and allowances for the intervening period are automatic and compulsory.

2. As regards question (a) above, it has been decided that the concurrence of the Ministry of Finance will not be necessary for reinstating a Government servant, if the authority which reinstates, the Government servant is competent to appoint him. The question as to what pay and
allowances should be allowed for the intervening period and whether or not the period should be treated as duty, will be dealt with under F. R. 54.

3. Regarding question (e) stated in Para 1 above, it has been decided that F. R. 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service is held by a court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution. In such cases:—

(i) if it is decided to hold further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination of service the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

(ii) if the Government servant is not “deemed” to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory; provided that:

(a) the arrears should be paid subject to the law of limitation;

(b) where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment, if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him, nothing shall be paid to him:

Provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the court regarding arrears of salary.

4. As the termination of service of a Government servant without following the procedure laid down in the C. C. S. (C. C. & A.) Rules, the C. S. S. (T. S.) Rules the C. S. R., or the terms of his appointment, etc., results in the payment of arrears by way of pay and allowances, the need for meticulously observing the “proper procedure” in such cases is once again impressed on all concerned.

* * *

Since the provisions of Article 311 (2) of the Constitution are materially the same as those contained in section 240 (3) of the Government of India Act, 1935, an observance of the following procedure laid down in the C. C. S. (C. C. & A.) Rules/Article 311 (2) of the Constitution is essential in all cases of termination of service except where such termination is in accordance with the terms of appointment or relevant rules:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based.

(b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence.
(c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the inquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict, the penalty of reduction in rank, compulsory retirement, removal or dismissal and communicates the same to the Government servant.

5. In all cases where the circumstances leading to a Government servant’s reinstatement reveal that the authority which terminated his services, either wilfully did not observe, or through gross negligence failed to observe the “proper procedure”, as explained above, before terminating his service, proceedings should be instituted against such authority under the (C. C. & A.) Rules and the question of recovering from such authority the whole or part of the pecuniary loss arising from the reinstatement of the Government servant should be considered.


Instruction (3). Promotion of officers who are under suspension of investigation.—1. As the various Ministries of the Government of India are aware, it has not so far been the practice for Departmental Promotion Committees, in the case of selection posts and the competent authority in the case of other posts, to consider for promotion of officers who are under suspension or whose conduct is under investigation or against whom departmental proceedings are about to be initiated. In cases where the officer is completely exonerated on conclusion of the departmental proceedings, his earlier consideration for promotion affects his future prospects adversely. Even if he is promoted subsequently, he loses his seniority as compared to officers who were junior to him in the lower grade and were promoted during the period of his suspension.

2. It has, therefore, been decided in consultation with the Ministry of Finance and the Comptroller and Auditor General that in such cases the officer’s suitability for promotion should be assessed at the relevant time by the Departmental Promotion Committee or other authority as the case may be, and a finding reached whether, if the officer had not been suspended or his conduct had not been under investigation, he would have been recommended/selected for promotion. Where a select list is prepared, the competent authority should also take a view as to what the officer’s position in that list would have been but for his suspension.

3. The findings as to the suitability and the place in the select list of the officer should be recorded separately and attached to the proceedings, in a sealed envelope superscribed “Findings regarding merit and suitability for promotion to/confirmation in.............(service/grade/post) in respect of Shri............(name of the officer),” and “Not to be opened till after the termination of the suspension of/disciplinary proceedings against Sri.........(name of the officer).” The proceedings of the Departmental Promotion Committee, etc., need only contain the note. “The findings are contained in the attached sealed envelope.” The authority competent to fill the vacancy should be separately advised (i) to fill the vacancy only in an officiating capacity, where the findings as to the suitability of the officer are for his promotion; and (ii) to reserve a permanent vacancy, where such findings are for his confirmation.

4. The vacancy that could have gone to the officer but for his suspension or the departmental proceedings against him should be filled only on
an officiating basis by the next person in the approved list. If the officer concerned is completely exonerated and it is held that the suspension was wholly unjustified, he should be promoted thereafter to the post filled in an officiating basis, the arrangements made previously being reversed. Where, however, the post which could have gone to the officer but for suspension or departmental proceedings against him, ceases to exist before the conclusion of the departmental proceedings, he can only be promoted to the first vacancy that may be available in future and if the officer concerned is found fit for promotion at that time.

The seniority so fixed will, however, not affect the pay of the officer which will be fixed under the normal rules as from the date of actual promotion.

5. The procedure laid down above should be followed in considering claims for confirmation of an officer under suspension, an officer whose conduct is under investigation, or an officer against whom departmental proceedings are about to be initiated. For this a permanent vacancy should be reserved for such an officer till a final decision is reached on the proceedings against him, or, where in rank such an officer is reduced in rank for a specified period, till he is actually restored to his original post.


Instruction (4). Fixation of seniority in case of suspension, exonation and promotion where minimum prescribed service could not be put in due to suspension—1. Instruction (3) provides that an officer under suspension who, on the conclusion of the departmental proceeding against him, is completely exonerated, the suspension being held to be wholly unjustified, should be promoted in the first vacancy that could be made available for the purpose and his seniority in the next higher grade fixed as if he had been promoted in accordance with his position in the select list.

2. A question has been raised as to how the seniority should be fixed in cases of the above type where, for promotion to the next higher grade, a minimum period of service is prescribed, but which the Government servant concerned could not put in on account of his suspension, which was ultimately found to be wholly unjustified. It has now been decided that in such a case, the period during which any officer junior to the suspended officer concerned was promoted to the higher grade should be reckoned towards the minimum period of service referred to above for the purpose of determining his eligibility for promotion to the higher grade. It has been decided that the pay of such category of Government servants should on promotion, be fixed by allowing the intervening period, during which the suspended officer could not be promoted due to his suspension, to be counted for increments in the higher grade, but no arrears would be admissible. The concessions will also be admissible to those Government servants who, though not under suspension, could not be promoted to the higher grade on account of their being implicated in departmental proceedings, or on account of their conduct being under investigation and who were subsequently completely exonerated.

3. These orders take effect from the date of issue, i.e., these orders will be applicable in cases wherein the suspended Government servants are reinstated in service (their-suspension ultimately found to be wholly unjustified) on or after the date of issue of this decision. As for Govern-
ment servants referred to in the last sentence of para 2, the concessions referred to therein will be admissible in those cases only where the decision to exonerate them completely is taken by competent authority on, or after, the date of this decision.


Instruction (5). Change of headquarters during suspension.—An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave to station without prior permission. As such, the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension request for a change of headquarters, there is no objection to a competent authority changing the headquarters, if it is satisfied that such a course will not put Government to any extra expenditure, like grant of travelling allowance, etc., or other complications.

[G. I., M. H. A., O. M. No. 39/556-Ests. (A), dated the 8th September, 1951]

Instruction (6). Whether an authority higher than the competent punishing authority can direct the latter to place an official under suspension.—A question has been raised whether officers of the Circle Office while on their visits to subordinate units can direct the competent punishing authority to place an official under suspension for investigating the lapses which come to the notice of the former during inspection. A suspension pending investigation into alleged misconduct does not amount to a final penalty. Accordingly it cannot be held that the direction of the higher authority to place an official under suspension, vitiates the proceedings against the official or precludes the former from acting as an appellate authority, if he is the prescribed appellate authority. It would be more appropriate, however, if the higher inspecting authority merely makes a suggestion to the competent punishing authority as to the desirability of taking disciplinary action against the official concerned, thus leaving the question of placing the official concerned under suspension to be decided by the competent punishing authority.

[D.G., P. and Ts. Memo. No. SPB. 11/3/51, dated the 3rd May, 1951]

Instruction (7). Report of arrest to superiors by Government servants.—It shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected therewith to his official superior promptly, even though he might have subsequently been released on bail. On receipt of the information from the person concerned or from any other source the departmental authorities should decide whether the fact and circumstances leading to the arrest of the person call for his suspension. Failure on the part of any Government servant to so inform his official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the police case against him.

It is requested that the above position may kindly be explained to all Government servants with whom the Ministry of Defence, etc., may be concerned.

Note 1. State Governments have been requested to issue necessary instructions to the police authorities under their control to send prompt initiation of arrest/or and release on bail, etc. of Central Government to the latter’s official superiors as soon as possible after the arrest or release servants indicating also the circumstances of the arrest, etc., to enable them to decide what action, if any, should be taken against such employees.


PART V—Penalties and Disciplinary Authorities

11. Penalties. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:—

Minor penalties:

(i) Censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iv) withholding of increments of pay;

Major penalties:

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increment of his pay;

(vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Explanation. The following shall not amount to a penalty within the meaning of his rule, namely:—

(i) withholding of increments of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;
(ii) stoppage of a Government servant at the efficiency bar in the
time-scale of pay on the ground of his unfitness to cross the
bar;

(iii) non-promotion of a Government servant, whether in a substan-
tive or officiating capacity, after consideration of his case, to a
service, grade or post for promotion to which he is eligible;

(iv) reversion of a Government servant officiating in a higher service,
grade, or post to a lower service, grade or post, on the ground
that he is considered to be unsuitable for such higher service,
grade or post or on any administrative ground unconnected
with his conduct;

(v) reversion of a Government servant, appointed on probation
to any other service, grade or post, to his permanent service,
grade or post during, or at the end of the period of probation in
accordance with the terms of his appointment or the rules
and orders governing such probation;

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

(vii) compulsory retirement of a Government servant in accordance
with the provisions relating to his superannuation or retire-
ment:

(viii) termination of the services—

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

(b) of a temporary Government servant in accordance with the
provisions of sub-rule (1) of rule 5 of the Central Civil
Services (Temporary Service) Rules, 1965; or

(c) of a Government servant employed under an agreement,
in accordance with the terms of such agreement.

Government of India's Instruction:

Instruction (1). Departmental action for neglect of family by
Government servant.—Instances of failure of Government servants to look
after the proper maintenance of their families have come to Government's
notice. It has been suggested that a provision may be made in the Central
Civil Services (Conduct) Rules, to enable Government to take action against
those Government servants who do not look after their families properly.

The question has been examined and it has been decided that it will
not be possible to make such a provision in the Conduct Rules as it would
entail administrative difficulties in implementing and enforcing it.
However, a Government servant is expected to maintain a reasonable
and decent standard of conduct in his private life and not bring discredit
to his service by his misdemeanour. In cases where a Government servant
is reported to have acted in a manner unbecoming of a Government servant
as, for instance by neglect of his wife and family, departmental action can
be taken against him on that score without invoking any of the Conduct
Rules. In this connection, a reference is invited to Rules 11 of the C. S. (C. C. A.) Rules, which specifies the nature of penalties that may for good and sufficient reason, be imposed on a Government servant. It has been held that neglect by a Government servant of his wife and family in a manner unbecoming of a Government servant may be regarded as a good and sufficient reason to justify action being taken against him under this rule.

It should, however, be noted that in such cases the party affected has a legal right to claim maintenance. If any legal proceedings in this behalf should be pending in a court of law, it would not be correct for Government to take action against the Government servant on this ground as such action may be construed by the court to amount to contempt.


Instruction (2). Entry of punishments in confidential rolls.—It has been decided that if as a result of disciplinary proceedings any of the prescribed punishment (e.g., censure, reduction to a lower post, etc.) is imposed on a Government servant a record of the same should invariably be kept in his confidential roll. 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., [as explained in Home Ministry’s Office Memorandum No. 39/21/56-Ests. (A), dated the 13th December 1956], a mention of such warning, etc., should also be made in the confidential roll.

[G. I., M. H., O. M. No. 38/12/59-Ests. (A), dated the 23rd April, 1959].

Instruction (3). Provision in the rules of public undertakings enabling disciplinary action against direct recruits for acts committed prior to their recruitment.—It has been recommended by the Joint Conference of the Central Bureau of Investigation and State Anti-Corruption Officers held in November, 1965, that a provision should be made in the rules of public sector undertakings which would enable them to take disciplinary action against their employees appointed through direct recruitment, for acts done by them in their previous or earlier employment. After a careful consideration of this recommendation, Government have come to the conclusion that an employer is not precluded from taking action against an employee in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service. A provision in the Discipline Rules that penalties can be imposed for “good and sufficient reasons” as in rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, would be adequate authority for taking action in respect of misconduct of the nature referred to above. When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.

Ministry of Industry etc. are requested to bring the above position to the notice of all public sector undertakings under their control and request them to make a provision in their Discipline Rules, so as to enable them to impose penalties on their employees for “good and sufficient reason”, as in Rule 11 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, if such a provision does not already exists.
Instruction (4). Question whether more than one statutory penalty can be imposed on the Government servant in respect of a single offence.—In a case of loss to Government through the negligence of an official, the competent punishing authority ordered a recovery of a part of the loss from the delinquent official and also withheld his increment of five years. The question arose whether for a single offence more than one statutory penalty can be imposed. The matter has been examined carefully and the position is as follows:—

The list of statutory punishment is a graded one and ordinarily the imposition of one or other of those penalties should suffice, and imposition of an additional penalty should be avoided. Technically, however, there is no restriction in the imposition on a Government servant of more than one penalty. The punishing authority would, however, do well to bear in mind that when more than one penalty is imposed, one of which is recovery from pay of the loss caused to Government, the net cumulative effect on the Government servant should not be of such severity as to make impossible for him to bear the strain.


Instruction (5). Distinction between Censure and Warning.—An Order of “Censure” is a formal and public act intended to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment, and nothing can amount to a “censure” unless it is intended to be such a formal punishment and imposed for “good and sufficient reason” after following the prescribed procedure. A record of the punishment so imposed is kept on the officer’s confidential roll and the fact that he has been “censured” will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

There may be occasions, on the other hand, when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e. g., point out negligence, carelessness, lack of thoroughness, delay, etc.) or he may call for an explanation for some act or omission and taking all circumstances into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of “censure” it calls for some informal action, such as the communication of a written warning, admonition or reprimand, if the circumstances justify it, a mention may also be made of such a warning etc., in the officers confidential roll; however, the mere fact that it so mentioned in the character roll does not convict the warning etc. into “censure”. Although such comments, remarks, warning etc., also would have the effect of making it apparent or known to the person concerned that he has done something blameworthy and, to some extent, may also affect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of “censure” because it was not intended that any formal punishment should be inflicted.

The fact that a mere informal “warning” cannot be equated to a formal “censure”, should not, however be taken as tantamount to suggesting that a written warning may be freely given without caring whether or not it is really justified. It is a matter of simple natural justice that written warnings, reprimands, etc. should not be administered or
placed on an officer's confidential record unless the authority doing so is satisfied that there is good and sufficient reason to do so. Paragraph 6 of the Home Ministry's Office Memorandum No. 51/5/54-Ests. (A), dated the 27th January, 1955 provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinates' work and qualities, but also to see that he gives to his subordinates at all times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officer's duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition etc., issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In process of bringing the defects to the notice of person concerned, where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to the formal proceeding required to be taken under Rule 55-A (now rule 16) of Central Civil Services (Classification, Control and Appeal) Rules, nor the warning given amounts to the imposition of a formal penalty.

[G. I., M. H. A., O. M. No. 30/21/56-Ests. (A), dated the 15th December, 1956].

Instruction (6). Question whether all the increments or only one increment to be withheld during the currency of the penalty.—When the penalty of withholding of increment is awarded to an employee, it is obligatory on the part of the disciplinary authority to specify the period for which the penalty should remain current. A doubt has been raised whether in such a case, all the increments falling due during the currency of the penalty or only one increment should remain withheld during the specified period. It is clarified that an order of withholding of increment for a specified period implies withholding of all the increments admissible during that specified period and not the first increment only.


Instruction (7). Registering name with Employment Exchange for higher posts not permissible when penalty is in force.—The Government have had under consideration the question whether a Government servant on whom a penalty has been imposed can be permitted to register his name with the Employment Exchange for a higher post, when the duration of the penalty is not yet over. It has since been decided that a Government servant on whom the penalty specified in clauses (4) and (5) of rule 11 of the C. C. S. (CCA) Rules, 1965 has been imposed should not be allowed to register his name with the Employment Exchange for higher posts during the period the penalty is in force.

[G. I., M. H. A., O. M. No. 14/6 65-Ests. (D), dated the 22nd February, 1965.]

12. Disciplinary Authorities.—(1) The President may impose any of the penalties specified in rule 11 on any Government servant.
(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on—

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the Schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

(3) Subject to the provisions of sub-rule (4), the power to impose any of the penalties specified in rule 11 may also be exercised, in the case of a member of a Central Civil Service, Class III (other than the Central Secretariat Clerical Service), or a Central Civil Service, Class IV,—

(a) if he is serving in a Ministry or Department of the Government of India, by the Secretary to the Government of India, in that Ministry or Department, or

(b) if he is serving in any other office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under sub-rule (2).

(4) Notwithstanding anything contained in this rule,—

(a) except where the penalty specified in clause (v) or clause (vi) of rule 11 is imposed by the Comptroller and Auditor-General on a member of the Indian Audit and Accounts Service, no penalty specified in clauses (v) to (ix) of that rule shall be imposed by any authority subordinate to the appointing authority;

(b) where a Government servant who is a member of a service other than the General Central Service or who has been substantively appointed to any civil post in the General Central Service, is temporarily appointed to any other service or post, the authority competent to impose on such Government servant any of the penalties specified in clauses (v) to (ix) of rule 11 shall not impose any such penalties unless it has consulted such authority, not being an authority subordinate to it, as would have been competent under sub-rule (2) to impose on the Government servant any of the said penalties had he not been appointed to such other service or post.

Explanation.—Where a Government servant belonging to a service or holding a Central Civil post of any class, is promoted, whether on probation or temporarily to the service or Central civil post of the next higher class, he shall be deemed for the purposes of this rule to belong to the service of, or hold the Central Civil post of, such higher class.

Government of India's Instructions:

Instruction (1). Power of an officer who merely looks after current duties against the absence on leave or deputation of the appropriate competent punishing or appellate authority.—An officer who is merely looking after the current duties of a higher officer is not competent to exercise the disciplinary or appellate powers of the latter, if he himself
is not vested with such concurrent powers in his own post. The following questions have been raised in this connection:

(1) who should pass the final punishment or appellate orders in the absence of the competent authority on leave or deputation etc.?

(2) who should place an official under suspension in the absence of the competent authority?

The difficulty arises only in cases of suspension when the order of suspension has to be issued immediately. Therefore so far as (1) is concerned, necessary investigations etc., may be completed in the absence of the competent authority, and final orders in the case should be held over pending the return of the competent authority who should pass the necessary orders in the matter. As regards (2), suspension pending investigation into alleged misconduct etc., does not amount to a penalty. In cases which cannot brook delay, the officer holding current charge of the duties of a higher post can exercise the powers of the competent authority in so far as passing of order of suspension pending investigation is concerned.

[D. G., P. and T., Memo No. STB. 112-23/49, dated the 15th December, 1949 read with Memo of even No. dated the 26th February, 1951.]

Instruction (2). Disposal of disciplinary cases in which the charge sheeted official makes allegations against the disciplinary authority.—

In a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority to refer such a case to Government in the normal manner for nomination of an ad hoc disciplinary authority by a Presidential Order under the provisions of rule 14 (2) of CCS (CCA) Rules, 1957, [now Rule 12(2) of CCS (CCA) Rules, 1965.]

[D. G., P. and T., Memo No. 6/64/64—Disc. dated the 27th January, 1965.]

The following points are clarified:

<table>
<thead>
<tr>
<th>Points raised</th>
<th>Clarification</th>
</tr>
</thead>
<tbody>
<tr>
<td>What happens to the disciplinary proceedings started by a disciplinary authority—</td>
<td>In such cases, it is not necessary for disciplinary authority to start <em>de novo</em> proceedings fresh framing and delivering by charges to the concerned official. He can carry on with the enquiry proceedings at the point where the transfer of the accused officer was effected.</td>
</tr>
<tr>
<td>(A) In respect of a Government servant when the latter is transferred to the jurisdiction of another disciplinary authority.</td>
<td></td>
</tr>
<tr>
<td>(B) Even though the said Government servant continues to be in the same service?</td>
<td>(b) will have to be followed.</td>
</tr>
</tbody>
</table>


13. Authority to institute proceedings.—(1) The President or any other authority empowered by him by general or special order may:
(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

PART VI—Procedure for imposing penalties

14. Procedure for imposing major penalties.—(1) No order imposing any of the penalties specified in clauses (v) to (ix) of rule 11 shall be made except after an enquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) 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 Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

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

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up:

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

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

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

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

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to
do so, appoint under sub-rule (2), an inquiring authority for
the purpose, and where all the articles of charge have been
admitted by the Government servant in his written statement of
defence, the disciplinary authority shall record its findings on
each charge after taking such evidence as it may think fit and
shall act in the manner laid down in rule 15.

(b) If no written statement of defence is submitted by the Govern-
ment servant the disciplinary authority may itself inquire into
the articles of charge or may, if it considers it necessary to do
so, appoint, under sub-rule (2), an inquiring authority for the
purpose.

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

(6) The disciplinary authority shall, where it is not the inquiring
authority forward to the inquiring authority:—

(i) a copy of the articles of charge and the statement of the imputa-
tions of misconduct or misbehaviour;

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

(iii) a copy of the statements of witnesses, if any, referred to in
sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in
sub-rule (3) to the Government servant; and

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

(7) The Government servant shall appear in person before the in-
quiring authority on such day and at such time within ten working days
from the date of receipt by him of the articles of charge and the statement
of the imputations of misconduct or misbehaviour as the inquiring authority
may, by notice in writing, specify in this behalf, or within such
further time, not exceeding ten days, as the inquiring authority may allow.

(8) The Government servant may take the assistance of any other
Government servant to present the case on his behalf, but may not engage
a legal practitioner for the purpose unless the Presenting Officer appointed
by the disciplinary authority is a legal practitioner, or the disciplinary
authority, having regard to the circumstances of the case, so permits.

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

(10) The inquiring authority shall return a finding of guilt in respect
of those articles of charge to which the Government servant pleads guilty.
(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he purposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:—

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

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

Note. If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority:

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

Note. The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

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

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

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

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the
leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

*Note.* New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appealing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

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

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte.*

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of rule 11 [but not competent to impose any of the penalties specified in clauses (v) to (ix) of rule 11], has itself inquired into or caused to be inquired into the articles of any charge
and that authority, having regard to its own findings or having regard to its
decision on any of the findings of any inquiring authority appointed by it,
is of the opinion that the penalties specified in clauses (v) to (ix) of rule 11
should be imposed on the Government servant, that authority shall forward
the records of the inquiry to such disciplinary authority as is competent to
impose the last mentioned penalties.

(6) The disciplinary authority to which the records are so forwarded
may act on the evidence on the record or may, if it is of the opinion that
further examination of any of the witnesses is necessary in the interest of
justice, recall the witnesses and examine, cross-examine and re-examine the
witness and may impose on the Government servant such penalty as it may
decom fit in accordance with the rules.

(22) Whenever any inquiring authority, after having heard and record-
ed the whole or any part of the evidence in an inquiry ceases to exercise
jurisdiction therein, and is succeeded by another inquiring authority which
has, and which exercises, such jurisdiction, the inquiring authority so
succeeding may act on the evidence so recorded by its predecessor, or partly
recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that
further examination of any of the witnesses whose evidence has already
been recorded is necessary in the interests of justice, it may recall, examine,
cross-examine, and re-examine any such witnesses as heretofore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared
and it shall contain—

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

(b) the defence of the Government servant in respect of each article
  of charge;

(c) an assessment of the evidence in respect of each article of
  charge;

(d) the findings on each article of charge and the reasons therefor.

Explanation. If in the opinion of the inquiring authority the proceed-
ings of the inquiry establish any article of charge different from the original
articles of the charge, it may record its findings on such article of
charge:

Provided that the findings on such articles of charge shall not be
recorded unless the Government servant has either admitted the facts on
which such article of charge is based or has had a reasonable opportu-
nity of defending himself against such article of charge.

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

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the Govern-
  ment servant;

(c) the oral and documentary evidence produced in the course of the
  inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the
  Government servant or both during the course of the inquiry; and
(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

Government of India’s Instructions:

Instruction (1.) Conviction of Government servant to be promptly communicated to administrative authorities.—With view mainly to avoid unnecessary expenditure by way of continued payment of subsistence allowance, the question of dismissal etc., of a Government servant should be considered as soon at orders of this conviction are passed by the first trial court. To enable this instruction being complied with in practice it is necessary that the administrative authorities should be made aware of orders of conviction of any person employed under their administrative control without any avoidable delay. Actually, however, it is the experience of Government of India that not only are the heads of offices concerned not informed in most cases about the orders of conviction of any Government servants employed under them but they fail to get replies reasonably expeditiously even when authorities concerned are specifically requested for information in the matter. The Ministry of Home Affairs have accordingly desired that the State Government should cause instruction to be issued to Prosecuting Officers under them that in future they would ensure that prompt intimation is sent to the administrative authorities concerned whenever orders convicting any Government servant of a criminal offence are passed in cases handled by them.


Instruction (2). Instructions avoiding procedural delays in the disposal of discipline, cases.—1.—There have been repeated references in Parliament and in Parliamentary committees to the delays in the disposal of departmental proceedings against delinquent Government servants, and to cases in which on technical and procedural grounds, the accused persons ultimately escape the punishment they deserve. The general impression is that the prescribed procedure is too elaborate and requires to be replaced by something more simple and summary.

(2) After careful consideration the Ministry of Home Affairs have come to the conclusion that this impression is not wholly justified. The procedure prescribed in Rule 14 of the C.G.S. (C.C.A.) Rules is applicable only to cases in which the charges are so serious as to call for one of the major punishments, i.e., Dismissal, Removal or Reduction in the rank, etc. (A mere summary procedure is already available for less serious cases). The provisions of Rule 14 ibid are merely designed to ensure compliance, with a salutary principle of justice and public policy which has also been incorporated in Article 311 of the Constitution of India viz., that no man should be condemned or punished without a reasonable opportunity to defend himself. The prescribed procedure therefore requires that the accused officer should be told in the form of written charges exactly what he is alleged to have done and on what evidence, oral or documentary, the allegations are based that he should have an opportunity to inspect the documentary evidence, to test the oral evidence by cross-examination and to furnish such evidence as he may wish to adduce in his own defence. If, as a result of the enquiry, it is decided that the officer should be dismissed, removed or reduced in rank, he has to be given a further opportunity to show cause, if any, against the actual punishment proposed. Anything less than this would amount to a denial of the reasonable opportunity which is guaranteed by Article 311.
(3) There is, however nothing in these minimum requirements which must necessarily lead to unduly protracted proceedings or to a failure to secure just punishment to the guilty. The officer conducting a departmental inquiry has to hold the balance even between the interest of the State and the avoidance of injustice to the accused. He is free to take a responsible, reasonable, and prudent view of the facts and the circumstances of the case and is not bound by the rigid limitations regarding the admissibility of evidence and the degree of proof applicable to prosecution before Criminal Courts. Provided the inquiry officer gives the necessary time and effort, confines his attention to the main points at issue and firmly resists any attempt by the accused officer to introduce irrelevancies or to adopt deliberate dilatory tactics—there is no reason why satisfactory expenditure in disposal should not be achieved in all cases without departing from the prescribed procedure.

(4) The various factors which may contribute to undue delays and faulty disposal are:

(i) Officers conducting the departmental enquiries may be so preoccupied with other duties that they can only spare a few hours at a time at long intervals for the enquiry itself.

(ii) Unfamiliarity with the procedure or inadequate appreciation of the difference between a departmental inquiry and a trial in a Criminal Court, may lead to over-elaboration, or lack of firmness dealing with dilatory tactics.

(iii) Avoidable delay may sometimes occur at the stage when the enquiry officer has submitted his report and the appropriate authorities have to make up their minds whether the findings are to be accepted and if so what the punishment should be.

(iv) Where, under the rules, consultation with the Union Public Service Commission is necessary some undue delay may occur in making the reference to the Commission, and in the consideration of the case by that body.

(5) As regards the factors mentioned in (i) and (ii) above the Ministry of Home Affairs have considered the feasibility of setting up separate Administrative Tribunals for enquiring into the more important departmental proceedings. Although such bodies have worked satisfactorily in the States of Uttar Pradesh and Madras, it is felt that Central Government machinery is so vast and widely scattered that a similar experiment will always be open to Government to set special committees of enquiry or to have recourse to the Public Servants Enquiries Act, 1850. For all other departmental enquiries the delay caused by excessive pre-occupation or unfamiliarities with the procedure could be easily avoided by adopting the following measures:

(i) In each Ministry or Department a specified officer or officers of appropriate rank shall be nominated and earmarked for the purpose of conducting all the departmental inquiries arising within that Ministry/Department.

(ii) As soon as occasion arises for taking up such an inquiry the nominated officer will be relieved of his normal duties to such extent as may be necessary to enable him to devote full and careful attention to the completion of the enquiries and the submission of his report. During this time the work of which officer is relieved may be distributed amongst other officers.
(iii) The nominated officers should familiarise themselves with the rules and essential procedural requirements and appreciate the difference between Departmental inquiries and trials in the Criminal Courts. The maintenance of close personal contract with the Ministry of Home Affairs will enable them quickly to resolve any doubts or difficulties which may arise.

(6) As regards the causes of delay mentioned in (iii) and (vi) of Para 4 much improvement will be effected if, (a) it is impressed upon all concerned that both public interest as well as humanitarian considerations demand that no avoidable delay should occur in the disposal of disciplinary cases; and (b) any failure to give such cases due priority is itself regarded as a dereliction of duty and suitably dealt with.

(7) As to possibility of delay occuring in the considerations of a case and tendering of their advice by the Union Public Service Commission the Ministry of Home Affairs are in correspondence with the Commission and they have every hope that satisfactory arrangements will be made to secure all possible expedition on the part of the Commission.

[G. I., M. H. A., O. M. No. 39/40/52-Ests., dated the 4th October, 1952.]

Instruction (4). Procedure to be adopted for referring disciplinary cases to U. P. S. C. for advice.—The following procedure should be adopted for referring disciplinary cases to the U. P. S. C. for advice:

(a) Original Cases—

(i) When no enquiry has been held i.e., so far as proceedings under rule 16 of C. C. S. (CGA) Rules of a corresponding rule are concerned only the memorandum containing the allegations and the official’s reply thereto should be sent to the Commission and it shall not be necessary to send a self-contained factual note as a rule. But a note should be sent where clarifications/comments have to be given to explain the points made in the official’s explanation. These clarifications/comments should, however, be only factual and procedural and should form part of the record.

(ii) Where action under rule 15 (now Rule 14) of the Central Civil Services (Classification, Control and Appeal) Rule, 1965 or a corresponding rule has been initiated and an enquiry has been held, but the Government consider in the light of the explanation furnished by the officer and the finding of the Enquiry Officer that there is no need to impose a major penalty, there may not be any need for preparing a self-contained note except where it is necessary to clarify the factual/procedural points in the light of any remarks contained in the enquiry report. In the letter forwarding the records to the Commission or in a separate note it may be mentioned that the Government have reached the provisional conclusion that no major penalty is called for. The note should, however, form part of the record.

(iii) Where an enquiry has been held and the Government consider that a major penalty is called for, it will be necessary for the disciplinary authority to record a provisional conclusion regarding the penalty to be imposed. While forwarding the reply of the officer to the show-cause notice and the other relevant
records to the Commission it will be sufficient in such cases to
deal with any factual/procedural points which may have been
raised in the officer’s reply to the show-cause notice, in a
separate note which will form part of the record. The note
should not, however, discuss the merits of the case and should
not record any findings on the charge, or express any opinion
regarding the penalty to be imposed on the officer.

(b) Cases of Appeal.—While forwarding an appeal to the Commission
there should not be any expression of opinion on the merits of the
case; it should, however, be ensured that comments of Disciplinary
Authority as required under rule 29 (now Rule 26) of the Central
Civil Services (Classification, Control and Appeal) Rules or a
corresponding rule are invariably sent to the Commission.

(c) Cases of Review on Memorial/Petitions or otherwise.—In terms of the
provisions of the Union Public Service Commission (Exemption
from Consultation) Regulations, the Commission are required to be
consulted only when the President proposes to pass an order over-
ruling or modifying, after consideration of any petition or memo-
rial or otherwise, an order imposing any of the penalties made by
him or by a subordinate authority, or an order imposing any of
the penalties in exercise of his powers of review and in modifica-
tion of an order under which none of the penalties has been
imposed. In such cases there is no objection to the Ministry
indicating in a separate note or in the forwarding letter the con-
siderations on account of which a modification of the order already
passed in the case is called for.

In cases where, as result of the review, it is proposed to enhance the
penalty and a show-cause notice to this effect is issued to the
officer, a note containing the Government’s comments on any
factual/procedural points raised by the officer in the reply to the
show-cause notice should be forwarded to the Commission together
with other relevant papers, without, however, expressing any view
regarding the findings on the charges, or the penalty to be imposed
on the officer.

(d) When a disciplinary case is referred to the Commission, all the
documents in original as detailed in the pro forma statement cir-
culated with Home Ministry’s D. O. No. 8/33/56-AVD, dated 31st
December, 1956 to all Vigilance Officers, together with all the
important papers which are referred to in these documents,
should be forwarded to the Commission for their perusal.


Instruction (5). Procedure for departmental proceedings prior to
criminal prosecution in case of alleged criminal misconduct of Govern-
ment Servants.—In the Home Department letter No. F. 312/35 Public,
dated the 15th November, 1935, it was laid down that in a case where it was
intended to prosecute employee for acts committed by him as a Government
servant everything should be done to carry the departmental proceedings
to as advanced a stage as possible before prosecution begins. It was also
laid down that the finding and the penalty in the departmental proceedings
should not be recorded till after the disposal of the criminal case. This matter
has been reviewed. The postponement of decision in the departmental
proceedings till after the criminal case is finally disposed of leads to undue delay in the completion of the proceedings. Moreover, if the officer is placed under suspension, he has to be paid subsistence allowance during the entire period of prosecution, and if there is an appeal against the conviction till the appeal is decided. If action is taken immediately after the conviction in the trial court, difficulties sometimes arise when the conviction is appealed against. In order to avoid these difficulties, as well to ensure the earliest possible decision in such cases, it has now been decided that the following procedure should normally be adopted in cases of alleged criminal misconduct of Government servants.

(2) As soon as sufficient evidence is available for the purpose in the course of investigation in cases of misconduct, whether such investigation is conducted departmentally or through the police (including the Special Police Establishment), action should be taken under the Civil Services (Classification, Control and Appeal) Rules or other appropriate disciplinary rules and disciplinary proceedings should be initiated forthwith. Such departmental proceedings need not interfere with the police investigation, which may be continued, where necessary. After the departmental proceedings are concluded, and the penalty, if any, imposed as a result thereof, the question of prosecution should be considered in the light of such material as may have become available as a result of the investigation.

(3) In suitable cases criminal proceedings should thereafter be initiated. Before initiating such proceedings advice on evidence should be obtained from Government Counsel, and in more important cases from the Attorney-General or the Solicitor-General. Where the conduct of an officer discloses a grave offence of a criminal nature, criminal prosecution should be the rule and not the exception. Where competent authority is satisfied that there is no criminal case which can be reasonably sustained against such officer, criminal prosecution should not, of course, be resorted to but prosecution should not be avoided merely on the ground that the case might lead to an acquittal.

(4) Should the decision of the trial court or the appellate court, as the case may be, lead to the acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. A consideration to be taken into account in such review would be whether the legal proceedings and the departmental proceedings covered precisely, the same ground. If they did not, and the legal proceedings, related only to one or two charges i.e., not the entire field of departmental proceedings, it may not be found necessary to alter the decision already taken. Moreover, it should also be remembered that while the court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold that the Government servant was guilty of a departmental misdemeanour and he had not behaved in the manner in which a person of his position was expected to behave.

(5) In this connection, attention is invited to the requirements of Article 311 (2) of the Constitution in regard to penalties of dismissal or removal or reduction in rank. This Article provides that no person, who is a member of Civil Service of the Union or holds a civil post under Union shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be
taken in regard to him. A proposal to amend Article 311 (2) is under consideration, but pending such amendment the provisions of this clause as judicially interpreted must be strictly followed. According to judicial pronouncements, these provisions are mandatory and the words underlined contemplate that after the enquiry against the accused officer has been completed and the competent authority has come to provisional conclusions regarding the action to be taken against him, he should be given an opportunity of showing cause against such action, if it is dismissal, removal or reduction in rank. For this purpose, he should be supplied with a copy of the report of the inquiring authority and be called upon to show cause within a reasonable time against the action proposed to be taken. Any representation submitted by him in this behalf should be duly considered before final orders are passed. Failure to observe these statutory requirements renders the orders passed null and void and, therefore, legally inoperative. In case of such failure, the Government servant concerned is deemed to have continued in service, or in the grade from which he was reduced, and subject to compliance with the provisions of any rules regarding allowances, he is entitled to the pay and allowances he would have drawn if such action had not been taken. According to the ruling of the Supreme Court in the case of Abdul Majid, it would be open to him to obtain a decree from a civil court against the Government for payment of these amounts. It is, therefore, necessary for the competent authority to observe strictly the statutory requirements of Article 311 (2) in all cases in which it is attracted. This should be impressed on all concerned. Compliance with these requirements is not, however, required in cases covered by clauses (a), (b) or (c) of the proviso to that Article. Where, however, action is taken under clause (a) of this proviso on the basis of the conviction of a person in a court of law and the conviction is set aside on appeal, the orders passed under the proviso automatically become inoperative. If departmental action against him is considered desirable, it will be necessary to follow the provisions of the relevant disciplinary rules, and, where necessary, substantive provisions of Article 311 (2).

[G. I., M. H. A., O. M. No. F. 39/30/54-Ests., dated the 7th June, 1955.]

Instruction (6). Papers to be obtained from Police for departmental proceedings.—Instruction (5) above lays down inter alia that as soon as sufficient evidence of criminal misconduct of Government servants is available in the course of investigation either departmental or through police, action should be taken under the C.C.S. (CCA) Rules or other appropriate discipline rules to initiate departmental proceedings and only after such proceedings are contemplated, the question of prosecution should be considered in the light of such evidence as may have become available as a result of such investigation. All earlier instructions issued by Home Ministry on the subject including those contained in the directive enclosed with their O.M. No. 22/1/50-P. II. dated the 14th January, 1954 (not printed) regarding procedure in cases dealt with by the Special Police Establishment should be deemed as superseded to this extent.

Where the necessary papers are to be obtained from the Special Police Establishment, the Vigilance Officer concerned may contact the Special Police Establishments direct. As regards investigation conducted by the State Police, State Governments are being requested to ask District Magistrates and the State authorities to assist in giving effect to this policy.

EXTRACT


In regard to cases in which Central Government servants are involved the investigation by police may take place either by the Special Police Establishment of the Government of India or by the State Police authorities. So far as the former are concerned, the Inspector General, Special Police Establishment, is being instructed to make the necessary records and other data available to departmental authorities for action under the C.C.S. (CCA) Rules before the question of prosecution is considered. In case in which the investigation is conducted by the State Police (whether in respect of cognizable offences or others) similar assistances by the State Police authorities will be necessary. Necessary instructions may kindly be issued to the District Magistrates and the police authorities under the State Government's control to extend all possible co-operation to the departmental authorities by way of supplying them with the necessary documents and other data to enable them to take timely departmental action against delinquent officers.

Instruction (7). Prosecution or departmental action according to seriousness of the offence.—Instruction (5) above provides that as soon as sufficient evidence is available in cases of criminal misconduct of Government servants, disciplinary proceedings under the appropriate rules should be initiated forthwith and that after the departmental proceedings are concluded and the penalty, if any, imposed as a result thereof, criminal proceedings should be initiated in suitable cases.

The above instructions have been reviewed in the light of the recommendations of the Committee on Prevention of Corruption contained in Para 10-25 of their Report, and, impartial modification of Instruction (5) above, it has been decided that prosecution should be the general rule in all those cases which are found fit to be sent to court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In such cases, departmental action should not precede prosecution. In other cases involving less serious offences or involving malpractices of departmental nature, departmental action only should be taken and the question of prosecution should generally not arise. Whenever, however, there is unresolved difference of opinion between the Central Bureau of Investigation and the administrative authority concerned as to whether prosecution in court or departmental action should be resorted to in the first instance the matter should be referred to the Central Vigilance Commission for advise.


Instruction (8). Significance of the amendment to Article 311(2) of the Constitution.—Article 311 (2) of the Constitution has since been amended and its substantive part as amended reads as follows:

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, on the basis of the evidence adduced during such inquiry.”

It will be observed that the requirements of Article 311 (2) of Constitution as amended are:
(a) the same as were the requirements of Article 311 (2) of Constitution before the amendment; BUT

(b) the representation against the penalty proposed to be imposed has to be only on the basis of the evidence adduced during the inquiry.

Accordingly, the representation by a Government servant, to whom Article 311 (2) of the Constitution is applicable, on the penalty proposed to be imposed on him should be based only the evidence adduced during the inquiry. If such representation contains statements, references, requests, demands, etc. not based on the evidence adduced during the inquiry, such statement, etc. should be ignored and this fact should be brought out in the final orders passed in the case.


Instruction (9). Pay Commission's recommendations regarding disciplinary proceeding and Government's orders thereon.—(1) In Chapter LI of their report, the Pay Commission have made the following recommendations regarding disciplinary proceedings:

(i) All memorials, etc. as well as appeals, which come to the Central Government against imposition of major penalties, should be disposed of only in consultation with the Public Service Commission.

(ii) The power to withhold appeals, memorials or petitions under prescribed circumstances should be exercised by an authority higher than the one which had passed the orders against which the appeal, etc. is made.

(iii) A disciplinary enquiry should not be conducted by the immediate superior of the Government servant being proceeded against or by an officer at whose instance the inquiry was initiated.

These recommendations have been carefully examined by Government and the conclusions reached are contained in the following paragraphs.

(2) The Government of India note that the Pay Commission have observed that the information available with them does not at all suggest that disciplinary action is taken in for too many cases or that major penalties imposed too freely or that appeals and memorials are dealt with perfunctorily. It is considered that the acceptance of recommendation at (i) above would considerably increase the work of the Union Public Service Commission. It may also lead to delays in completing disciplinary cases, which would neither be in the interest of public service nor in that of the individual Government servant. It has, therefore, been decided not to make any change in the existing procedure.

(3) As regards recommendation under (ii), the instructions contained in Appendix 3 lay down the procedure for submission of petition, memorials etc., to the President. In these instructions the power to withhold petitions etc., has been granted only to high authorities like the Secretaries to the Government and the Head of Departments. An appeal can be withheld only under prescribed circumstances; the appellant is required to be informed of the fact and the reasons for withholding the appeal are required to be communicated to the appellate authority and a quarterly return giving the list of withheld appeals has to be submitted to the appellate authority. These are sufficient safeguards against unjustified withholding of appeals.
It is considered that these instructions and rules do not require any modification. The authorities dealing with petitions, memorials and appeals are, however, expected to apply the instructions and rules in a liberal spirit and they should ordinarily refrain from withholding any appeal, representation, petition or memorial except in rare cases where the justification for contrary action may be obvious.

(4) As regards recommendation (iii), it is obviously desirable that only disinterested officers should be appointed as Inquiry Officers in departmental proceedings. There is no bar to the immediate superior officer holding an inquiry but, as a rule, the person who undertakes this task should not be suspected of bias in such cases. The authorities concerned should bear this in mind before an Inquiry Officer is appointed in a disciplinary case.

[G. I., M. H. A., O. M. No. F. 6 (26)/60-Ests. (A), dated the 10th February, 1961.]

Instruction (10). Scope of the expression “appointing authority” in the case of major penalties when the present disciplinary authority is lower in rank than the officer who appointed the charge-sheeted official concerned.—Article 311 (1) of the Constitution provides that no Government servant should be dismissed or removed from service by an authority subordinate to that by which he was appointed. Rule 14 (4) of the C.G.S. (CCA) Rules, 1957 [corresponds to rule 12 (4) of C.G.S. (CCA) Rules 1965], lays down further that no penalty specified in clauses (iv) to (vi) in Rule 13 of JCS (CCA) Rules, 1957 [corresponding to clauses (v) to (ix) of C.G.S. (CCA) Rules, 1965] should be imposed on a Government servant by an authority lower than the Appointing Authority. The terms used in the Constitution and the C.G.S. (CCA) Rules, 1957, viz., “Subordinate to” or “lower than” the Appointing Authority refer to subordination in rank and not to that of function. In view of the provisions referred to above, the authority who has been prescribed in the schedule to C.C.S. (CCA) Rules as the disciplinary authority for imposition of major penalties in respect of a grade shall not impose any of these penalties on an official of that grade if he was actually appointed to that grade by an authority who is higher in rank or grade than the former authority.

For example, an official who was appointed by an officer of the Junior Time Scale of the Indian Postal Service, Class I: while holding charge of a Division cannot be punished with any of the major penalties by an officer of the P.S.S. Class II, though holding charge of the same Division. Any such orders passed by a lower authority are void and liable to be set aside. When these punishment orders are declared void by the court or are set aside by the appellate authority or by the President due to violation of constitutional/statutory provision, Government have to incur unnecessary expenditure in the shape of arrears of pay and allowances. It is, therefore, desirable that before any action is initiated under rule 15 of the C.G.S. (CCA) Rules, 1957 [now Rules 14 and 15 of C.G.S. (CCA) Rules, 1965], with a view to imposing any of the major penalties on an official, it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority, the fact should be reported to the Department/Ministry concerned for issue of President’s orders nominating another officer to act as the disciplinary authority in that particular case. While reporting the matter to Government, a specific recommendation as to the officer who may be nominated to act as the disciplinary authority should be made.
These instructions may kindly be circulated to all disciplinary authorities for strict observance to ensure that punishment orders are passed only by the competent authorities.

[D. G., P. and T., Memo No. 44/6/59-Disc., dated the 7th August, 1959, to all Heads of Circles and P. & T. Administrative offices].

Instruction (11). Oral enquiry in major penalty proceedings against gazetted officers to be entrusted to Commissioners for departmental enquiries.—It has been decided that departmental disciplinary proceedings against gazetted officers of all grades involving lack of integrity or an element of vigilance, in which an oral enquiry is to be made under rule 15 of the C.C.S. (CCA) Rules, 1957 or under the corresponding disciplinary rules, [now Rules 14 and 15 of C.C.S. (CCA) Rules, 1965], such enquiry should hereafter be entrusted to one of the Commissioners for Departmental Enquiries. All requests for the services of the Commissioners for Departmental Enquiries for this purpose should be addressed to the Central Vigilance Commission.

It has further been decided that such enquiries in the case of officials of public sector undertakings, corporated bodies etc., having status comparable to that of gazetted officers should also be entrusted to one of the Commissioners for Departmental Enquiries in the Central Vigilance Commission. It is requested that necessary instructions may kindly be issued to all public sector undertakings, corporate bodies, etc. with which the Ministries are concerned.

If in any particular case, it is not proposed to entrust an enquiry for any special reasons to a Commissioner for Departmental Enquiries, the Ministry/Department/Public Undertaking/Corporate Body concerned may approach the Central Vigilance Commission indicating the circumstances which would warrant an exception being made together with the name and designation of the officer proposed to be appointed as enquiry officer.

[Mem No. 1/15/ 5-Co ord. dated the 20th July, 1965 from the Central Vigilance Commission to all Chief Vigilance Officers of Ministries/Departments/Union Territories].

Instruction (12). Presenting Officer to be nominated along with the appointment of Enquiry Officer to avoid delay.—Case studies undertaken by the Commission have shown that the progress of oral enquiries in disciplinary cases conducted by the Commissioners for Departmental Enquiries is often held up due to the delay in nominating Presenting Officers by the disciplinary authorities. It has further been observed that the proceedings in many cases are interrupted by the (i) transfer of Presenting Officers in the course of the enquiry; and (ii) inability of the Presenting Officers to be present on the date and time fixed for enquiry due to their other official duties.

(2) Public interest demands that such inquiries should be processed expeditiously. To this end it would be helpful if the Presenting Officers under rule 14 (5) (a) of the C.C.S. (CCA) Rules, 1965 would be nominated along with the appointment of Enquiry Officer under rule 14 (2) ibid. It would be appreciated if suitable action could kindly be taken by the Ministries/Departments to eliminate, as far as possible, the causes which tend to protract the oral enquiries.

[Letter No. 2/8/65-Co-ord., dated the 7th June, 1965, from the Central Vigilance Commission, New Delhi to the Chief Vigilance Officers of the Ministries/Departments/Union Territories, etc.]
Instruction (13). Intimation to the controlling authority of the
official who is to assist the accused in presenting the case before the
Inquiry Officer.—The disciplinary authority/Inquiry Officer would inti-
mate the date and time of the enquiry to the controlling authority of the
official who is to assist the accused and present his case before the
Enquiry Officer. The information will be on the following lines:—

“Copy forwarded for information and necessary action to............
If, for any reason, it is not practicable to relieve Sri.............
for presenting the case on behalf of the accused, on the due date,
necessary intimation may be sent to all concerned well in time.
In that case a subsequent convenient date for relief may also be
indicated.”

[D. G., P. & T., letter No. 20/2/64-Disc., dated the 29th July, 1965 ad-
dressed to the Secretary General, National Federation of P. & T. Employees
Union, New Delhi and copy to all Heads of Circles and Administrative
Offices.]

Instruction (14). Refusal by competent authority to grant per-
mission to a nominated Government Servant to present the delinquent’s
case does not amount to denial of the right of representation.—(1) A
question has been raised as to whether under the existing rules a Govern-
ment servant nominated under rule 1 f (3) of the C.S.S. (CCA) Rules, 1965 to
present the case of a delinquent official could be refused permission as it
involved large amounts of money in terms of D.A. and T.A. and there was
hardly any justification for an official in the Circle far away being in a
position to plead the case.

2. The matter has been examined in detail. Under rule 14 (8) of
C.G.S. (CCA) Rules, 1965, a Government servant may take the assistance of
any other Government servant to present the case on his behalf. In other
words, the rules do not seem to vest any discretion on the disciplinay autho-
rity in regard to the nomination of a Government Servant to present the
case of the delinquent official. The matter has been considered in consulta-
tion with the Ministries of Law and Home Affairs and it has been decided
that refusal by Superior Officer to grant permission to nominated Govern-
ment servant on reasonable grounds would not amount to denying the right
of representation under C.S.S. (CCA) Rules, as it would be open to the
delinquent official to nominate another Government servant. Thus the
disciplinary authority has got the discretion to refuse the request of the
delinquent official to permit him to get the assistance of an official who is far
away from the place of enquiry for presenting the case before the Enquiry
Officer, on reasonable grounds and in public interest.

all Heads of Circles and Administrative Offices.]

Instruction (15). Corrupt means presumed if amassing of wealth
is not satisfactorily explained.—The Government of India have had under
consideration for some time, in consultation with the Union Public
Service Commission, the question whether in departmental inquiry officer
charged with corruption should be presumed to be guilty of that charge in
case he is unable to satisfactorily account for possession by himself or by
any other person on his behalf e.g., dependants, of pecuniary resources or
property disproportionate to his known sources of income. It is considered
that a presumption of corruption fairly and reasonably arises against an
official who cannot account for large accretion of wealth which he could not
possibly have saved from his known sources of income. Such principle has
received statutory recognition in section 5 (3) of the Prevention of Corruption Act, 1947, and it is considered that its application in a departmental inquiry would not be unjust or inequitable. Accordingly, it has been decided that if an officer against whom a departmental inquiry is held is unable to explain satisfactorily the large wealth amassed by him, the officer holding the enquiry is entitled to act on the presumption that such wealth was amassed by corrupt means.

[G. L., M. H. A., O.M. No. 39/19/52-Ests., dated the 8th October, 1952.]

Instruction (16). Grant of T. A. to a Government servant charged to appear before the Enquiry Officer.—A question has arisen regarding the admissibility of travelling allowance to a Government servant against whom an oral enquiry is held under the C.C.S. (CCA) Rules, 1965 and who is required to proceed from one station to another to appear before the officer conducting the enquiry. The President has been pleased to decide that in such cases the Government servant concerned may be allowed T. A. as on tour under S. R. 154.

(2) No travelling allowance will, however, be admissible to the charged person if the enquiry is held at a place other than his headquarters expressly at his own request.


Instruction (17). Inspection of documents considered as part of inquiry and T. A. as therefore admissible.—A question has arisen whether rendering of assistance by a Government servant to a delinquent official in examining the documents and taking extracts therefrom is covered by the terms “Present the case” used in Rule 14 (8) of the C.C.S. (CCA) Rules, 1965. It has been decided in consultation with the Ministries of Home Affairs and Law that the rendering of such assistance is covered by the term “Present the case” used in Rule 14 (8) of C.C.S. (CCA) Rules, 1965, and that “Inspection of documents” is a part of enquiry under the rules *ibid* for which an enquiring authority is appointed by the disciplinary authority. It has been held further that presentation of a case under Rule 14 (l) *ibid* means presentation with the help of all documents which will be useful to contradict or disprove the evidence adduced on behalf of the Government and as such for any journey undertaken to present the case in this sense will entitle the Government servant rendering such assistance to another Government Servant to T. A. in accordance with the Government of India’s Instruction No. 6 below S.R. 190.


Instruction (18). Discretion of the Inquiring Authority regarding examination of witnesses.—A doubt has been raised by certain Circles regarding the powers of the Inquiring Authority to refuse to examine witnesses whose evidence in its opinion is irrelevant or immaterial to the case. This doubt has arisen because Rule 15 (c) of C.C.S. (CCA) Rules, 1957 had specifically provided that the Inquiring Authority had the authority to decline to examine any witness on the ground that his evidence is not relevant to material but the C.C.S. (CCA) Rules, 1965 are silent in this regard. The matter has been examined in consultation with the Ministries of Home Affairs and Law and the legal position in this regard is as follows: 

"An oral enquiry which the enquiry officer is bound to hold, if so requested by the charge-sheeted employee, can very well be
regulated by him in his discretion, exercised by him in judicial manners. If the charge-sheeted employee starts cross-examination can the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If the employee desires to examine witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, the enquiry officer may refuse to examine the witness; but, in doing so, he will have to record his special and sufficient reasons, so that the record would *ex falso*, show that the enquiry officer, in refusing permission, had exercised his discretion in a judicial manner and not in an arbitrary or perfunctory manner. The enquiry officer would then be justified in conducting the enquiry in such a way that its proceedings are not unduly or deliberately prolonged."

The position explained above may please be brought to the notice of all the officers appointed as Inquiring Authorities in disciplinary cases.

The question of issue of amendment to C. C. S. (CCA) Rules, 1965 is under consideration of the Government.


**Instruction (19). Statements of witnesses to be authenticated by the signature of the witnesses, the accused and the Inquiring Officer.—**

The normal practice that is being followed in all departmental inquiries is that the statements of witnesses are countersigned by the witness concerned, the accused official and the Inquiring Officer so that the validity of the documents is not questioned by anyone at a later date. It is necessary that this procedure is followed in all inquiries.

[D.G., P. & T.'s Memo. No. 6/6/660-Disc., dated the 14th April, 1961.]

**Instruction (20). Measures to prevent tampering with records/documents during inspection by delinquent officials.—** A delinquent official against whom disciplinary proceeding are pending under C.C.S. (CCA) Rules, is entitled to the inspection of records/documents etc. having a bearing on the case. On requisition by the disciplinary authority, the G.B.I. has to hand over the documents to him for purpose of perusal and inspection by the delinquent official. Recently instances have come to notice, where the accused officers while inspecting the records/documents, tampered with materially vital documents. In another case, the accused officer tampered with the documents when the Enquiry Officer temporarily left the inquiry room during the course of the enquiry.

In order to obviate recurrence of such incidents Ministries/Departments are requested to consider the desirability of issuing instructions to the following effect:

(i) that the accused officer should be allowed inspection of records/documents, etc. only in the presence of a responsible officer; and

(ii) that the inquiry officer should take sufficient precautions to ensure that the records/documents and other papers are not
tampered with while the documents are under their custody or during the course of actual inquiry.

[G. I., M. H. A., O. M. No. 242/06/65-AVD, dated the 27th September, 1965, addressed to the Vigilance Officers of all Ministries/Departments.]

Instruction (21). Dismissal with retrospective effect not permissible.—An order of dismissal cannot be given effect retrospectively from the date of commencement of suspension but only from the date on which the order of dismissal is passed, or if the dismissal is due to conviction by a court of law, from the date of the court's orders of conviction.

[D. G., P. & T.'s Memo. No. ESB 111-7/32, dated the 10th June, 1933.]

Instruction (22). Dismissal with retrospective effect permissible in the case of a deserter.—The prohibition against dismissing an official with retrospective effect vide Instruction (21) above, cannot apply to a deserter as the ex-official of his own volition ceased to be in the employ of the department and the order of dismissal can take effect from the date on which he left the service of the Government.

[Letter No. STB. I/P.-10-Rlg.—XXXV, dated the 11th May, 1955 from the Postmaster General, Madras.]

15. Action on the inquiry report.—(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) (i) If the disciplinary authority having regard to its findings on all or any of the article of charge, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 shall be imposed on the Government servant, it shall:

(a) furnish to the Government servant a copy of the report of the inquiry held by it and its findings on each article of charge, or where the inquiry has been held by an inquiring authority, appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with
brief reasons for its disagreement, if any, with the findings of the inquiring authority;

(b) give the Government servant a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under rule 14;

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in pursuance of such notices if any, shall be forwarded by the disciplinary authority to the Commission for its advice;

(b) the disciplinary authority shall after considering the representation, if any made by the Government servant, and the advice given by the Commission, determine what penalty, if any should be imposed on the Government servant and make such order as it may deem fit;

(iii) Where it is not necessary to consult the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant in pursuance of the notice given to him under clause (a) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.

16. Procedure for imposing minor penalties.—(1) Subject to the provisions of sub-rule (3) of rule 15 no order imposing on a Government servant any of the penalties specified in clauses (2) to (iv) of rule 11 shall be made except after:

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

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

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

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

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

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to effect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold in crements of pay with cumulative
effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include:—

(i) a copy of the intimation to the Government servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefor.


Government of India's Instructions:

Instruction (1). Enquiry mandatory in certain types of the penalty of withholding of increments.—It has been decided in the meeting of the National Council held on the 6th and 7th November, 1967, that in cases where increments are withheld for a period of more than three years or where increments are stopped with cumulative effect or where such stoppage is likely to effect adversely the pensionary entitlement the procedure of holding an enquiry should invariably be followed.

(2) As the Ministry of Finance, etc., are aware, clause (b) of sub-rule (1) of rule 16 of the C. C. S. (CCA) Rules, 1965 makes provisions for holding an enquiry in the manner laid down in sub-rules (3) to (23) of Rule 14 ibid in every case in which the disciplinary authority is of the opinion that such an inquiry is necessary. In view of the decision of the National Council, mentioned in the preceding paragraph, it has been decided that, notwithstanding the provision contained in rule 16 (1) (b) of the C.C.S. (CCA) Rules, 1965, if in a case it is proposed, after considering that representation, if any submitted by a Government servant, to withhold increments of pay for a period exceeding three years or to increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to effect adversely the amount of pension payable to the Government servant, an enquiry shall invariably be held in the manner laid down in sub-rules (9) to (23) of Rule 14 ibid.

Suitable amendments to the C.C.S. (CCA) Rules, 1965 are being issued separately.


Instruction (2). Recovery of pecuniary loss may be made from D. C. R. Gratuity. In the case of loss of a leather bag containing Rs. 2,284 by a Postman, the disciplinary authority imposed on the Postman the penalty of recovery from his D.C.R. Gratuity in view of the impending
retirement of the Postman and the impracticability of enforcing recovery from his pay. The appellate authority set aside the punishment imposed on the Postman on the ground that recovery from D. C. R. Gratuity was not one of the recognised penalties under the C. C. S. (CGA) Rules, 1965.

The question has been raised as to how to enforce recovery from an official who has been held responsible for pecuniary loss caused by him to Government by negligence or breach of orders, in case the Government servant concerned is due to retire very shortly. It has been decided in consultation with the Ministries of Home Affairs and Law that when loss is caused to the Government by a Government servant and as a result of disciplinary proceedings the penalty of recovery of the loss from the pay of a Government servant is ordered, the recovery from pay should be effected in the normal course. If during the course of recovery the official retires from the service and balance is still outstanding for recovery, the amount so outstanding can be treated as dues owed by him to Government and adjusted against the gratuity payable to him. Gratuity is only an ex gratia payment made by a Government to a Government servant and adjustment of dues against it will also cover adjustment of loss recoverable from him. In the circumstances the disciplinary authority should not refrain from imposition of the penalty of recovery from pay of a Government servant who has been held responsible for causing monetary loss to the Government merely on the ground that the Government servant is due to retire very shortly and that it would not be practicable to enforce recovery from pay.


17. Communication of Orders.—Orders made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authorities and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any with the findings of the inquiring authority(unless they have already been supplied to him) and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

13. Common Proceedings.—(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants, may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

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

(2) Subject to the provisions of sub-rule (4) of rule 12, any such order shall specify :-
the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in rule 11 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding.

19. Special procedure in certain cases.— Notwithstanding anything contained in rule 14 to rule 18:

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

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

20 Provisions regarding officers lent to State Government etc.—

(1) Where the services of a Government servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as “the borrowing authority”), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as “the lending authority”) of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant:

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on the Government servant, it may after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be
imposed on the Governments servant, it shall replace his services at
the disposal of the lending authority and transmit to it the proceed-
ing of the inquiry and thereupon the lending authority may, if
it is the disciplinary authority, pass such order thereon as it may
dean necessary or, if it is not the disciplinary authority, submit
the case to the disciplinary authority which shall pass such
order on the case as it may deem necessary:

Provided that before passing any such order the disciplinary authority
shall comply with the provisions of sub-rules (3) and (4) of rule 15.

Explanation. The disciplinary authority may make an order under
this clause on the record of the inquiry transmitted to it by the borrowing
authority or after holding such further inquiry as it may deem necessary,
as far as may be in accordance with rule 14.

21. Provisions regarding officers borrowed from State Govern-
ments etc.—(1) Where an order of suspension is made or a disciplinary
proceeding is conducted against a Government servant whose services have
been borrowed by one department from another department or from a
State Government or an authority subordinate thereto or a local or other
authority, the authority lending his services (hereinafter in this rule referred
to as “the lending authority”) shall forthwith be informed of the circum-
stances leading to the order of the suspension of the Government servant
or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding con-
ducted against the Government servant if the disciplinary authority is of
the opinion that any of the penalties specified in clauses (i) to (iv) of the
rule 11 should be imposed on him, it may, subject to the provisions of sub-
rule (3) of rule 15 and except in regard to a Government servant serving
in the Intelligence Bureau up to the rank of Assistant Central Intelligence
Officer, after consultation with the lending authority, pass such orders on
the case as it may deem necessary:

(i) Provided that in the event of a difference of opinion between
the borrowing authority and the lending authority the services
of the Government servant shall be replaced at the disposal of
the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the
penalties specified in clauses (v) to (ix) of rule 11 should be
imposed on the Government servant, it shall replace the services of
such Government servant, at the disposal of the lending authority
and transmit to it the proceedings of the inquiry for such ac-
tion as it may deem necessary.

PART VII—Appeals

22. Orders against which no appeal lies.—Notwithstanding any-
thing contained in this Part, appeal shall lie against—

(i) any order made by the President;

(ii) any order of an interlocutory nature or of the nature of a step-
in-aid or the final disposal of a disciplinary proceeding, other
than an order of suspension;
(iii) any order passed by an inquiring authority in the course of an inquiry under rule 14.

23. Orders against which appeals lies.—Subject to the provisions of rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:

(i) an order of suspension made or deemed to have been made under rule 10;

(ii) an order imposing any of the penalties specified in rule 11 whether made by the disciplinary authority or by any appellate or reviewing authority;

(iii) an order enhancing any penalty, imposed under rule 11;

(iv) an order which—
   (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or
   (b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order—
   (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
   (b) reverting him while officiating in a higher service grade or post to a lower service, grade or post, otherwise than as a penalty;
   (c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;
   (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
   (e) determining his pay and allowances—
      (i) for the period of suspension, or
      (ii) for the period from the date of his dismissal, removal, or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to his service, grade or post; or
   (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement) or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.
Explanation.—In this rule—

(i) the expression “Government servant” includes a person who has ceased to be in Government service;

(ii) the expression “pension” includes additional pension, gratuity and any other retirement benefit.

Government of India’s Instructions:

Instruction (1). Appeals against supersession in the matter of promotion.—A doubt had arisen whether an appeal against supersession in the matter of promotion can be considered under the C.C.S. (CCA) Rules 1965. The Ministry of Home Affairs have clarified that an appeal against supersession in the matter of promotion will fall within the purview of rule 23 (iv) of the C.C.S. (CCA) Rules, 1965. The appellate authority will be that indicated in rule 24 *ibid*.

[G. I., Min, of Def. O. M. No. PC-318 to M. F. O. 2051/OS/Arty 3/D (Appts), dated the 7th June, 1967.]

Instruction (2). Consideration of requests for withdrawal of appeals.—The question whether an appeal or a petition after it has been submitted, should be allowed to be withdrawn or not is within the discretion of the authority to whom the appeal or petition has been addressed. Since on appeal or petition, the penalty already imposed, can also be enhanced, the competent authority will no doubt consider whether in any case enhancement of penalty is called for. If enhancement of penalty is called for, it is open to the competent authority to refuse to allow withdrawal of the appeal or petition. The discretion in the matter rests entirely with the competent authority.

[D. G., P. & T’s Memo. No. SEA. 6-15/53, dated the 2nd June, 1953.]

24. Appellate Authorities.—(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or where no such authority is specified:

(i) where such Government servant is or was a member of a Central Civil Service, Class I or Class II or holder of a Central Civil post, Class I or Class II,—

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the President where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Central Civil Service, Class III or Class IV or holder of a Central Civil post, Class III or Class IV, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1)—
an appeal against an order in a common proceeding held under
rule 18 shall lie to the authority to which the authority func-
tioning as the disciplinary authority for the purpose of that
proceeding is immediately subordinate;

(ii) where the person who made the order appealed against becomes,
by virtue of his subsequent appointment or otherwise, the appel-
late authority in respect of such order, an appeal against such
order shall lie to the authority to which such person is im-
mediately subordinate.

4[(3) A Government servant may prefer an appeal against an order
imposing any of the penalties specified in rule 11 to the President, where no
such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty
is imposed, by any authority other than the President, on such Government
servant in respect of his activities connected with his work as an office-
bearer of an association, federation, or union participating in the Joint
Consultation and Compulsory Arbitration Scheme.

Government of India’s Instructions:

Instruction (1). The punishing authority not to deal with the case
if he happens to become the appellate authority when the appeal is
preferre1.—It was represented to Government that an officer who imposed
the penalty in capacity as the punishing authority, should not deal with
the case if he happens to be specified appellate authority when the appeal
against the punishment imposed by him is preferred. Government have
been pleased to accept this request and accordingly, it has been decided
that if any such case arises, the officer concerned should not deal with the
appeal, but should refer the matter to Government for obtaining orders
about the authority who should deal with the appeal.

[D.G., P. & T’s. Memo. No. 6/17/57-Disc., dated the 17th October,
1957.]

Instruction (2). Appeal in the case of a disciplinary order
against an office bearer of an association or union in respect of such
activities as office bearer.—All appeals to the President under sub-rule (3)
of rule 24 should be placed before the Minister-in-charge for final orders,
irrespective of whether the general directions in various Ministries, relating
to the disposal of appeals addressed to the President, require with submission
or not.

In respect of persons serving in the Indian Audit and Accounts
Department, the appeals referred to in the preceding Para shall be disposed
of by the Comptroller and Auditor General of India.

[G.I., M.H.A., O.M. No. 7/4/64-Ests. (A), dated the 18th April,
1967.]

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

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

1. Sub-rule (3) inserted vide G. I., M. H. A. Notification No. 7/4/64-Ests. (A), dated the
18th April, 1967.
26. **Form and contents of appeal.**—(1) Every person perferring as appeal shall do so separately and in his own name.

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

(3) The authority which made the order appealed against shall on receipt of a copy of the appeal forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.

27. **Consideration of appeal.**—(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rule, the appellate authority shall consider:

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

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

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate of severe;

and pass orders:

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

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

provided that:

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

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (vi) to (ix) of rule 11 and an inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be, in accordance with the provisions of s. b. rule (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such order as it may deem fit;
(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an inquiry under rule 14 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity as far as may be, in accordance with the provisions of sub-rule (4) of rule 15, of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such order as it may deem fit; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

28. Implementation of orders in appeal.—The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

PART VIII—Review

29. (1) Notwithstanding anything contained in these rules:—

(i) the President, or

(ii) the Comptroller and Auditor General, in the case of a Government servant serving in the Indian Audit and Accounts Department, or

(iii) the Posts and Telegraphs Board, in the case of a Government servant serving in or under the Posts and Telegraphs Board, or

(iv) the head of a department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such head of a department, or

(v) the appellate authority, within six months of the date of the order proposed to be reviewed, or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order:

May at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these rules or under the rules repealed by rule 34 from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may:—

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case, or

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

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of rule 11 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary:

Provided further that no power of review shall be exercised by the Comptroller and Auditor-General, the Posts and Telegraphs Board or the head of departments, as the case may be, unless:—

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

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

(2) No proceeding for review shall be commenced until after:—

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

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

(3) An application for review shall be dealt within the same manner as if it were an appeal under these rules.

Government of India's Instructions:

Instruction (1). Review of punishments to be made by Vigilance Officers.—Recommendation No. 75 (ix), contained in paragraph 9.23 (ix) of the Report of the Committee on Prevention of Corruption, has been considered in the light of the comments received from Ministries/Departments. The recommendation consists of the following two parts:

(i) The Chief Vigilance Officers should have the power to scrutinise the correctness of the findings and conclusions arrived at in a departmental inquiry and the adequacy of punishment and initiate action for review if he considers that the punishment awarded is inadequate; and

(ii) The Delhi Special Police Establishment should be authorised to move for review of findings and punishment in cases started on their report.

It is further stated that in all these matters the advice of the Central Vigilance Commission should be freely obtained.

(2) As regards (i) above, a Vigilance Officer cannot obviously review findings accepted and orders passed by an officer in his own hierarchy to
whom he is subordinate. For example, when a Secretary passes orders, there can be no question of the Vigilance Officer of the Ministry scrutinising the case, or if the Head of a Department passes orders, his Vigilance Officer cannot examine the correctness of the decision. The intention of the recommendation is that findings and orders in disciplinary cases should be scrutinised at the next higher level, and the Vigilance Officer at each such level should do this scrutiny on behalf of the officer at that level (Secretary, Head of a Department, etc.) who can decide whether the order passed by the lower authority needs to be reviewed.

(3) In a case where there is an appeal in a disciplinary case, the findings and the orders of punishment have in any case to be scrutinised. Such scrutiny would normally be done by the Vigilance Officer though, of course, orders of the appropriate Appellate Authority (Secretary, Head of Department, etc.) would be taken. This class of cases does not, therefore, present any difficulty. There are, however, cases in which a Government servant is either exonerated in disciplinary proceedings or is awarded punishment against which he considers it imprudent to appeal. In a certain percentage of these cases, it is desirable that the power of review should be exercised. The object of this is to ensure by a systematic arrangement of scrutiny that the power of review is exercised in all suitable cases.

(4) As regards (3) above, attention is invited to the procedure laid down in paragraph 6 of Central Vigilance Commission’s Circular No. 9/1/64 D.P., dated the 13th April, 1964, (not printed in this compilation), which gives effect to this part of the recommendation.

[G.I., M.H.A., O.M. No 43-109/64-AVD, dated the 18th April, 1964, addressed to the Vigilance Officers of all Ministries/Departments of the Government of India.]

Note—The intention is that a review of punishments imposed should be carried out at all appellate levels by the Vigilance Officers at that level and cases submitted to the appellate authorities concerned. For this purpose, it would not be necessary, in all cases to obtain the records of the cases but to make a general review from the particulars given in the Punishment Register viz., the nature of offence and the penalties imposed to see whether prima facie, there is a case for review. If the necessity for a review is established, then only the records of the cases will be obtained.

[D.G., P. & T., Letter No. 8/43/64-VIG, dated the 7th January, 1965, addressed to all Heads of Circles and Administrative Offices.]

Instruction (2). Original punishing authority not competent to revise its own order of punishment except where such order proves to be inapplicable and ineffective.—A case has been brought to the notice of the Director-General in which a Government servant who had reached the maximum of his scale of pay was awarded the statutory penalty of stoppage of his increments for 3 months. It has been held by the Ministry of Law that the order of punishment being inapplicable and ineffective should be treated as irregular and inoperative and the competent authority i.e., the original punishing authority is competent, on the defect being brought
to his notice, to cancel the original punishment orders and pass fresh orders imposing an effective penalty, where possible, without further enquiry. As such, when such a case comes to the notice of any authority, it should be brought to the notice of the original punishing authority for rectification of the incorrect orders.

It should be noted that except in cases where the punishment orders passed on an official as a result of conviction in a Court of Law are cancelled on the official’s acquittal on appeal by the appellate court and in the cases of the type referred to above, the punishing authority is not competent to revise its own orders.


PART IX—Miscellaneous

30. Service of orders, notices etc.—Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

Government of India’s Instructions:

Instruction (1). Service of orders at residence of subordinate staff not to be made by gazetted officers.—It has come to the notice of the Director-General that in certain cases gazetted officers have gone to the residence of subordinate staff with a view to serve orders, notices, etc., which the officials were trying to avoid for one reason or the other. The Director-General considers that the practice of deputing gazetted officers to serve such notices/orders on subordinate staff at the latter’s residence is highly objectionable, besides being embarrassing to the Gazetted Officers concerned.

This question has since been considered that wherever an officer is satisfied that a subordinate is wilfully evading the acknowledgement of a document, he should record all the facts within his knowledge which lead him to this conclusion on the file, and having done so, the document should be sent to the official concerned by Registered Post, Acknowledgment Due at the last known address of the employee. If the document sent by Registered Post, Acknowledgment Due is not accepted by the addressee and is returned by the Post Office to sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned.

It may also be impressed on all the employees that if anyone fails to turn up to accept a document intended for him, when required to do so, he is liable to be treated as absent from duty without leave and will suffer all the consequences of such absence.

In a rare case where it may be absolutely necessary to depute an official for delivering a document at the residence of an employee, a Gazetted officer should, in no case, be deputed for this purpose, and an official, not higher in rank than Inspector of Post Offices/Town Inspector/Phones Inspector etc., be deputed for this purpose, if necessary.
31. **Power to relax time limit and to condone delay.**—Save as otherwise expressly provided in these rules the authority competent under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

32. **Supply of copy of Commission’s advice.**—Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission, and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order.

**Government of India’s Instructions:**

**Instruction (I). Copy of advice given by U. P. S. C. to be given to Government servant.**—Rule 32 lays down *inter alia* that a copy of the advice given by the Union Public Service Commission should be furnished to the Government servant concerned. It has been decided, in consultation with the Commission, that henceforth the Commission should furnish two spare copies along with the original advice letter in each case. In respect of disciplinary cases received from State/Central Government in regard to All India Service Officers also, the Commission will adopt the same practice, the only difference being that, in case of references received from State Governments, one spare copy of the advice letter will be sent to them and the other to Home Ministry for information.

[G. I., M. H. A., O. M. No. F. 23/19/60-Ests. (B), dated the 29th December, 1964.]

33. **Transitory provisions.**—On and from the commencement of these rules and until the publication of the Schedules under these rules, the Schedules to the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952 as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are, immediately before the commencement of these rules, applicable, and such Schedules shall be deemed to be the Schedules referred to in the corresponding rules of these rules.

34. **Repeal and Saving.**—(I) Subject to the provisions of rule 33, the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, and any notifications or orders issued thereunder in so far as they are inconsistent with these rules, are hereby repealed:

Provided that:

(a) such repeal shall not affect the previous operation of the said rules, or any notification or order made, or anything done, or any action taken, thereunder;
(b) any proceedings under the said rules, pending at the commencement of these rules shall be continued and disposed of as far as may be, in accordance with the provisions of these rules, as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rules apply, of any right of appeal which had accrued to him under the rules, notification or orders in force before the commencement of these rules.

(3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be made, in accordance with these rules, as if such orders were made and the appeal were preferred under the rules.

(4) As from the commencement of these rules any appeal or application for review against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules:

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by any rule in force before the commencement of these rules.

35. Removal of doubts.—If any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the President or such other authority as may be specified by the President by general or special orders, and the President or such other authority shall decide the same.

SCHEDULE

PART I—Central Civil Services, Class I

1. Archaeological Service (Class I).
2. Botanical Survey of India (Class I).
3. Central Engineering Service (Class I).
4. Central Electrical Engineering Service (Class I).
5. Central Health Service (Class I).
6. Central Revenue Chemical Service (Class I).
7. Central Secretariat Service:
   (a) Selection Grade; (b) Grade I; (c) Grade II.
8. General Central Services (Class I).
10. Indian Audit and Accounts Service.
11. Indian Defence Accounts Service.
12. Indian Foreign Service (Class I).
13. Indian Meteorological Service (Class I).
14. Indian Postal Service (Class I).
15. Indian Post and Telegraphs Traffic Service (Class I).
16. Indian Revenue Service:
   (a) Customs Branch (Indian Customs Service, Class I).
   (b) Central Excise Branch (Central Excise Service, Class I).
   (c) Income Tax Branch (Income Tax Service, Class I).
17. Indian Salt Service (Class I).
18. Mercantile Marine Training Ship Service (Class I).
19. Mines Department (Class I).
20. Overseas Communications Service (Class I).
21. Survey of India (Class I).
22. Telegraph Engineering Service (Class I).
23. Zoological Survey of India (Class I).
24. Indian Frontier Administrative Service:
   (a) Grade I; (b) Grade II.
25. Central Legal Service (Grades I, II, III, and IV).
26. Railway Inspectorate Service (Class I).
27. Indian Foreign Service Branch (B):
   (a) General Grade, Grade I; (b) General Grade, Grade II.
28. Delhi and Himachal Pradesh and Andaman and Nicobar Islands Civil Service, Grade I.
29. Delhi and Himachal Pradesh and Andaman and Nicobar Islands Police Service, Grade I.
30. Indian Inspection Service (Class I).
31. Indian Supply Service (Class I).
32. Central Information Service:
   (a) Senior Administrative Grade; (b) Junior Administrative Grade; (c) Grade I; (d) Grade II.
33. Indian Statistical Service.
34. Indian Economic Service.
35. Telegraph Traffic Service (Class I).
<table>
<thead>
<tr>
<th>Description of Service</th>
<th>Appointing Authority</th>
<th>Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in Rule 13) Authority</th>
<th>Penalties</th>
</tr>
</thead>
</table>
| Central Secretaries Service, Grade III. | President | President  
In respect of a member of the Service serving in—  
(a) a Ministry or Department of Government other than a Ministry or Department hereinafter specified;  
(b) a non-Secretariat office other than an office hereinafter specified;  
(i) if such office is under the control of a "Head of Department" directly under Government—  
(ii) in other cases—  
(e) Ministry of Finance (Defence Division)  
(d) Office of the Union Public Service Commission. | Secretary in the Ministry or Department. |
| Central Secretariat Service, Grade IV. | President | President  
In respect of a member of the Service serving in:—  
(a) a Ministry or Department of Government other than a Ministry or Department hereinafter specified;  
(b) a non-Secretariat office other than an office hereinafter specified— | Secretary in the Ministry or Department. |
<p>| | | | All |</p>
<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(i) if such office is under the control of a &quot;Head of the Department&quot; directly under Government;</td>
<td>(i) to (iv)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) in other cases—</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Ministry of Finance (Defence Division)—</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Office of the Union Public Service Commission.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>President</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>In respect of a member of the Service serving in:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) a Ministry or Department of Government other than a Ministry or Department hereinafter specified;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) a non-Secretariat office other than an office hereinafter specified—</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(i) if such office is under the control of a &quot;Head of a Department&quot; directly under Government—</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii) in other cases—</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Ministry of Finance (Defence Division)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) Office of the Union Public Service Commission.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>President</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>In respect of a member of the Service serving in:</td>
<td></td>
</tr>
</tbody>
</table>

Central Secretariat President
Stenographers Service, Grade I.

Head of the Department.
Secretary in the Ministry or Department concerned.
Financial Advisor, Defence Division.
Secretary, Union Public Service Commission.

Central Secretariat President
Stenographers Service Grade II.(combined.)

All
<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Secretary, Ministry of Labour</th>
</tr>
</thead>
</table>
| (a) a Ministry or Department other than a Ministry or Department hereinafter specified—
(b) a non-Secretariat office other than an office hereinafter specified—
(i) if such office is under the control of a “Head of a Department” directly under Government.
(ii) in other cases—
(c) Ministry of Finance (Defence Division)—
(d) Office of the Union Public Service Commission—
Secretary, Ministry of Labour—
In respect of a member of the Service serving in:
(a) the Central Tractor Organisation
(b) Central Public Works Department
(c) Coal Commissioner’s Organisation
(d) Cochin Port; Vizagapatnam Port; Kandla Port.

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Secretary in the Ministry or Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary in the Ministry or Department</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Head of the Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of the Department</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Secretary in the Ministry or Department concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary in the Ministry or Department concerned</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Financial Adviser, Defence Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Adviser, Defence Division</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Secretary, Union Public Service Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary, Union Public Service Commission</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Chairman Central Tractor Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chairman Central Tractor Organisation</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Chief Engineer, Central Public Works Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Engineer, Central Public Works Department</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Coal Commissioner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coal Commissioner</td>
<td></td>
</tr>
<tr>
<td>(i)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Administrative officer of the Port concerned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative officer of the Port concerned</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Secretary, Ministry of Transport and Communication (Department of Transport)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary, Ministry of Transport and Communication (Department of Transport)</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Narcotics Commissioner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Narcotics Commissioner</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Deputy Secretary, Department of Economic Affairs, Chief Engineer, Hirakud Dam Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy Secretary, Department of Economic Affairs, Chief Engineer, Hirakud Dam Project</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labour Officers, Class II</th>
<th>Director-General, Health Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director-General, Health Services</td>
<td></td>
</tr>
<tr>
<td>(i) to (iv)</td>
<td></td>
</tr>
</tbody>
</table>
Labour Officers
Class II

Secretary
Ministry of Labour

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Ministry of Defence

Joint Secretary, Ministry of (i) to (iv)
of Defence.
Chief of the General Staff; (i) to (iv)
Adjudant General;
Quarter Master General;
Master General of the Or-
dnance;
Engineer-in-Chief;
Director General of Or-

dance Factories;
Director General, Armed
Forces Medical Services;
Naval Secretary;
Air Officer-in-Charge, Per-
sonnel and Organisation.
Secretary, Ministry of Pro-
duction.
Head of the Circle; . (i) to (iv)
General Manager, Posts
and Telegraphs Workshops.
Secretary, Ministry of
Works, Housing and
Supply.
Chief Inspector of Mines (i) to (iv)
Chief Commissioner, And-
daman and Nicobar Is-
lands.
Salt Commissioner.
Member, Oil and Natural
Gas Commission.
General Manager, Hindus-
tan Housing Factory (Pt.) Ltd.

(k) National Instruments Factory
Calcutta—

(l) Posts and, Telegraphs Department—

(m) Stationery and Printing Depart-
ment.

(n) Mines Department—Post of Inspector
of Mines (Welfare)—

(o) Administration of Andaman and
Nicobar Islands:

(i) Chatham Saw Mills;

(ii) Marine Dockyard and Power
House.

(p) Salt Organisation—

(q) Oil and Natural Gas Commission

(r) Hindustan Housing Factory (Private)
Limited.
Central Health Service, Class II.  Secretary, Ministry of Health.

India Meteorological Service, Class II.  Director General of Observatories.

Postal Superintendents' Service, Class II.  Director General of Posts and Telegraphs.

Postmasters' Service, Class II.  Director General of Posts and Telegraphs.

Telegraph Engineer, Class II.  Director General of Posts and Telegraphs.

Traffic Director-General, Class II, Posts and Telegraphs.
| Central Excise Service, Class II—Superintendents, Class II (including Deputy Headquarters Assistant to the Collector) and District Opium Officers, Class II. | Collector of Central Excise/Land Customs, Narcotics Commissioner. | Collector of Central Excise/Land Customs Director of Inspection; Director of Revenue Intelligence, Narcotics Commissioner. | Deputy Collector (Statistics and Intelligence Branch). Assistant Collector of Central Excise, Class I; Assistant Narcotics Commissioner. Deputy Collector of Central Excise; Deputy Narcotics Commissioner. Deputy Director, Revenue Intelligence. | (i) to (iv) All |
Customs Preventive Service, Class II
Chief Inspectors.
Customs Preventive Service, Class II
Inspectors.

Collector of Customs
Collector of Customs

Collector of Customs;
Director of Inspection
Director of Revenue Intelligence
Collector of Customs;
Director of Inspection.

Director of Revenue Intelligence
Assistant Collector (Preventive);
Assistant Director of Inspection.
Commissioner of Income Tax;

Commissioner of Income Tax,

Chief Botanist,
Botanical Survey of India.

Chief Botanist,
Botanical Survey of India.

Chief Botanist,
Botanical Survey of India,

Chief Botanist, Botanical Survey of India

Director, Geological Survey of India

Director, Geological Survey of India

Surveyor General of India,

Surveyor General of India,

Director, Zoological Survey of India

Director, Zoological Survey of India

Chief Engineer, Central Public Works
Department.

Chief Engineer, Central Public Works
Department.

Assistant Chief Engineer (Vigilance),
Central Public Works Department.

Chief Engineer, Central Public Works
Department.

Joint Secretary, Ministry of Production.

Joint Secretary, Ministry of Production.

Salt Commissioner.

Salt Commissioner.

(i) to (iv)

All

(i) to (iv)

All

All

All

All

(i) to (iv)

All

All

513
Indian Foreign Service (B)—
(a) General Cadre, Grade III;
(b) Cypher Sub-cadre, Grade I;

President

President

In respect of a member of the Service serving in:

(i) a Ministry or Department of Government;
(ii) an Indian Mission/Post abroad.

Secretary in the Ministry or Department.
Head of Mission/Post, if he is also “Head of Department” otherwise Secretary, Ministry of External Affairs.

Indian Foreign Service (B)—
(a) General Cadre, Grade IV;
(b) Stenographers, Sub-cadre Grades I & II;
(c) Cypher Sub-cadre Grade II.

President

President

In respect of a member of the Service serving in:

(i) a Ministry or Department of Government;
(ii) an Indian Mission/Post abroad

Secretary in the Ministry or Department.
Head of Mission/Post, if he is also “Head of Department” otherwise Secretary, Ministry of External Affairs.

Delhi and Himachal Pradesh and Andaman and Nicobar Islands Civil Service Grade II.

Joint Secretary, Ministry of Home Affairs.

Joint Secretary, Ministry of Home Affairs.

In respect of a member of the Service, serving under Delhi Administration.

Chief Secretary, Delhi Administration.
In respect of a member of the Service serving under Himachal Pradesh Administration.

Chief Secretary, Himachal Pradesh Administration. (i) to (iv)

In respect of a member of the Service serving under the Andaman and Nicobar Administration.

Chief Secretary, Andaman and Nicobar Administration. (i) to (iv)

Joint Secretary, Ministry of Home Affairs

All

In respect of a member of the Service serving under Delhi Administration.

Chief Secretary, Delhi Administration. (i) to (iv)

In respect of a member of the Service serving under the Government of Himachal Pradesh.

Chief Secretary, Government of Himachal Pradesh. (i) to (iv)

In respect of a member of the Service serving under the Andaman and Nicobar Administration.

Chief Secretary, Andaman and Nicobar Administration. (i) to (iv)

Central Information Service, Grades III and IV.

Secretary, Ministry of Information and Broadcasting.

All

In respect of a member of the Service in:

(a) an office under the control of Head of Department;

(b) Directorate of Field Publicity;

(c) Office of the Registrar of Newspapers of India;

(d) Research and Reference Division.

Head of Department. (i) to (iv)

Director of Field Publicity. (i) to (iv)

Registrar of Newspapers for India. (i) to (iv)

Deputy Director, Research and Reference Division. (i) to (iv)
<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Water and Engineering Service, Class II—</td>
<td>Joint Secretary</td>
<td>Joint Secretary</td>
<td>All</td>
</tr>
<tr>
<td>Posts in Farakka Barrage Control Board and Ganga Discharge Circle.</td>
<td>Central Power Engineering Service, Class II—</td>
<td>Joint Secretary</td>
<td>All</td>
</tr>
<tr>
<td>Central Power Engineering Service, Class II—</td>
<td>Joint Secretary</td>
<td>Joint Secretary</td>
<td>All</td>
</tr>
<tr>
<td>Posts in Central Water and Power Commission.</td>
<td>Secretary in the Ministry or Department.</td>
<td>Secretary in the Ministry or Department.</td>
<td>All</td>
</tr>
<tr>
<td>General Central Service, Class II,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Posts in any Ministry or Department of Government of India, other than the posts in respect of which specific provision has been made by a general or special order of the President.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post Type</td>
<td>Position Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Posts outside a Ministry or Department of Government of India, other than</td>
<td>Head of the Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>which specific provision has been made by a general or special order of</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the President.</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Posts in Union Territories other than Delhi Administration, the Andaman</td>
<td>Secretary in the Ministry or Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands.</td>
<td>Administrator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delhi Administration</td>
<td>Head of the Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Andaman and Nicobar Islands:</td>
<td>Secretary in the Ministry or Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Laccadive, Minicoy, and Amindivi Islands:</td>
<td>Chief Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Laccadive, Minicoy, and Amindivi Islands:</td>
<td>Chief Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In respect of posts in the Forest Chief Conservator of Forests Department</td>
<td>In respect of posts in the Forest Chief Conservator of Forests Department</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Post Type</td>
<td>Position Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Posts in Union Territories other than Delhi Administration, the Andaman</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Nicobar Islands and the Laccadive, Minicoy and Amindivi Islands.</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delhi Administration</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Andaman and Nicobar Islands:</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Laccadive, Minicoy, and Amindivi Islands:</td>
<td>All</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All posts</td>
<td>All</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Central Civil Services (G. C. A.) Rules, 1965

517
### PART III—Central Civil Services, Class III

<table>
<thead>
<tr>
<th>Description of Service</th>
<th>Appointing Authority</th>
<th>Authority competent to impose penalties and penalties which it may impose (with reference to item numbers in rule 13)</th>
<th>Penalties</th>
<th>Appellate Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Secretariat Clerical Service, Deputy Secretary, Cadre Authority</td>
<td>Deputy Secretary, Cadre Authority</td>
<td>All</td>
<td>Secretary, Cadre Authority</td>
<td></td>
</tr>
<tr>
<td>Upper Division and Lower Division Grade</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In respect of a member of the Service serving in:—

(a) a Department/Office, other than those specified below and other than the Cadre Authority, where the head of the office is of a rank not below that of Deputy Secretary or Director (Junior Administrative Grade).

(b) Ministry of Finance (Defence Divn.)

(c) Prime Minister’s Sectt,

(d) Directorate General of Posts & Telegraphs

(e) Office of the Inspector-General, Delhi Special Police Establishment,

Head of the Office (i) to (iv) Secretary, Cadre Authority

Deputy Financial Adviser (i) to (iv) Financial Adviser, Defence Divn.

Deputy Secretary or an Officer of the rank of Dy. Secretary.

Secretary, Posts and Telegraphs Board (i) to (iv) Postmaster General, (Defence Divn.)

Deputy Inspector General (i) to (iv) Inspector-General
<table>
<thead>
<tr>
<th>Post Category</th>
<th>Officer/Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>(f) Office of the Chief Engineer, Central Public Works Department.</td>
<td>Director of Administration (i) to (iv) Chief Engineer.</td>
</tr>
<tr>
<td>(g) Directorate General of Supplies and Disposals.</td>
<td>Director of Administration (i) to (iv) Director General, Supplies and Disposals.</td>
</tr>
<tr>
<td>Posts and Telegraphs Accounts Service—</td>
<td></td>
</tr>
<tr>
<td>Senior Accountant; Junior Posts &amp; Telegraphs Accountant.</td>
<td>Member, P. &amp; T. Board ... All</td>
</tr>
<tr>
<td></td>
<td>Director General, Posts and Telegraphs.</td>
</tr>
<tr>
<td></td>
<td>Manager, Workshops; (i) to (iv) General Manager, Posts and Telegraphs Workshops.</td>
</tr>
<tr>
<td></td>
<td>Deputy General Manager, Posts and Telegraphs Workshops.</td>
</tr>
<tr>
<td></td>
<td>Chief Accounts Officer, (i) to (iv) Member, P. &amp; T. Board.</td>
</tr>
<tr>
<td></td>
<td>Telegraph Stores and Workshops.</td>
</tr>
<tr>
<td></td>
<td>District Manager, Telephones. (i) to (iv) Member, P. &amp; T. Board or General Manager, Telephones.</td>
</tr>
<tr>
<td></td>
<td>Deputy General Manager, Telephones.</td>
</tr>
<tr>
<td></td>
<td>Controller of Telegraph Stores.</td>
</tr>
<tr>
<td></td>
<td>Senior Electrical Engineer; Divisional Engineer, Telegraphs, Post; and Telegraphs Training Centre, Jabalpur.</td>
</tr>
<tr>
<td></td>
<td>Additional Chief Engineer Technical and Development Circle.</td>
</tr>
<tr>
<td>Indian Foreign Service (B):</td>
<td>Deputy Secretary of External Affairs.</td>
</tr>
<tr>
<td>---------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>(a) General Cadre Grades V &amp; VI;</td>
<td>In respect of a member of the Service serving in:</td>
</tr>
<tr>
<td>(b) Cypher Sub Cadre, Grade III.</td>
<td>(i) a Ministry or Department of Government;</td>
</tr>
<tr>
<td>General Central Service; Class III:</td>
<td>(ii) an Indian Mission/Post abroad.</td>
</tr>
<tr>
<td>Posts in Ministries/Department of Government other than the posts in respect of which specific provision has been made by a general or special order.</td>
<td>Deputy Secretary in the Ministry/Department of Government.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(i) to (iv)</th>
<th>Director (Staff), Posts and Telegraphs Directorate, Member, P. &amp; T. Board.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) to (iv)</td>
<td>Secretary, Posts and Telegraphs Board; Principal, Training Centre, Saharanpur.</td>
</tr>
</tbody>
</table>

| All | Secretary, Ministry of External Affairs. |

Secretary in the Ministry/Department of Government.
Posts in non-Secretariat Officers other than posts in respect of which specific provision has been made by a general or special order of the President.

All

If such head of office is subordinate to a "Head of Department" under the Ministry or Department of Government such Head of Department.

If the head of the office is himself the Head of Department or is not subordinate to any Head of Department, the Secretary, in the Ministry or Department of Government.

Administrator or such other authority as may be specified by the Administrator, where the order is that of the Administrator, the President.
<table>
<thead>
<tr>
<th>Description of Service</th>
<th>Appointing Authority</th>
<th>Authority</th>
<th>Penalties</th>
<th>Appellate Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>General Central Service Class VI: Posts in Ministries or Departments of Government other than posts in respect of which specific provision has been made by a general or special order of the President. Posts in non-Secretariat Offices other than posts in respect of which specific provision has been made by a general or special order of the President.</td>
<td>Under Secretary Under Secretary</td>
<td>All</td>
<td>Deputy Secretary.</td>
<td></td>
</tr>
<tr>
<td>Post in Union Territories</td>
<td>Head of Office Head of Office</td>
<td>All</td>
<td>If such head of office is subordinate to a Head of Department under the Ministry or Department of Government, such Head of Department. If the head of the office is himself the Head of Department or is not subordinate to a Head of Department, the Secretary in the Ministry or Department of Government. Administrator or such authority as may be specified by the Administrator; where the order is that of the Administrator, the President.</td>
<td></td>
</tr>
</tbody>
</table>

Subject: Central Civil Services (Classification, Control and Appeal) Rules, 1965.

In pursuance of the recommendations of the Committee on Prevention of Corruption (Santhanam Committee), the Central Civil Services (Classification, Control and Appeal) Rules, 1957, have been revised and a new set of rules—The Central Civil Services (Classification, Control and Appeal) Rules, 1965—have been issued separately and are being published as a Gazette of India Extraordinary, dated the 24th November, 1965.

2. The new rules largely follow the pattern of the Central Civil Services, (Classification, Control and Appeal) Rules, 1957. The more important changes contained in the new Rules are explained in the following Paras for general information. This, however, does not purport to be an exhaustive list of all the changes contained in the new Rules.

3. Time-limits have been specifically prescribed for submission of the initial statement of defence, personal appearance before the Inquiring Authority, adjournment of a case obstructed by the conduct of the delinquent official, inspection of documents, notice for the discovery or production of documents in the possession of Government and adjournment of enquiry when new evidence is sought to be produced. It will also not be necessary to conduct an enquiry into charges which are admitted by a Government servant. These measures are intended to effect a saving of time in the conduct of disciplinary proceedings.

4. Specific provisions have been made:

(i) to regulate the conduct of disciplinary proceedings whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein;

(ii) for appointing a “Presenting Officer” to present the case on behalf of the Disciplinary Authority, Inquiring Authority, as the case may be;

(iii) for holding an enquiry as for the imposition of a major penalty even in cases where it is proposed to impose only a minor penalty, if the disciplinary authority is of the opinion that such enquiry is necessary; and

(iv) for communication of orders in a disciplinary proceeding.

5. In the rule relating to penalties, i.e., in rule 11, clauses (v) and (vi) have been made self-explanatory in order to indicate the form which the orders passed under those clauses should take.

6. In the rules relating to officers whose services are lent or borrowed, provision has been made to cover cases of officers whose services are lent and borrowed as between departments of the Government of India also.

7. Under the new Rules, Government servants can submit appeals direct to the Appellate Authority, instead of routing them through the
authority which passed the order appealed against. The period of limitation for submission of appeals has been reduced from three months to forty-five days.

8. Provision has been made in the new Rules to enable the Government to set up special agencies with powers to initiate, conduct, and conclude disciplinary proceedings against Government servants *vide* rule 13.

9. A transitory provision has been made to continue the schedules to the old Rules as schedules to the new Rules also, till the publication of the schedules to the new Rules. Detailed instructions regarding the preparation of Schedules to the new Rules will be issued separately.

10. The new Rules will cover civilians in Defence Services also. So far as Railway Services are concerned, a separate set of Rules will be framed by the Ministry of Railways, on the lines of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

11. Ministry of Finance, etc., are requested to bring the above points to the notice of all concerned.

FORMS

1

STANDARD FORM OF ORDER OF SUSPENSION

[Rule 10 (1) CGS (CCA) Rules]

No..............................

Government of India Ministry of...........

(Place of issue............, Dated........)

ORDER

Whereas a disciplinary proceeding against Sri.......................... (name and designation of the Government servant) is contemplated/ pending.

Where a case against Sri........ (name and designation of the Government servant) in respect of a criminal offence is under investigation/inquiry/trial.

Now, therefore, the President/the undersigned (the Appointing Authority or any authority to which it is subordinate or any other authority empowered by the president in that behalf), in exercise of the powers conferred by sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Sri................ under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the Headquarters of Sri...................(name and designation of Government servant) shall be..........................(name of the place) and the said Sri......... shall not leave the headquarters without obtaining the previous permission of the undersigned.

[(By order and in the name of the President

Signature:]

[Name and designation of the suspending authority.]

1. Where the order is expressed to be made in the name of President.
2. The officer in the appropriate Ministry Department authorised under Article 77 (2) of the Constitution to authenticate the orders on behalf of the President or the other competent officer passing the order.
1. Copy to Sri..................(name and designation of the suspended officer). Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately.

2. Copy to Sri..................(name and designation of the Appointing Authority) for information.

3. Copy to Sri..................(name and designation of the lending authority) for information.

4. The circumstances in which the order of suspension was made are as follows:—

(Here give details of the case and reasons for suspension)

_Note_—Paras 2 to 4 should not be inserted in the copy of the order of suspension sent to the officer to be suspended.

[G. I., M. H. A., O. M. No. 234/18/65 AVD (II), dated the 5th March, 1966.]

**II**

**STANDARD FORM OF CERTIFICATE TO BE FURNISHED BY THE SUSPENDED OFFICIAL UNDER F. R. 53 (2)**

I,....................................(name of Government servant), having been placed under suspension by Order No.............., dated.............. while holding the post of..................do hereby certify that I have not been employed in any business, profession, or vocation for profit/remuneration/salary.

Signature
Name of Government servant
Address.

[G. I., M. H. A., O. M. No. 234/18/65 AVD (II), dated the 5th March, 1966.]

**III**

**STANDARD FORM OF ORDER FOR REVOCATION OF SUSPENSION ORDER**

[Rule 10 (5) (c) C. C. S. (CCA) Rules]

No.
Government of India
Ministry of..................
(Place of Issue....................., date.....................)

ORDER

Whereas an order placing Shri..................(name and designation of the Government servant) under suspension was made/deemed to have been made by..................on..................

Now, therefore, the President/the undersigned (the authority which made or is deemed to have made the order of suspension or any authority to which that authority is subordinate) in exercise of the powers conferred by clause (c) of sub-rule (5) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

(By Order and in the name of the President)

Signature

Name and Designation of the authority this order.

1. To be signed by an officer in the appropriate Ministry/Department authorised under Article 77 (2) of the Constitution to authenticate orders on behalf of the President, if the order is expressed to be made in the name of the President.
1. Copy to Shri........................(name and designation of the suspended officer).
2. Copy to Sri.........................(name and designation of the appointing Authority) for information.
3. Copy to Sri.........................(name and designation of the lending authority making the order of suspension).
4. Copy to Sri.........................(name and designation of the authority making the order of suspension).
5. The reasons for revoking the order of suspension are as follows:

(Here give in brief the reasons).

Notes.—1. Endorsement as in Para 2 should be made where the Order of revocation of suspension is made by an authority lower than the Appointing Authority.
2. Endorsement as in Para 3 should be made where the order of suspension has been made against a “Borrowed Officer.”
3. Endorsement as in Para 4 should be made where the Order of revocation of suspension is made by an authority other than the authority which made or is deemed to have made the order of suspension.
4. Para 5 should be inserted only, if an endorsement as in paras 2, 3, or 4 is made.
5. Para 2 to 5 should not be inserted in the copy sent to the suspended officer.


IV

STANDARD FORM OF CHARGE SHEET FOR MAJOR PENALTIES

[Rule 14 of C. C. S. (CCA) Rules]

No..................

Government of India

Ministry/Department of.............

Dated..............................

MEMORANDUM

The President/[(undesignated proposes to hold an inquiry against Sri
...............................under rule 14 of the Central Civil Services (Classification,
Control and Appeal) Rules, 1965. The substance of the imputations of
misconduct or misbehaviour in respect of which the inquiry is proposed to
be held is set out in the enclosed statement of articles of charge (Annexure I).
A statement of the imputations of misconduct or misbehaviour in support of
each article of charge is enclosed (Annexure II). A list of documents by
which, and a list of witnesses by whom, the articles of charge are proposed
to be sustained are also enclosed (Annexures III & IV).

2. Sri..........................is directed to submit within 10 days of the receipt
of this Memorandum a written statement of his defence and also to state
whether he desires to be heard in person.

1. Strike out the word which is not applicable.
3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Sri.........................is further informed that if he does not submit his written statement of defence on or before the date specified in Para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the C. C. S. (C. G. & A.) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Sri.........................is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matter pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Sri.........................is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C. C. G. (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

[By order and in name of the President/]

( )

Name and designation of competent authority.

To

Sri.........................

..............................

ANNEXURE I

Statement of articles of charge framed against Shri.............(name and designation of the Government servant)............

Article I

That the said Sri..............while functioning as.....................
during the period..............

Article II

That during the aforesaid period and while functioning in the aforesaid office, the said Sri.............

Article III

That during the aforesaid period and while functioning in the aforesaid office the said Sri.............

ANNEXURE II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Sri.........................(name and designation of the Government servant)

1. Where the President is the disciplinary authority.
2. The officer in the appropriate Ministry/Department authorised under Article 77 (2) of the Constitution to authenticate orders on behalf the President or the disciplinary authority, as the case may be.
ANNEXURE III

List of documents by which the articles of charge framed against Shri...............................................................(name and designation of Government servant) are proposed to be sustained.

ANNEXURE IV

List of witnesses by whom the articles of charge framed against Shri...............................................................(name and designation of the Government servant) are proposed to be sustained.

V

STANDARD FORM OF ORDER RELATING TO APPOINTMENT OF INQUIRY OFFICER/BOARD OF INQUIRY

[Rule 14 (2) of C. G. S. (CCA) Rules, 1965]

No...........

Government of India

Ministry of......................

(Place of issue)..................., dated.................................

ORDER

Whereas an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, is being held against ..............................................(name and designation of the Government servant).

And Whereas the President/the undersigned considers that a Board of Inquiry/an Inquiry Officer should be appointed to inquiry into the charges framed against him.

Now, therefore, the President/the undersigned, in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints—

a Board of Inquiry consisting of:

1. 
2. ) (Here enter name and designation of Members of the Board of Inquiry).
3. )

OR

Sri...............................................................(name and designation of the Inquiry Officer) as Inquiry Officer to inquire into the charges framed against the said. Shri.....................

1[By order and in the name of the President]

Signature :

Designation of the competent authority.

Copy to (name and designation of the Government servant).

1[Copy to (name and designation of Member of the Board of Inquiry/Inquiry Officer).

2[Copy to (name and designation of the lending authority), for information.

1. The cases where the order is expressed to be made in the name of the President.
2. To be used wherever applicable. 'Not to be inserted in the copy sent to the Government servant.
VI

STANDARD FORM FOR THE ISSUE OF SHOW CAUSE NOTICE

FORM No. 1.

[Rule 15 (4) of CCS (CCA) Rules, 1965]

No..................................

Government of India

Ministry of....................

Place of issue..............Dated......................

MEMORANDUM

The undersigned is directed to enclose a copy of the inquiry report submitted by the officer appointed to inquire into the charges against Sri ................name, designation and office of the Government servant in which he is employed) (under suspension).

2. On a careful consideration of the inquiry report aforesaid, the President/undersigned agrees with the findings of the Inquiry Officer and holds that the article (s) of charge is/are proved. The President/undersigned has, therefore, provisionally come to the conclusion that Shri....................is not a fit person to be retained in service and so the President/undersigned proposes to impose on him the penalty of dismissal from service/removal from service/compulsory retirement.

OR

Shri....................(name of Government servant) is not a fit person to be retained.

as......................(name of post) in the time scale of pay of Rs..................of service

in the grade of...(name of grade)/in grades..................of the...................(name

as...................(name of post held by the Government servant),
in the................service (name of service),
and so the President/undersigned proposes to impose on him the penalty of reduction to

the post of.........(name of post) in the time scale of pay Rs........

the grade of........(name of grade)/Grade...of the........name of

the post of......(name of post to which reduced).

the..........Service (name of Service to which reduced).

OR

the penalty of reduction the lower stage at Rs.............in the time scale of pay of Rs.............may be imposed on Sri.............for a period of...........(here state the period).

3. Sri...............(name of the Government servant) is hereby given an opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during the inquiry. Any representation which he may wish to make on the penalty proposed will be considered by the President/undersigned. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this Memorandum by Sri.............(name of the Government servant).

1. Only in cases where applicable.
4. The receipt of this Memorandum should be acknowledged.

[By order and in the name of the President]

[Name and designation of the competent authority].

To

(Name, designation and office of the Government servant).

VII

STANDARD FORM FOR ISSUE OF SHOW CAUSE NOTICE

FORM No. 2

[Rule 15 (4)(ii) of CCS (CCA) Rules 1965]

No......................

Government of India

Ministry of................

Place of issue..............Date..............

MEMORANDUM

The undersigned is directed to enclose a copy of the inquiry report on each article of charge submitted by the officer appointed to inquire into the charges against.

Sri..............(name, designation and office of the Government servant in which he is employed)\(^3\) (under suspension),

2. On a careful consideration of the inquiry report aforesaid, the President/undersigned agrees with the findings of the inquiry officer in so far as it relates to article (s) of charge No. (s)............. and for reasons stated in the attached memorandum holds that article (s) of charge No. (s)............. which the Inquiry Officer has held as not proved proved is also proved/not proved. The President/undersigned has, therefore, provisionally come to the conclusion that Sri..............is not a fit person to be retained in service and so the President/undersigned proposes to impose on him the penalty of dismissal from service/compulsory retirement.

OR

Sri..............(name of Government servant) is not a fit person to be retained

as..............(name of post in the time-scale of pay of Rs..............service)

in the grade of..............(name of grade) in grade...of the..............(name of the service)

as..............(name of post held by the Government servant),

in the..................Service (name of Service),

and so the President/undersigned proposes to impose on him the penalty of reduction to

the post of..............(name of post in the time-scale of pay of (Rs..............name of service),

the grade of..............(name of grade) Grade......of the..............

the post of..................(name of post to which reduced)

the..............Service (name of service to which reduced)

the penalty of reduction to the lower stage at

Rs..............in the time scale of pay of Rs..............may be imposed on

Shri..............for a period of..............(there state the period).

1. Where the President is the competent disciplinary authority.

2. To be signed by an officer in the appropriate Ministry/Department authorised under Article 77 (2) of the Constitution to authenticate orders on behalf of the President or the disciplinary authority, as the case may be.

3. Only in case where applicable.
3. Sri.............(name of the Government servant) is hereby given
an opportunity of making representation on the penalty proposed, but only
on the basis of the evidence adduced during the inquiry. Any representa-
tion which he may wish to make on the penalty proposed will be consid-
ered by the President/undersigned. Such representation, if any, should
be made in writing and submitted so as to reach the undersigned not later
than fifteen days from the date of receipt of this Memorandum by Sri
.............(name of the Government servant).

4. The receipt of the Memorandum should be acknowledged.

   1) By order and in the name of the President
   2) Name and Designation of the Competent Au thority.

To

..............................................................
(Name, designation and office of the Government servant).

VIII

STANDARD FORM OF MEMORANDUM OF CHARGE FOR
MINOR PENALTIES

[ Rule 16 of C.C.S. CCA) Rules, 1965 ]
No. .....................
Government of India Ministry/Office of .........
Dated .....................

MEMORANDUM

Sri.............(Designation)..................(office in which working)
.....................is hereby informed that it is proposed to take action against him
under rule 16 of C.C.S. (CCA) Rules 1965. A statement of the imputations of
misconduct or misbehaviour on which action is proposed to be taken as
mentioned above, is enclosed.

2. Sri.............is hereby given an opportunity to make such repre-
sentation as he may wish to make against the proposal.

3. If Shri.............fails to submit his representation within 10 days
of the receipt of this Memorandum, it will be presumed that he has no
representation to make and orders will be liable to be passed against
Shri.............ex parte.

4. The receipt of this Memorandum should be acknowledged by
Sri.............

   3) By order and in the name of the President
   4) Signature:
      Name and designation of
      Competent Authority.

To

Sri.............

..............................................................
[G.I., M.H.A., O.M. No. 234/18/65-AVD (II), dated the 5th March,
1966].

1. Where the President is the competent disciplinary authority.
2. To be signed by an officer in the appropriate Ministry/Department authorised under
   Article 77 (2) of the Constitution to authenticate orders on behalf of the President or the
   disciplinary authority, as the case may be.
3. Where the President is the disciplinary authority.
4. The officer in the appropriate Ministry/Department authorised under Article 77 (2), of the
   Constitution to authenticate orders on behalf of the President or the disciplinary authority
   as the case may be.
STANDARD FORM OF ORDER FOR TAKING DISCIPLINARY ACTION IN COMMON PROCEEDINGS

[Rule 18 of CCS (CCA) Rules, 1965]

No........................

Government of India, Ministry of...........

Dated:

ORDER

Names of Government Servants. Whereas the Government servants specified in the margin are jointly concerned in a disciplinary case.

1. Now, therefore, in exercise of the powers conferred by sub-rules (1) and (2) of Rule 18, Central Services (C.C.A.) Rules, 1965, the President/the undersigned hereby directs:

(i) That disciplinary action against the said Government servants shall be taken in a common proceeding.

2((ii) That (name and designation of the authority) shall function as the Disciplinary Authority for the purpose of the common proceeding and shall be competent to impose the following penalties, namely:—

3(Here specify the penalties)

4((iii) That the procedure prescribed in rule 5 14, 15 and Rule 16 shall be followed in the said proceedings.

5((By order and in the name of the President).

[Signature]

6[Name and Designation of the Competent Authority Copy to:—

1. Sri............(Name and Designation)
2. Sri............(Name and Designation)
3. Sri............(Name and Designation)

1. The authority competent to impose the penalty of dismissal from service on all such Government servants or if they are different, the highest of such authorities with the consent of others. See Rule 18 (1).
2. See rule 18 (2) (i).
3. See rule 18 (2) (ii).
4. See rule 18 (2) (iii).
5. Score out the portion not applicable.
6. Where the order is expressed to be made in the name of the President.
7. The officer in the appropriate Ministry/Department authorised under Article 77 (2) of the Constitution to authenticate orders on behalf of the President, or other competent authority under rule 18 (1).
8. See Rule 18 (1)
CENTRAL CIVIL SERVICES (TRANSFERRED EMPLOYEES) RULES, 1956

1. Short title and commencement.—(1) These rules may be called the Central Civil Services (Transferred Employees) Rules 1956.

(2) These rules shall be deemed to have come into force in respect of each transferred employee, on the date on which such employee was actually taken over.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) "Government" means the Government of India;

(b) "relevant date" means the date on which a transferred employee was actually taken over by the Government;

(c) "State" in its grammatical variations means a Part 'C' State or a State merged with a Part 'A' State;

(d) "State Rules" in relation to an employee means the rules and orders relating to the conditions of service of that employee in force on the day immediately preceding the date on which he was actually taken over; and

(e) 'transferred employee' means a person who was employed under the Government of a Part 'C' State or of a State merged with a Part 'A' State and who has been taken over by Central Government in Departments other than the Indian Audit and Accounts Department, in consequence of constitutional changes and the extension of the executive authority of the Central Government to that State.

3. Persons to whom rules apply.—These rules shall apply to transferred employees other than those specified in Rule 7.

4. Absorption in an appropriate grade under Government.—A transferred employee shall be fitted into an appropriate grade under the Government with effect from the relevant date in accordance with the order issued by the Government in that behalf and any such employee who is not so absorbed shall continue to be governed by the State Rules:

Provided that any modifications in the State Rules after the relevant date shall be subject to the specific orders of the Government.

5. Initial pay.—A transferred employee shall have his initial pay fixed in the appropriate grade or post on the Central scales of pay in accordance with the orders issued by the Government in that behalf.

Explanation.—Central scales of pay mean the "prescribed scales" specified in the Central Civil Services (Revision of Pay) Rules, 1947.

6. Leave and pension.—(1) A transferred employee shall be subject to the Revised Leave Rules, 1933, as amended from time to time. The leave

1. Published with G. I. M. F. (Department of Expenditure) S. R. O. No. 2455, dated the 22nd October, 1956.
to be carried forward in the relevant date and the manner in which leave taken during the pre-absorption period shall count for pension, shall be determined in accordance with the orders issued in the Ministry of Finance Office Memorandum No. F. 14 (4)-Est. III/53-1, dated the 13th July, 1953 and No. F. 7(124)-E. V./53, dated the 27th March, 1954, respectively, as amended from time to time.

(2) A transferred employee who retires before the 17th April, 1950, shall be subject to the Pension Rules in the Civil Service Regulations as on the 16th April, 1950, as for post-1938 entrants. Such an employee retiring on or after the 17th April, 1950, shall be subject to the Revised Pension Rules published in the Ministry of Finance Office Memorandum No. F. 3 (1). Ets. (Spl.).47, dated the 17th April, 1950 as applicable to post-1938 entrants, as amended from time to time. All the permanent or temporary service rendered by the transferred employee under the State Government prior to absorption shall be treated as permanent or temporary service rendered under the Government:

Provided that a transferred employee who was subscribing to a Contributory Provident Fund shall be brought on to pensionable service under Government and thereafter, he shall not be allowed to subscribe to the Contributory Provident Fund. The extent to which the past service of such a transferred employee shall count towards pension shall be determined with reference to the orders contained in the Ministry of Finance Office Memorandum No. F. 7 (47)-E. V./54, dated the 17th July, 1950, as amended from time to time.

Explanation.—For the purposes of this sub-rule, the expression “All the permanent or temporary service rendered by the transferred employee under the State Government prior to absorption” shall mean the total length of service, whether permanent or temporary, rendered by a transferred employee in any Acceding State, a Part ‘C’ State or a Part ‘A’ State, prior to the date of such absorption.

(3) A transferred employee who retires before the 16th April, 1950, shall be eligible for the benefit of commutation of pension under the Civil Pensions (Commutation) Rules. Such an employee retiring on or after the 17th April, 1950, shall be eligible to the benefits of commutation of pension under the Civil Pension (Commutation) Rules read with the Revised Pension Rules as amended from time to time.

(4) For the purpose of determining the age of retirement for ministerial Government servants, the provisions of Fundamental Rule 55 (b) (ii) shall apply.

7. Saving.—The rules shall not apply to—

(a) employees in Railways;
(b) employees paid from the Defence Services Estimates;
(c) employees engaged on contract;
(d) employees not in wholetime employment;
(e) employees paid out of contingencies; and
(f) employees absorbed in the Indian Audit and Accounts Department.
THE CENTRAL CIVIL SERVICES (SAFEGUARDING OF NATIONAL SECURITY) RULES, 1953

1. (1) These rules may be called the Central Civil Services (Safeguarding of National Security) Rules, 1953.

(2) The Civil Services (Safeguarding of National Security) Rules, 1949 are hereby cancelled.

(3) These rules apply to all persons serving in connection with the affairs of the Union, but shall not apply to—

(i) railway servants as defined in Section 3 of the Indian Railways Act, 1890;

(ii) persons holding posts in the Railway Board who are subject to the Railway Service (Classification, Control and Appeal) Rules; and

(iii) other persons holding posts under the administrative control of the Railway Board or of the Financial Commissioner of Railways.

2. In these rules—

(a) "Government servant" means any person to whom these rules apply;

(b) "head of a department" means any authority who is the head of a department for the purpose of the Supplementary Rules; and

(c) "the competent authority" means—

(i) in relation to a Government servant appointed by the head of a department or by an authority subordinate to the head of a department, the head of the department; and

(ii) in relation to any other Government servant, the President.

3. Where as the President is of opinion that a Government servant is engaged in or is reasonably suspected to be engaged in subversive activities or is associated with others in subversive activities and that his retention in the public service is on that account prejudicial to national security, the President may make an order compulsorily retiring such Government servant, from service.

4. Before an order under Rule 3 is made—

(a) the competent authority shall by notice in writing inform the Government servant of the action proposed to be taken in regard to him and give him an opportunity to make to the President, within such period as may be specified in the notice, representation in writing against that action; and

(b) the President shall take into consideration, the representation, if any, so made by him.

1. Published side Notification No. S. R. O. 2242, dated the 5th December, 1953, as amended from time to time.
5. Where action under these rules is proposed to be taken in regard to a Government servant, the competent authority shall place the Government servant under suspension:

Provided that if the Government servant so wishes, the competent authority shall, before placing him under suspension, permit him to proceed on such leave as may then be admissible to him.

6. Nothing contained in the Central Civil Services (Conduct) Rules, 1955, Parts IV, V and VI of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and Sections III and IV of the Civilians in Defence Services (Classification, Control and Appeal) Rules, 1952, shall apply to or in respect of any action proposed to be taken under these rules.

7. Any person compulsorily retired from service under rule 3 shall be entitled to such compensation, pension, gratuity or provident fund benefits as would have been admissible to him under the rules applicable to his service or post on the date of such retirement if he had been discharged from service due to the abolition of his post without any alternative suitable employment being provided.
THE CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES, 1965

In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution, and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President is pleased to make, in supersession of the Central Civil Services (Temporary Service) Rules, 1949, the following rules to regulate the conditions of service of temporary Government servants, namely:

1. Short title, commencement and application.—(1) These rules may be called the Central Civil Services (Temporary Service) Rules, 1965.

(2) They shall come into force at once.

(3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons who hold a civil post under the Government of India and who are under the rule making control of the President but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government.

(4) Nothing in these rules shall apply to—

(a) Railway servants;
(b) Personnel paid from Defence Service Estimates;
(c) Government servants not in whole-time employment;
(d) Government servants engaged on contract;
(e) Government servants paid out of contingencies;
(f) persons employed in extra-temporary establishments or in work-charged establishments;
(g) non-departmental telegraphists and telegraphmen employed in the Posts and Telegraphs Department;
(h) Such other categories of employees as may be specified by the Central Government by notification published in the Official Gazette.

2. Definition.—In these rules, unless the context otherwise requires—

(a) "appointing authority" means, in relation to a specified post, the authority declared as such under the Central Civil Services (Classification, Control and Appeal) Rules, 1957;

(b) "quasi-permanent service" means temporary service commencing from the date on which a declaration made under Rule 3 takes effect and consists of periods of duty and leave (other than extraordinary leave) after that date;

(c) "specified post" means the particular post, or the particular grade of posts within a cadre, in respect of which a Government servant is declared to be quasi-permanent under Rule 3;

(537.)
(d) "temporary service" means the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India.

3. When a Government servant shall be deemed to be quasi-permanent.—A Government servant shall be deemed to be in quasi-permanent service:

(i) if he has been in continuous temporary service for more than three years; and

(ii) if the appointing authority, being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect.

4. Declaration under Rule 3 to specify the post.—A declaration made under Rule 3 shall specify the particular post or the particular grade of posts within a cadre, in respect of which it is made, and the date from which it shall take effect.

5. Termination of temporary service.—(1) (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before he termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

(2) (a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Central Government or any other authority specified by the Central Government in this behalf may, of its own motion or otherwise, re-open the case, and after calling for the records of the case and after making such enquiry as it deems fit—

(i) confirm the action taken by the appointing authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months:

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.
(b) Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify:

(i) the amount of proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

6. Termination of temporary service on account of physical unfitness.—Notwithstanding anything contained in Rule 5, the services of a temporary Government servant who is not in quasi-permanent service may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.

7. Termination of quasi-permanent service.—(1) The services of a Government servant in quasi-permanent service, shall be liable to termination—

(i) in the same circumstances and in the same manner as a Government servant in permanent service, or

(ii) when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for Government servants not in permanent service:

Provided that the services of a Government servant in quasi-permanent service shall not be liable to termination under clause (ii) so long as any post of the same grade and under the same appointing authority as the specified post held by the Government servant in quasi-permanent service continues to be held by a Government servant not in permanent or quasi-permanent service:

Provided further that as among Government servants in quasi-permanent service whose specified posts are of the same grade and under the same appointing authority, termination of service consequent on reduction of posts shall ordinarily take place in order of juniority in the list referred to in Rule 8:

Provided further that when the services of a quasi-permanent Government servant are terminated under clause (ii), he shall be given three months’ notice and if, in any case, such notice is not given, then with the sanction of the authority competent to terminates the service of such Government servant, a sum equivalent to his pay plus the allowances for the period of the notice, or as the case may be, for the period by which the notice actually given to him falls short of three months, shall be paid to him at the same rates at which he was drawing them immediately before the termination of his services, and if he is entitled to any gratuity, such gratuity shall not be paid for the period in respect of which he receives a sum in lieu of notice.

(2) Nothing in this rule shall affect any special instruction issued by Government regarding the manner and the order in which temporary Government servants belonging to any Scheduled Caste or Scheduled Tribe may be discharged.
8. Permanent appointment of Government servant in quasi-permanent service.—(1) Subject to the provisions of this rule a Government servant in respect of whom the declaration has been made under Rule 3, shall be eligible for a permanent appointment on the occurrence of a vacancy in the specified post which may be reserved for being filled from among Government servants in quasi-permanent service, in accordance with such instructions as may be issued by the President in this behalf from time to time.

Explanation.—No such declaration shall confer upon any Government servant in quasi-permanent service a right to claim a permanent appointment to any post.

(2) Every appointing authority shall, after consultation with the appropriate Departmental Promotions Committee, prepare from time to time a list, in order of precedence, of Government servants in quasi-permanent service who are eligible for permanent appointment and in preparing such list, the appointing authority shall consider both the seniority and the merit of the Government servants concerned.

(3) All permanent appointments to posts which are reserved under sub-rule (1) under the control of any appointing authority shall be made in accordance with such lists:

Provided that the Government may order that permanent appointment to any grade or post may be made purely in order of seniority.

9. Leave allowances, etc. of a Government servant in quasi-permanent service.—A Government servant in quasi-permanent service and holding a specified post shall, as from the date on which his services are declared to be quasi-permanent, be entitled to the same conditions of service in respect of leave, allowances and disciplinary matters as a Government servant in permanent service holding the specified post is entitled to.

10. Terminal gratuity payable to temporary Government servants.—(1) A temporary Government servant who retires on superannuation or is discharged from service or is declared invalid for further service, shall be eligible for a gratuity at the rate of one-third of a month’s pay for each completed year of his service, provided that he had completed not less than five years’ continuous service at the time of retirement, discharge or invalidment.

(2) Death gratuity.—In the event of the death of a temporary Government servant while in service, his family shall be eligible for a death gratuity on the scale and subject to the conditions specified below:

(a) if the death takes place after completion of one year’s service but before completion of three years’ service, gratuity equal to one month’s pay;

(b) if the death takes place after completion of three years’ service but before completion of five years’ service, a gratuity equal to two months’ pay;

(c) if the death takes place after completion of five years’ service or more, a gratuity equal to three months’ pay or the amount of terminal gratuity as calculated under sub-rule (1), whichever is more:
Provided that the grant of gratuity under this rule shall be subject to the service rendered by the Government servant concerned being held by the authority competent to appoint him to be satisfactory:

Provided further that no gratuity shall be admissible in a case where the Government servant concerned resigns his post or is removed or dismissed from service as a disciplinary measure:

Provided further that no gratuity shall be admissible under this rule to a Government servant re-employed after retirement.

Explanation.—"Pay" for the purpose of determining the amount of terminal or death gratuity under this rule shall include pay on the last day of service and dearness pay in the case of persons who draw pay in the pre-revised scales but shall not include pay, special personal pay and other emoluments classed as 'pay'. In the case of a Government servant who was on leave with or without allowances on the date of his retirement, discharge, invalidation or death, pay for this purpose shall be the pay which he drew immediately before proceeding on such leave, provided that the benefit of increase in pay, not actually drawn due to increment or promotion to a post carrying a higher rate of pay falling during earned leave not exceeding 120 days, or the first 120 days of earned leave where the total leave exceeds 120 days, shall also be admissible.

11. Terminal gratuity payable to a Government servant in quasi-permanent service.—(1) A Government servant in quasi-permanent service shall, if his services are terminated otherwise than as a disciplinary measure or by resignation, be eligible for a gratuity at the rate of one-half of a month’s pay for each completed year of quasi-permanent service such gratuity being payable on the basis of the pay admissible to such Government servant in respect of the specified post on the last day of his service.

(2) In the event of the death of a quasi-permanent Government servant while in service his family shall be granted gratuity on the following scale:

(i) if the death takes place after completion of three years but before completion of 5 years of total continuous service, a gratuity equal to three months’ pay;

(ii) if the death takes place after completion of five years’ total continuous service or more, a gratuity equal to four months’ pay or gratuity under sub-rule (1) above whichever is more:

Provided that this rule shall not apply to a Government servant borne on establishments to which Contributory Provident Fund benefits are attached.

Explanation.—For the purpose of this rule—

(a) ‘quasi-permanent service’ shall mean and include two-thirds of purely temporary service as defined in clause (d) of Rule 2, if the total period of continuous service on the date of retirement, discharge, death or invalidation is not less than 5 years;

(b) ‘pay’ shall mean, besides pay, special pay attached to the specified post on the last day of his service;

(c) in the case of those who draw pay in the pre-revised scales, the term ‘pay’ shall also include ‘dearness pay’;
(d) in the case of a quasi-permanent Government servant who holds or held a higher post or grade at the time of the termination of his services, the term ‘pay’ under this rule shall include also one half of the difference between the pay in the specified post and the pay actually drawn in the higher officiating post or grade.

(e) if immediately before the termination of his service a quasi-permanent Government has been absent from duty or leave, the gratuity payable under this rule shall be computed at what it would have been, had he not been absent from duty:

Provided that the amount of gratuity shall not be increased on account of increase in pay not actually drawn and that benefit of higher officiating or temporary pay is given only if it is certified that the Government servant would have continued to hold the higher officiating a temporary appointment but for his proceeding on leave:

Provided further that the benefit of increase in pay, not actually drawn due to increment or promotion to a post carrying a higher rate of pay falling during earned leave not exceeding 120 days or the first 120 days of earned leave where the total leave exceeds 120 days, shall be admissible;

(f) the term ‘continuous service’ occurring in this rule means the total service including spells of quasi-permanent and temporary service as defined in clauses (b) and (d) of Rule 2 of these rules respectively.

INDEX

Abolition of post

termination of service due to, if
Art. 311, applies, 433, (vol. I)

Absence from duty

without leave—removal, order of
removal followed by grant of
leave, whether removal invalid,
438, (vol. I)

"Abuse"

meaning of, 53, (vol. II)

Acquittal

under Sec. 5 (2), Prevention of
Corruption Act, 1947, if bars
trial under section 409, Penal
Code, 61, (vol. II)

Actionable wrong

what is, 7, (vol. I)

"Administrative Tribunal"

defined under section 3 of the
Uttar Pradesh Disciplinary
Proceeding (Summoning of
Witnesses and Production of
Documents) Act, 1953, 255,
(vol. I)

Admission of facts

under the disciplinary proceeding,
256, (vol. I)

Age

determination of, of High Court
Judges, 363, (vol. I)
of the High Court Judges, 363,
(vol. I)
of High Court judges—question
of deciding age—consultation
with Chief Justice of India,
nature of, 366, (vol. I)
of High Court Judges, whether
Judge whose age is in dispute
is entitled to personal hearing,
366, (vol. I)

Age of retirement

Government's decision to retain
some public servants in service
after, if violative of, Art. 14,
466, (vol. I)
rule as to, classification in fixing,
validity of, 465, (vol. I)

Age of superannuation

retirement due to change of, 488,
(vol. I)
whether pleasure extends to com-
pelling servant to continue in
service even after the, 101,
(vol. I)

Agent

and employee, difference, 170,
(vol. II)

All India Services Act, 1951

continuance of existing rules, 313,
(vol. II)
provisions under, 313-14, (vol. II)
regulation of recruitment and
conditions of service, 313,
(vol. II)

The All India Services (Conditions
of Services (Residuary Matters)
Rules, 1960

power of Central Govt. to provide
for residuary matters, 315,
(vol. II)
power to relax rules and regula-
tions in certain cases, 315,
(vol. II)
rules under, 315-16, (vol. II)

All India Servcies (Conduct) Rules,
1968

Bigamous marriages, 241, (vol. II)
delegation of powers, 342, (vol.
II)
employment of near relatives in
companies or firms, 384, (vol. II)
All India Services (Conduct) Rules, 1968—(concl.)
moveable immovable and valuable property, 339, (vol. II)
private trade or employment, 338, (vol. II)
public demonstrations in honour of Govt. servants, 337, (vol. II)
rules under, 333-42, (vol. II)

All India Services (Discipline and Appeal) Rule, 1955
if ultra vires Constitution, 144, (vol. I)
if violate Art. 314 of the Constitution, 139, (vol. I)
rule 3 of the, 524, (vol. I)

All India Services (Discipline and Appeal) Rules, 1969
consideration of appeal, 357, (vol. II)
inquiry report, action on the, 353, (vol. II)
_pay, allowances and treatment of service on reinstatement, 346, (vol. II)
procedure for imposing major penalties, 249, (vol. II)
removal of doubts, 361, (vol. II)
review, 359, (vol. II)
rules under, 343-61, (vol. II)
special procedure in certain cases, 355, (vol. II)
subsistence allowance during suspension, 345, (vol. II)
suspension during disciplinary proceedings, 344, (vol. II)

All India Service (Leave) Rules, 1955—(concl.)
earning and right of leave, 319, (vol. II)
extend of leave admissible to a probationer in case of termination of service, 327, (vol. II)
grant of leave beyond the date of retirement, 319, (vol. II)
half-pay, commuted, leave not due and extraordinary leave, 322, (vol. II)
maximum leave, rate and amount of earned leave, 321, (vol. II)
procedural instructions, 327, (vol. II)
rules under, 317-28, (vol. II)

All India Services Special Disability Leave Regulations, 1957
conditions for the grant of special disability leave and the amount of such leave, 362, (vol. II)
rules under, 362-63, (vol. II)

Allegations
statement of accompanying the charge-sheet not supplied, effect of, 207, (vol. I)
supplying of statement of, at the stage of second show-cause notice, if admissible, 207, (vol. I)

Alteration
in Service Rules, 182, (vol. I)

Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957
law as to residence for appointment in a particular part of State—Section 3 of the, 119, (vol. I)

Andhra Pradesh Registration Subordinate Service Special Rules
rule 5 of the, 162, (vol. I)
The Anti-Corruptions Laws Amendment Act, 1964

objects and reasons of the, 86, (vol. II)

Appeal

repeal of Sec. 5 (3) of the Prevention of Corruption Act, 1947 during pendency of, effect of, 56, (vol. II)

Applicability

and scope of Art. 311 of the Constitution, 63, (vol. I)
of Art. 311: compulsory retirement, when punishment, 450, (vol. I)
of Art. 311 (2) of the Constitution, if motive is immaterial, 69, (vol. I)

Appointing authority

—317, (vol. I)
if can suspend, 540, (vol. I)
no dismissal or removal by an authority subordinate to, 319, (vol. I)

Appointments

and posts, reservation of, 109, (vol. I)
and promotion of persons as district judges, order of Governor, if illegal, 371, (vol. I)
General, 107, (vol. I)
If there was no reservation for, made by promotion, 121, (vol. I)

Law as to residence for, in a particular part of State—Section 3, Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957, 119, (vol. I)
of Director's grade made on the basis of selection—seniority once fixed cannot arbitrarily disturbed, 578, (vol. I)
qualifications for, 107, (vol. I)
reservation by Government of right of, to any particular cadre irrespective of merit posi-

Appointments—(contd.)
tion—Rule 9 Mysore Recruitment of Gazetted Probationers Rules, 1959, if violative of Arts. 14 and 16, 120, (vol. I)

Articles 14 and 16

if violates by Rule 12, Madhya Pradesh Government Servants (Temporary and Quasi Permanent Service) Rules, 1960, 444, (vol. I)

Articles 146 and 229

provide for appointments and conditions of service of officers attached to the Supreme Court or the High Court, 383, (vol. I)

Article 233, 371

Articles 233 to 237

Scope of, 367, (vol. I)

Articles 235, 371

deals with the control over subordinate courts, 376, (vol. I)

Article 311

compulsory retirement when punishment: applicability of, 450, (vol. I)
if not limited to permanent employees only, 321, (vol. I)
if it extends to temporary employees also 321, (vol. I)
of the Constitution; who can claim protection of, 321, (vol. I)

Rules 148 (3) and 149 (3), Railway Establishment Code, if violate, 396, (vol. I)

Authority

who can dismiss or remove a Government servant, 309, (vol. I)

Bias

departmental enquiry, 265, (vol. I)
Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935

enquiry held under the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951 and not under the, 44, (vol. I)

Bihar and Orissa Agricultural Service Class I, Rules, 1935

selection post—whether seniority relevant in making selection—Rules if repealed by 1945 Rules, 576, (vol. I)

Bihar Government Servants Conduct Rules, 1956

Rule 4-A of the, if violates Art. 19 (1) (a), (b) and (c) of the Constitution, 148, (vol. I)

whether Rule 4-A of the infringed Art. 19 (1) (a), (b) and (c) of the Constitution, 56, (vol. I)

Rule 165-A of the, validity of, 155, (vol. I)

Bombay Civil Service Classification and Recruitment Rules

validity of, 157, (vol. I)

Bonus

enforceable right of a servant, 166, (vol. I)

Bribes

relevancy of evidence of previous acts of taking, 53, (vol. II)

Bribery

offence under Sec. 5 (1) (d) and, distinction between, 35, (vol. II)

Burden of proof

on whom lies to show discrimination, 27, (vol. I)

under Sec. 4 of the Prevention of Corruption Act, 1947 and Sec. 114, Evidence Act, 49, (vol. II)

Cadre—(cond.)

government of right of appointment to any particular, irrespective of merit position, 120, (vol. I)

Central Services (Classification, Control and Appeal) Rules, 1957

if Rule 12 (4) contravenes Arts. 142, 144, and 311 of the Constitution, 80, (vol. I)

if Rule 12 (4) violates the provisions of Art. 19 (1) (f) of the Constitution, 59, (vol. I)

of rule 12 (4) ultra vires, 139, (vol. I)

Central Civil Services (Classification, Control and Appeal) Rules, 1965

appeals against supersession in the matter of promotion, 497, (vol. II)

appellate authorities, 497, (vol. II)

classification of services, 455, (vol. II)

departmental action for neglect of family by Government Servant, 466, (vol. II)

pay commission's recommendations regarding disciplinary proceedings, 484, (vol. II)

promotion of officers who are under suspension of investigation, 462, (vol. II)

review of punishments to be made by vigilance officers, 501, (vol. II)

Rules under, 452, 532, (vol. II)

suspension, 458, (vol. II)

transitory provisions, 504, (vol. II)

Central Civil Services (Conduct) Rules, 1955

question before the Supreme Court under Rule 4-A of the, 57, (vol. I)

Rules 4-A and 4-B, validity of, 146, (vol. I)

validity of Rule 4-A of the, 57, (vol. I)
Central Civil Services (Conduct) Rules, 1964

bigamous marriages, 441, (vol. II)
consumption of intoxicating drinks and drugs, 445, (vol. II)
demonstrations and strikes, 385, (vol. II)
employment of near relatives of Government Servants in private undertakings enjoying Government patronage, 377, (vol. II)
evidence before committee or any other authority, 390, (vol. II)
joining of associations by Government servants, 385, (vol. II)
private trade or employment, 408 (vol. II)
Rules under, 364, 451, (vol. II)
vindication of acus and character of Government servants, 432, (vol. II)

The Central Civil Services (Safeguarding of National Security) Rules, 1953

Rules under, 535-36 (vol. II)

Central Civil Services (Temporary Service) Rules, 1949

Rule 5 of the, 441, (vol. I)
Section 2 (b), defines "quasi permanent service", 351, (vol. I)
Section 2 (c), defines "specified post", 351, (vol. I)
Section 3 of the, 351, (vol. I)
Section 4 of the, 351, (vol. I)
Section 6 of the, 351, (vol. I)
Section 7 of the, 352, (vol. I)
Section 8 of the, 352, (vol. I)
Section 9 of the, 352, (vol. I)
Section 10 of the, 352, (vol. I)
superseded by the Central Civil Services (Temporary Service) Rules, 1965, 351, (vol. I)
service terminated under, 34, (vol. I)

Central Civil Services (Temporary Service) Rules, 1965

Central Civil Services (Temporary Service) Rules, 1959, superseded by the, 351, (vol. I)
death gratuity, 540, (vol. II)
Rules under, 537-42, (vol. II)
terminal gratuity payable to a Government servant in quasi-permanent service, 541, (vol. II)
termination of quasi-permanent service, 539 (vol. II)
termination of temporary service, 538, (vol. II)
when a Government Servant shall be deemed to be quasi-permanent, 538, (vol. II)

Central Civil Services (Transferred Employees) Rules, 1956

absorption in an appropriate grade under Government, 533 (vol. II)
leave and pensions, 533, (vol. II)
persons to whom rules apply, 533 (vol. II)
Rules under, 533-34 (vol. II)

Charge

esentials of, 60, (vol. II)
in personnel after examination of some witnesses, dismissal of employee based on report of enquiry committee after charge is personal, 218, (vol. I)
must be specific in disciplinary proceedings, 205 (vol. I)

Charge-sheet

against industrial worker, 233, (vol. II)
first stage enquiry, 228, (vol. I)
statement of allegations accompanying the, not supplied, effect of, 207, (vol. I)

Chief Justice of India

High Court judges—question of deciding age—consultation with, nature of, 366, (vol. I)
Citizens

to get equality of opportunity in matters of employment, 32, (vol. I)

Civil capacities

dismissal, removal or reduction in rank of persons employed in, under the Union or a State, 63, (vol.I)
tenure of office of persons employed in India, 85, (vol. I)

Civil Court

power to interfere, 296, (vol. I)

Civil Posts

meaning of, 355, (vol. I)

Civil Services (Classification Control and Appeal) Rules 1920 (see also under Central Civil Services)

order to hold the enquiry under the Public Servants (Inquiries) Act, 1850 instead of under rule 55 of the, if discriminatory, 44, (vol. I)

rule 55 provides a reasonable opportunity of showing cause against the action proposed to be taken against him, 90, (vol.I)

rules made under section 96-B of the Government of India Act, 1915, 162, (vol. I)

Civil Services (Safeguarding of National Security) Rules, 1949 (See also under Central Civil Services)

rules made under Sec. 2411 (2) of the Government of India Act, 1935, 163, (vol. I)
validity of, 156, (vol. I)

Civil Services (Temporary Services) Rules, 1949 (See also under Central Civil Services)

Rule 5 of the, 445, (vol. I)

Civil Service Regulations

rules made under Sec. 96-B of the Government of India Act, 1915, 2, 162, (vol. I)

Civil Servant

if proposed to be dismissed or reduce in rank, to be given an opportunity or being heard, 89, (vol. I)
to hold office at the pleasure of the Crown, 81, (vol. I)

Civilians

In defence service, 358, (vol. I)

Class legislation

Article 14 of the Constitution, if forbids, 41, (vol. I)

Classification

of servants, 7, (vol. I)

Commission

powers of court etc. acting under, 255, (vol. I)

Commissioners

powers of 255, (vol. I)
powers of, their protection, service of their process, 255, (vol. I)

Communication

of punishment order, 296, (vol. I)

Compulsory retirement

and reduction of pension, 492, (vol. I)
dispute regarding date of birth, 498, (vol. I)
fundamental rule 56 (j) validity, adverse entries in confidential reports: whether an opportunity to be heard to be given, 472, (vol. I)

order extending service unilaterally: if valid, 503, (vol. I)

order of, after enquiry, no reason for agreeing with findings of
Compulsory retirement—
(concl.)

enquiry Tribunal: effect of, 493, (vol. I)

right of Government to continue the employee in service pending enquiry: rule, validity of, 482, (vol. I)

temporary appointment: continuance of person after superannuation without approval of Government, if proper, 493, (vol. I)

when no punishment, 461, (vol. I)

when punishment, applicability of Art. 311, 450, (vol. I)

what is, 452, (vol. I)

Conditions of Service

determination in matters relating to, 178, (vol. I)

general, 123, (vol. I)

meaning of, 124, (vol. I)

power of legislature to make laws, 132, (vol. I)

recruitment and, Section 241, of the Government of India Act, 1935, 36, (vol. I)

Service Rules and executive instructions, 133, (vol. I)

whether Service Rules constitute terms of a contract, 136, (vol. I)

Conduct

of Government business under Art. 166, and service matters, 62, (vol. I)

what conduct can be treated as misconduct, 3, (vol. I)

written and unwritten code of, for Government servants, I (vol. I)

Conduct & Misconduct

see provisions as to bigamous marriages, 33, (vol. II)

canvassing of non-official or other influence, 33, (vol. II)

connection with radio or press, 26, (vol. II)

consumption of intoxicating drinks and drugs, 34, (vol. II)

criticism of Government, 26, (vol. II)

delegation of power, 34, (vol. II)

demonstrations and strikes, 21, (vol. II)

employment of near relatives, 19, (vol. II)

evidence before committee or any authority, 27, (vol. II)

Govt. employees and fundamental rights, 21, (vol. II)

insolvency and habitual indebtedness, 31, (vol. II)

interpretation, 34, (vol. II)

investment, lending and borrowing, 30, (vol. II)

joining of association, 21, (vol. II)

moveable, immovable and valuable property, 31, (vol. II)

private trade or employment, 29, (vol. II)

public demonstrations in honour of Govt. servants, 29, (vol. II)

subscriptions, 27, (vol. II)

taking part in politics and elections, 20, (vol. II)

unauthorized communication of information, 27, (vol. II)

under Central Civil Services (Conduct) Rules, 1964, 15, (vol. II)

vindication of acts and character of Government servants, 33, (vol. II)

Confidential report

adverse entries in the, whether an opportunity to be heard to be given, 472, (vol. I)
Constitution—(concl.
ployees also, 321, (vol. I)
Article 311 : protection, if not limited to permanent employees, 321, (vol. I)
Article 311 : scope and applicability, 63, (vol. I)
Article 312 empowers Parliament to create new All India Services, common to the Union or the State, 125, (vol. I)
Article 313 of the, 95, (vol. I)
Article 320 (3) (d), of the, 103, (vol. I)
compulsory retirement, when punishment, applicability of Article 311, of the 450, (vol. I)
Conduct of Government business under Art. 166, of the, and service matters, 62, (vol. I)
conviction on criminal charge : proviso (a) to Art. 311 (2), 299, (vol. I)
conviction referred to in Art. 311 of the, meaning of, 70, (vol. I)
cultural and educational rights Arts. 29, and 30 of the, 51, (vol. I)
equality before law : Arts. 14, 15 and 16 of the, 39, (vol. I)
fixation of seniority on the basis of previous service rule 1 (f) (iii) and (iv), if violative of Arts. 14 and 16, 574, (vol. I)
government servants and Arts. 19 and 309 of the, 54, (vol. I)
if Art. 14 forbids class legislation, 41, (vol. I)
if Art. 14 has retrospective effect, 47, (vol. I)
if Disciplinary Proceedings (Administrative Tribunal) Rules, 1851, ultra vires Art. 14 of the 46, (vol. I)
if Rule 3 of the Railway Service (Safeguarding) of National
Constitution—(cont'd.)

Security) Rules, 1949, ultra vires, of the 153, (vol. I)
if Rule 12 (4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, violates Art. 19 (1) (f) of the, 59, (vol. I)
if Art. 311 is not retrospective, 69, (vol. I)
if Section 240 (3) of the Government of India Act, 1935, embodied in Art. 311 (2) of the, 77, (vol. I)
if Rule 12 (4) of the Central Civil Services (Classification Control and Appeal) Rules, 1957, Contravenes Arts. 142, 144 and 311 of the, 80, (vol. I)
if provisions of Art. 320 (c) mandatory, 103, (vol. I)
if Rule 9, of the Mysore Recruitment of Gazetted Pobationers Rules, 1959, violative of Arts. 14 and 16 of the, 120, (vol. I)
if Rule 12 (4), Central Civil Services (Classification, Control and Appeal) Rules ultra vires of the, 139, (vol. I)
if Rules 148 (3) and 149 (3), Railway Establishment Code, violative of Art. 311 of the, 140, (vol. I)
if All India Services (Discipline and Appeal) Rules, 1955, ultra vires the, 144, (vol. I)
if Disciplinary Proceedings Administrative Tribunal) Rules, 1951, violative of Art. 14 of the 152, (vol. I)
object of Art. 14 of the, 48, (vol. I)
power to promulgate Ordinances under Art. 123, of the, 73, (vol. I)
Preliminary enquiry against a temporary public servant—scope—Art. 311 (2) is not attracted, 334, (vol. I)
Constitution—(cont'd.)

problem of giving adequate representation to members of backward classes enjoined by Art. 16 (4) of the, 33, (vol. I)
procedure followed in enquiry after, if discriminatory, 387, (vol. I)
promotion once made, if liable to be upset on the revision of seniority—whether order upsetting promotion violative of Art. 16, 560, (vol. I)
Proviso (b) to Art. 311 (2), of the, 300, (vol. I)
right against exploitation—Arts. 23 and 24, of the, 51, (vol. I)
right to constitutional remedies—Arts. 32 to 5, of the, 51, (vol. I)
right to equality, Arts. 14 to 18, of the, 51, (vol. I)
right to freedom—Arts. 19 to 22 of the, 51, (vol. I)
right to freedom of religion—Arts. 25 to 28, of the, 51, (vol. I)
right to property Arts. 31, 31-A and 31-B of the 51, (vol. I)
Rule 4-A of the Bihar Government Servants Conduct Rules, 1956, if violates Art. 19 (1) (a), (b), (e) of the, 148, (vol. I)
Rules 148 (3) and 149 (3) Railway Establishment Code, if violate Art. 311, 396, (vol. I)
scope of Arts. 233 to 237, 367, termination of service for security reasons : proviso (c) to Art. 311 (2), of the, 300, (vol. I)
termination of service due to abolition of post : if Art. 311, applies, 483, (vol. I)
to suspend the provisions of Arts. 268 to 279, during an emergency, 73, (vol. I)
unamended Art. 311 (2), of the, 75, (vol. I)
Constitution—(consld.)

unamended (sub-Article) Art. 311 (2) except the proviso was a reproduction of Section 240 (3) of the Government of India Act, 1935, 76, (vol. I)


whether Rule 4-A of the Bihar Government Servants Conduct Rules, 1956, infringed Art. 19 (1) (a), (b), (c), of the, 56, (vol. I)

whether tenure of pleasure is controlled by Art. 311, of the, 96, (vol. I)

who can claim protection of Art. 311, 321, (vol. I)

Constitution of America

Government employment and constitutional guarantee, 18, (vol. I)

Constitution of Australia

Government employment and constitutional guarantee, 19, (vol. I)

Constitution of U. S. S. R.

Government employment and constitutional guarantee, 19, (vol. I)

Constitutional

if a law to be, 43, (vol. I)

The U. P. Higher Judicial Service Rules, if, 155, (vol. I)

Constitutional guarantee

see American Constitution
see Constitution of Australia
see Constitution of U. S. S. R.
see Government of India, Act, 1935.

extent of executive power of State, and, 61, (vol. I)

Government employment and, 15, (vol. I)

Constitutional provisions

Service Rules and, 138, (vol. I)

Constitutionality

of an enactment, presumption in favour of, 43, (vol. I)

Consultation

with High Court necessary in case of subordinate judiciary, 367, (vol. I)

with Public Service Commission, 293, (vol. I)

with Public Service Commission, if necessary, where Registrar of the High Court is dismissed, 106, (vol. I)

with State Public Service Commission in case of subordinate judiciary, if necessary, 375, (vol. I)

Contract

whether service rules constitute terms of a, 136, (vol. I)

Contract of service

duration of, 171, (vol. II)

how terminable, 1, (vol. II)

Control

over subordinate courts, 376, (vol. I)

Conviction

on criminal charge, 299, (vol. I)
on criminal charge: Proviso (a) to Article 311 (2), Constitution, 299, (vol. I)

referred to in Article 311 (meaning of, 70, (vol. I)

Corporations

servant of statutory companies and, 412, (vol. I)

Corruption

see Prevention of corruption need not be in connection with his own duty, 51, (vol. II)
Courts
application of preceding section to railways, customs, postal and telegraph services and officials of, 87, (vol. I)
powers of, acting under commission, 255, (vol. I)
when bound to raise presumption under section 4 of the Prevention of Corruption Act, 1947, 47, (vol. II)

Criminal charge
conviction on, 299, (vol. I)
conviction on, proviso (a) to Article 311, (2), Constitution, 299, (vol. I)

Criminal Law Amendment Act, 1952
sections 1, 2, 3, 4, 5, 6, 7, 8, 79-84, (vol. II)

Criminal Procedure Code
sections 251, 252, 435, 540-A, 76 to 78, (vol. II)
section 531, applicability of, 86, (vol. II)

Criminal Prosecution
departmental enquiry and, 305, (vol. I)

Cross-examination
of witnesses, 245, (vol. I)

Cultural and educational rights
Articles 29 and 30 of the Constitution, 51, (vol. I).

Customs
application of preceding section to railways, postal and telegraph services and officials of courts, 87, (vol. I)

Dearness allowance
enforceable right of a Government servant, 166, (vol. I)

Defence
legal assistance for, 237, (vol. I)

Defence service
civilians in, 358, (vol. I)

Defence evidence
in the disciplinary proceedings, 245, (vol. I)

Definition
of demonstration, 56, (vol. I)

Delhi Road, Transportation Authority (Conditions) of Appointment and Service) Regulations, 1952
Regulations 9-B and 15 (2), clause 7 of the, 438, (vol. I)
duty of enquiry officer to disclose material acted upon to, 282, (vol. I)

Delinquent employee
reply of the, 233, (vol. I)

Demonstration
definition of, 56, (vol. I)

Demonstration and strikes
—149, (vol. I)

Departmental action
against the police officer without substantial compliance with the provisions of the rules is invalid, 119, (vol. II)
when justiciable, 4, (vol. I)

Departmental enquiry
—and criminal prosecution, 305 bias, 265, (vol. I)
defined under the Uttar Pradesh Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953, 255, (vol. I)
first stage enquiry: preliminary enquiry, 227, (vol. I)
holding of, for the same offence, 395, (vol. I)
nature and scope of, 225, (vol. I)
provisions as to, 116, (vol. II)
whether can be held on same facts, 116 (vol. II)
whether institution of enquiry by the State Government against the member of Secretary of State's Service serving under Bihar Government after Independence is valid, 119, (vol. II)
Departmental examination

date of passing the test to regulate seniority, 25, (vol. I)

Departmental proceedings

initiation of cancellation of leave preparatory to retirement, 306, (vol. I)

prosecution under section 29, Police Act, is not necessary before taking, 395, (vol. I)

Departmental promotees

and direct recruits, 564, (vol. I)

Departmental Rules

All India Services Act, 1951, 313, 314, (vol. II)
The All India Services (Conditions of Service—Residual Matters) Rules, 1960, 315:16, (vol. II)
The All India Services (Conduct) Rules, 1968, 333-42, (vol. II)
The All India Services (Discipline and Appeal) Rules, 1969, 343-61, (vol. II)

All India Services (Leave) Rules, 1955, 317-28, (vol. II)

The All India Services (Special Disability Leave) Regulations, 1957, 362-63, (vol. II)
The Central Civil Services (Classification, Control and Appeal) Rules, 1965, 492-332, (vol. II)
The Central Civil Services (Conduct) Rules, 1964, 364-451, (vol. II)
The Central Civil Services (Safeguarding of National Security) Rules, 1953, 555-36, (vol. II)
The Central Civil Services (Temporary Service) Rules, 1965, 557-42, (vol. II)

Central Civil Services (Transferred Employees) Rules, 1956, 538-84, (vol. II)
The Public Servants (Inquiries) Act, 1950, 329-32, (vol. II)

Deputation

enforceable right of a servant, 176, (vol. I)

Direct recruits

and promotoes, if they constitute different classes, 27, (vol. I)

and promotoes, percentages differ, if disciplinary, 29, (vol. I)
departmental promotoes, and, 564, (vol. I)

Direct recruits and promotoes

rules prescribing different methods for determining seniority of, 568, (vol. I)

Direct recruited

and promotoe—if they form one class no discrimination, 563, (vol. I)

Disciplinary action

see Industrial Workers against servant, 177, (vol. I)
grounds for starting, against industrial workers, 231, (vol. II)
of industrial workers, 227, (vol. II)
procedure and principles for, against a temporary public servant, 333, (vol. I)

Disciplinary authority(ies)

findings and report of enquiring officer—how far binding on, 260, (vol. I)

Rule 9 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967, 381, (vol. I)
satisfaction of the enquiry authority is immaterial, 275, (vol. I)
tentatively determining to impose particular punishment before explanation to show cause notice, if illegal, 282, (vol. I)
using against employee charges of which he was acquitted without warning him, 207, (vol. I)

Disciplinary matters

if includes suspension, 544, (vol. I)
Disciplinary proceedings

admission of facts, 256, (vol. I)
appointment of enquiry officer, 233, (vol. I)
charge against the employee, 271, (vol. I)
charge must be specific, 205, (vol. I)
competent authority to be satisfied, 274, (vol. I)
consultation with the public service commission, 293, (vol. I)
cross-examination of witnesses, 245, (vol. I)
defence, evidence in the, 245, (vol. I)
defence written statement, 271, (vol. I)
departmental enquiry and criminal prosecution, 305, (vol. I)
departmental enquiry: bias, 265, (vol. I)
departmental enquiry: nature and scope, 225, (vol. I)
disciplinary authority using against employee charges of which he was acquitted without warning him, 207, (vol. I)
discretion of Government to hold enquiry or launch prosecutions: provision if discriminatory, 305, (vol. I)
dismissal, removal or reduction in rank of persons employed in civil capacities under the union or a state, 186, (vol. I)
duty of enquiry officers to disclose material acted upon to delinquent employee, 282, (vol. I)
enquiry by a tribunal having no jurisdiction, effect of, 260, (vol. I)
enquiry officer acquitting employee of first two charges and finding him guilty of third charge—punishing authority relying on charges on which employee was acquitted: effect of, 294, (vol. I)

Disciplinary proceedings—(contd.)

examination of witnesses—whether rules of evidence to be followed, 241, (vol. I)
facilities for inspection of copies of documents 251, (vol. I)
findings and report of enquiry officer—how far binding on disciplinary authority, 260, (vol. I)
first stage enquiry: charge-sheet, 28, (vol. I)
first stage enquiry: preliminary enquiry, 227, (vol. I)
General, 185, 186, (vol. I)
If enquiry not to be held by authority competent to impose punishment, 236 (vol. I)
if valid where notice terminating his services given by servant during period of suspension, legality of, 307, (vol. I)
Initiation of departmental proceedings—cancellation of leave, preparatory to retirement, 306, (vol. I)
interim orders, if any, 271, (vol. I)
legal assistance for defence, 237, (vol. I)
mala fides, 222, (vol. I)
natural justice: requirement of, 203, (vol. I)
non-supply of copy of enquiry officer’s report, effect of, 288, (vol. I)
notice to show cause, 275, (vol. I)
notice to show cause not issued formally in the name of Rajpramukh—If provisions of Article 166 contravened and show cause notice invalid, 282, (vol. I)
notice to delinquent officer, 230, oral and documentary evidence considered during the enquiry, 271, (vol. I)
oral enquiry, 230, (vol. I)
order of dismissal based on several grounds some of which unsustainable, order if bad, 294, (vol. I)
Disciplinary proceedings—(contd.)

personal hearing of an employee 291, (vol I)

power of civil court to interfere, 296, (vol I)

previous record—when can be taken into consideration to determine punishment, 291, (vol I)

procedure and principles for disciplinary action against a temporary public servant, 333, (vol I)

proceedings against employee: charge in personnel after examination of some witnesses—dismissal of employee based on report of enquiry committee after charge in personnel, 218, (vol I)

proposed punishment based on previous punishment a bad record, 280, (vol I)

punishing authority failing to indicate in notice its concurrence with conclusions of enquiry officer, 276, (vol I)

punishment, 295, (vol I)

punishment order: communication of, 296, (vol I)

reasonable opportunity requirements of, 189, (vol I)

reasons for agreeing with enquiry officer need not be given unless rules specifically require, 277, (vol I)

reply of the delinquent employee, 22, (vol I)

reply to show cause notice, 290, (vol I)

report of enquiry officer, 271, (vol I)

show cause notice against any of the three major punishments: effects of, 278, (vol I)

statement of allegations, 271, (vol I)

statement of allegations accompanying the charge-sheet not supplied, effect of, 207, (vol I)

Disciplinary proceedings—(contd.)

stoppage of efficiency bar and recovery of loss—disciplinary proceeding started but dropped subsequently—efficiency bar if automatically crossed, 11, (vol II)

supplying of statement of allegations at the stage of second show-cause notice, if admissible, 207, (vol I)

suspension, and, if initiation of, is condition precedent to suspensions, 552, (vol I)

termination of service for security reasons: proviso (e) to Art. 311 (2) of the Constitution, 300, (vol I)

whether enquiry officer need make recommendations as to punishment, 270, (vol I)

whether fresh proceedings can be started in respect of same matter: double jeopardy, 303, (vol I)

whether personal satisfaction of President or the Governor essential, 301, (vol I)

whether President or Governor is bound to give reasons for his satisfaction, 301, (vol I)


enquiry against the respondent under, 44

if ultra vires Art. 14 of the Constitution, 46 (vol I)

if violative of Art. 14 of the Constitution, 152, (vol I)

Discretion

of Government to hold enquiry or launch prosecution: provision if discriminatory, 305, (vol I)
Discrimination

Article 16 (2) of the Constitution prohibits, 33, (vol. I)
burden of proof, on whom lies, 27, (vol. I)
in matters relating to conditions of service, 178, (vol. I)
Munsif not promoted to subordinate judge and others promoted, if, 45, (vol. I)
selection for recruitment by competitive examination, if, 558, (vol. I)

Dismiss or revoke

who can, 309, (vol. I)

Dismissal

see Industrial workers
appointing authority, 317, (vol. I)
authority who can dismiss or remove a Government servant, 309, (vol. I)
declared illegal: is suspension revived, 541, (vol. I)
no dismissal or removal by an authority subordinate to appointing authority, 319, (vol. I)
of employee based on report of enquiry committee after charge in personnel, 218, (vol. I)
of private employees, 172, (vol. II)
of the Registrar of the High Court—consultation with public service commission, if necessary, 106, (vol. I)
order of, based on several grounds some of which unsustainable order, if bad, 294, (vol. I)
order of, with retrospective effect, if valid, 448, (vol. I)
protection given by the rules to the Government servants against removal or reduction in rank, 65, (vol. I)

Dismissal

remedies for wrongful, and the Specific Relief Act, of private employees, 179, (vol. II)
remedies for wrongful, of private employees, 178, (vol. II)
removal or reduction in rank of persons employed in civil capacities in Union or a State, 186, (vol. I)
removal or reduction in rank of persons employed in civil capacities under the Union or State, 63, (vol. I)
U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, and power to dismiss, 386, (vol. I)
who can remove or dismiss, 309, (vol. I)

Dismissal and removal

general, 421, (vol. I)
meaning of, 426, (vol. I)
preliminary enquiry before services are terminated in terms of contract, 435, (vol. I)
scope of, 426, (vol. I)
termination of probationer’s services as per rules, 432, (vol. I)
termination of service—when would amount to removal or dismissal, 422, (vol. I)

Dismissal or discharge

after resignation, 439, (vol. I)

Dismissal order

when takes effect, 448, (vol. I)

Disobedience

penalty for, to process, 256, (vol. I)
power of inquiring officer and penalty for, to process, 255, (vol. I)
District Judge

appointment and promotion of persons as, order of Governor, if illegal, 371, (vol. I)
combined cadre comprising, Registrar, High Court and Judicial Officers in Secretariat—procedure to be followed in appointment, postings and transfer etc., 375, (vol. I)
recruitment of persons other than, 374, (vol. I)

Doctrine of equality

selection by board on the basis of interviews, if discriminates, 28, (vol. I)
doctrine of pleasure, 81, (vol. I)

Documents

facilities for inspection of copies, of, 231, (vol. I)

Domestic enquiry

against industrial worker, 235, (vol. II)

Domestic tribunal

natural justice and, 5, (vol. I)

Double jeopardy

whether fresh proceedings can be started in respect of same matter, 303, (vol. I)

Duty

of enquiry officers to disclose material acted upon to delinquent employee, 282, (vol. I)

Effect

of enquiry by a tribunal having no jurisdiction, 260, (vol. I)
of non-supply of copy of enquiry officer’s report, 288, (vol. I)
of punishing authority relying on charges on which employee was acquitted, 294, (vol. I)
of show cause notice against any of the three major punishments, 278, (vol. I)

Effect—(concl.

of statement of allegations accompanying the charge-sheet not supplied, 207, (vol. I)
of where service was terminated on one month’s notice and public service commission not consulted, 106, (vol. I)

Efficiency bar

see provisions as to enquiry against employee—if reports prior to crossing of, can be looked into, 11, (vol. II)
if automatically crossed stoppage of, and recovery of loss, disciplinary proceedings started but dropped subsequently, 11, (vol. II)
stoppage of, and recovery of loss—disciplinary proceeding started but dropped subsequently—efficiency bar, if automatically crossed, 11 (vol. II)

Employee

agent and difference, 170, (vol. II)
duty of the enquiring officer to disclose material acted upon to delinquent, 282, (vol. I)
enquiry against—if reports prior to crossing of efficiency bar can be looked into, 11, (vol. II)
power to suspend, 535, (vol. I)
proceedings against, 218, (vol. I)
quasi-permanent employees, 350, (vol. I)

Employed

meaning of, 68, (vol. II)

Employment

equality of opportunity in matters of, 19, (vol. I)
equality of opportunity in matters of, when can be predicated, 31, (vol. I)
Government employment and constitutional guarantees, 15, (vol. I)
INDEX

Employment—(contd.)
guarantee contained in Art. 16
(1) is for ensuring equality of
opportunity for all citizens
relating to, 38, (vol. I)
matters of promotion if included
in matters relating to, 30,
(vol. I)
meaning and scope of, 1, (vol. I)

Enforceable right
bonus 166, (vol. I)
cadre 176, (vol. I)
dearness allowances, 166, (vol. I)
deputation, 176, (vol. I)
pension, 166, (vol. I)
promotion, 166, (vol. I)
salary, 165, (vol. I)
scales of pay, 166, (vol. I)
seniority, 166, (vol. I)

Enquiry
admission of facts, 256, (vol. I)
appointment
officer, 233, (vol. I)
a tribunal having no jurisdic-
tion, effect of, 260, (vol. I)
charge against employee, 271,
(vol. I)
cross examination of witnesses,
245, (vol. I)
defence evidence in the disci-
plinary proceedings, 245, (vol. I)
defence written statement, 271,
(vol. I)
departmental enquiry, bias, 265,
(vol. I)
on parte enquiry, 264, (vol. I)
examination of witnesses: wheth-
er rules of evidence to be
followed, 241, (vol. I)
facilities for inspection of copies
of documents, 231, (vol. I)
findings and report of enquiring
disciplinary authority, 260,
(vol. I)
first stage enquiry—charge-sheet,
228, (vol. I)
first stage enquiry—preliminary
equity, 227, (vol. I)
if not to be held by authority
competent to impose punish-
ment, 236, (vol. I)
interim orders, if any, 271, (vol. I)
interim suspensions can be passed
even when no enquiry is pend-
ing, 537, (vol. I)
legal assistance for defence, 237,
(vol. I)
otice to delinquent officer, 230,
(vol. I)
oral and documentary evidence
considered during the, 271,
(vol. I)
oral enquiry, 230, (vol. I)
order of compulsory retirement
after: no reason for agreeing
with findings of Enquiry Tri-
bunal, effect, 493, (vol. I)
preliminary enquiry against a
temporary public servant—
scope—Art. 311 (2) is not
attracted, 334, (vol. I)
proposed punishment based on
provisions punishment a bad
record, 280, (vol. I)
punishing authority failing to
indicate in notice its concurrence
with conclusions of en-
quiry officer, 276, (vol. I)
reasons for agreeing: with enquir-
ing officer need not be given
unless rules specifically require,
277, (vol. I)
reply of the delinquent employee,
233, (vol. I)
report of the enquiry officer,
271, (vol. I)
right of Government to continue
the employee in service pending
rule, validity of, 492, (vol. I)
show cause notice against any of
the three—major punishments:
effect of, 278, (vol. I)
statement of allegations, 271,
(vol. I)
Enquiry—(concl.)

test for proper, against industrial worker, 236, (vol. II)
whether enquiry officer need make recommendations as to
punishment, 270, (vol. I)

Enquiry authority

satisfaction of the, is immaterial, 275, (vol. I)

Enquiry Committee

dismissal of employee based on
report of, after charge in per-
sonnel, 218, (vol. I)

Enquiry Officer

acquiring employee of first two
charges and finding him guilty
of third charge, 294, (vol. I)
appointment of the, 233, (vol. I)
defined under the Uttar Pradesh
Disciplinary Proceedings (Sum-
moning of Witnesses and Pro-
duction of Documents) Act,
1953, 255, (vol. I)
findings and report of the, how
far binding on disciplinary
authority, 260, (vol. I)
findings of fact recorded by, in
case of departmental enquiry,
if not binding on Government,
118, (vol. II)
to hold enquiry on consideration
of natural justice and fairplay,
117, (vol. II)
whether need make recommenda-
tions as to punishments, 270,
(vol. I)
power of, and penalty for dis-
obedience to process, 255,
(vol. I)
punishing authority failing to
indicate in notice its concurren-
cence with conclusions of, 226,
(vol. I)
reasons for agreeing with, need
not be given unless rules speci-
fically require, 277, (vol. I)
who should be the, 231, (vol. II)

Enquiry Officer's report

non-supply of copy of, effects of,
288, (vol. I)

Enquiry Tribunal

order of compulsory retirement
after enquiry, no reason for
agreeing with findings of, effect
of, 493, (vol. I)

Equal protection of laws

does not postulate equal treatment
of all persons without distinc-
tion, 42, (vol. I)

Equality

meaning of, 37, (vol. I)

Equality before law

Article 14, 15 and 16 of the Con-
stitution, 39, (vol. I)
Article 16 (1), (2) of the Constitu-
tion gives effect to the guar-
anteed by Articles 14, 31, (vol. I)

Equality of opportunity

Article 16 of the Constitution
speaks about the, 28, (vol. I)
Article 16 (2) prohibits discrimina-
tion and assures the effective
enforcement of the fundamental
right of, 38, (vol. I)
guarantee contained in Article 16
(1) is for ensuring, for all citi-
zens relating to employment,
38, (vol. I)
in matters of employment, 19
(vol. I)
in matters of employment, when
can be predicated, 31, (vol. I)
in guaranteed by Article 17 (1) of
the Constitution, 33, (vol. I)

Evidence

defence evidence in the Disci-
plinary Proceedings, 245, (vol. I)
relevancy of, of previous acts of
taking bribes, 53, (vol. II)

Evidence Act

burden of proof under section 4,
Prevention of Corruption Act,
1947 and Section 114 of the, 49,
(vol. II)
Sections 132, 144, 145, 146, 147,
148, 149, 150, 151, 152, 153, 154,
155, 156, 157, 158, 159, 160,
Evidence Act—(concl.)
161, 162, 163, 164, 165, 166, 68
to 76, (vol. II)

Evidence and proof
42, (vol. II)

Ex-parte enquiry
264, (vol. I)
except as expressly provided by
this Constitution, 126, (vol. I)

Executive instructions
Service rules and, 133, (vol. I)

Executive order
if treated as "law" within the
meaning of Article 15, 49,
(vol. I)

Executive powers
extent of, of State and constitu-
tional guarantees, 61, (vol. I)
of the State, Article 154 speaks of
the, 128, (vol. I)

Extent
of executive power of State and
constitutional guarantees, 61,
(vol. I)

Findings and report
of enquiring officer—how far
binding on the disciplinary
authority, 260, (vol. I)

First stage enquiry
admission of facts, 256, (vol. I)
appointment of the Enquiry
Officer, 233, (vol. I)
charge-sheet, 225, (vol. I)
cross-examinations of witnesses,
245, (vol. I)
defence evidence in the disci-
plinary proceedings, 245, (vol. I)
departmental enquiry: bias, 265,
(vol. I)
enquiry by a tribunal having no
jurisdiction, effect of, 260,
(vol. I)
ex parte enquiry, 264, (vol. I)

First stage enquiry—(concl.)
facilities for inspection of copies
of documents, 231, (vol. I)
findings and report of enquiring
officer how far binding on the
disciplinary authority, 26,
(vol. I)
legal assistance for defence, 237,
(vol. I)
otice to delinquent officer, 230,
(vol. I)
oral enquiry, 230, (vol. I)
preliminary enquiry, 227, (vol. I)
reply of the delinquent employee,
233, (vol. I)
whether enquiry officer need
make recommendations as to
punishment, 270, (vol. I)

Fresh proceedings
whether can be started in respect
of matter: double jeopardy,
303, (vol. I)

Fundamental right
of equality before the law or the
equal protection of the territory
of India, Article 14 enshrines,
the, 41, (vol. I)
the word "state" has a different
connotation in Part III relating
to, 41, (vol. I)
waiver of, 47, (vol. I)

Government
decision of, retain some public
servants in service after the age
of retirement, if violative of
Article 14, 466, (vol. I)
defined under the Uttar Pradesh
Disciplinary Proceedings (Sum-
moning of Witnesses and Pro-
duction of Documents) Act,
1953, 255, (vol. I)
discretion of, to hold enquiry or
launch prosecution: provision,
if discriminatory, 305, (vol. I)
may have to employ temporary
servants to satisfy the needs of
a particular contingency, 34,
(vol. I)
meaning of, 17, (vol. II)
Industrial workers—(contd.)

findings when perverse, 241, (vol. II)
fine to, 248, (vol. II)
gardner, 215, (vol. II)
grounds for starting disciplinary action against, 232, (vol. II)
grounds of dismissal, 262, (vol. II)
hospitals, 207, (vol. II)
industrial dispute, 217, (vol. II)
industry—meaning of, 193, (vol. II)
matters to be considered in testing the justification for punishment, 261, (vol. II)
municipalities, 205, (vol. II)
nature and scope of tribunal’s jurisdiction, 273, (vol. II)

non-compliance with section 25-F (b) of the Industrial Disputes Act, effect of, 299, (vol. II)
object of retrenchment compensation, 299, (vol. II)
oral examination of witnesses—natural justice, 237, (vol. II)
power of tribunal to interfere with order of dismissal, 257, (vol. II)
procedure under standing order must be followed even if workers withdraws from enquiry, 236, (vol. II)
punishment to, 247, (vol. II)
reduction in rank, 249, (vol. II)
retrenchment and lay-off, 290, (vol. II)

retrenchment compensation, if different from gratuity, 297, (vol. II)
retrenchment, when justified and when not justified, 293, (vol. II)
retrenchment, when *mala fide* 296, (vol. II)

right of employee to get retrenchment compensation only if the employer can pay, 299, (vol. II)

right of enquiry officer to refuse to examine a witness or to allow a question, 237, (vol. II)
rule of, 295, (vol. II)

Industrial workers—(contd.)

Section 25-F (c), Industrial Disputes Act is not a condition precedent, 300, (vol. II)
statutory provisions for compensation in case of lay-off and retrenchment, 301, (vol. II)
strike—duration of, 265, (vol. II)
strike—when criminal trespass, 265, (vol. II)
strikes when justified, 263, (vol. II)
suspension, effect of, 250, (vol. II)
suspension of, 249, (vol. II)
suspension pending enquiry, 250, (vol. II)
suspension with retrospective operation, 251, (vol. II)
taking into consideration past record, effect of, 243, (vol. II)
taking part in illegal strike need not result in dismissal, 261, (vol. II)

Tribunal cannot substitute another punishment—no enquiry—management can still adduce evidence before Tribunal, 286, (vol. II)
victimization, 241, (vol. II)
violation of principles of natural justice by management—duty of tribunal, 288, (vol. II)
wages for period of suspension, 252, (vol. II)
warning or censure to, 248, (vol. II)
what is retrenchment, 292, (vol. II)

whether enquiry can be held against an employee after his acquittal in criminal case, 245, (vol. II)

whether Evidence Act has application to enquiries conducted by domestic tribunals, 237, (vol. II)
whether the union sponsoring dispute must be union of workmen in establishment in which workman concerned is employed, 225, (vol. II)
withholding of increments to, 248, (vol. II)
Industrial workers—(concld.)

workman—meaning of, 213, (vol. II)

Industry

meaning of, 193, (vol. II)

Initiation

of departmental proceedings: cancellation of leave preparatory to retirement, 306, (vol. I)

Inspection

facilities for, of copies of documents, 231, (vol. I)

Integration of States

reduction in rank due to, 572, (vol. I)

Interim suspension

can be passed even when no enquiry is pending, 537, (vol. I)

Investigation

objections as to when can be raised, 59, (vol. II)
objection regarding illegality of, 62, (vol. II)
under section 5-A, Prevention of Corruption Act, 1947, scope of, 62, (vol. II)

Judiciary

High Court Judges, 363, (vol. I)

Junior Accountants

seniority for promotion as, junior inspectors of stations or stores accounts, 25, (vol. I)

Junior Inspectors of Station

seniority for promotion as Junior accountants, or stores accounts, 25, (vol. I)

Jurisdiction

enquiry by a tribunal having no effect of, 260, (vol. I)

Kinds

of suspension, 534, (vol. I)

Known sources of income

under section 5 (3), Prevention of Corruption Act, 1947, 57, (vol. II)

law (s)

as to residence for appointment in a particular part of State—Section 3, Andhra Pradesh Public Employment (Requirement as to Residence) Act, 1957, 119, (vol. I)
equality before, Arts. 14, 15 and 16 of the Constitution, 39, (vol. I)
power of legislature to make, 132, (vol. I)

“Law”

whether an executive order is a, 419, (vol. I)

Lay-off

compensation for, 292, (vol. II)
what is, 290, (vol. II)

Lay-off and retrenchment

see Industrial workers

Laying of traps

42, (vol. II)

Leave preparatory to retirement

177, (vol. I)

Legal assistance

for defence, 237, (vol. I)

Legality

of considering seniority in one cadre for another cadre, 566, (vol. I)
of notice terminating his services given by servant during period of suspension; discriminate disciplinary proceedings, if valid, 307, (vol. I)

Legislature

if free to recognise degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest, 43, (vol. I)
power of, to make laws, 132, (vol. I)
Liability
- on tort of state for acts of its servants, 7, (vol. I)

Life Insurance Corporation
servants of, 358, (vol. I)

Life Insurance Corporation Act,
1956
regulation made under section 49
of the, 165, (vol. I).

Madhya Pradesh Government,
(Temporary and Quasi Permanent Service) Rules, 1960
Rule 12 of the, 444, (vol. I)

Madras District Police Act, 1859
compulsory retirement of police
officers under the, 393, (vol. I)

Mala Fides
disciplinary proceedings, 222,
(vol. I)

Master and Servant
general law of, 168, (vol. II)
ordinary law of, see Misconduct,
14, (vol. II)
relationship of, 165, (vol. II)
scope and test to determine, 165,
(vol. II)

Matters of promotion
if included in the words “matters relating to employment”, 30,
(vol. I)

“Matters relating to employment”
Matters of promotion if included
in the term, 30, (vol. I)

Meaning—(concl.)
of “employed” 68, (vol. II)
of Govt. and Govt. servant, 17,
(vol. II)
of “gratification”, 40, (vol. II)
of High Court, 376, (vol. I)
of industry, 193, (vol. II)
of “obtaining pecuniary advantage”, 55, (vol. II)
of “pension,” 93, (vol. II)
of probation, 107, (vol. II)
of quasi-permanent post, 351,
(vol. I)
of reasonable opportunity of
showing cause against the
action proposed to be taken,
77, (vol. I)
of reduction in rank, 505, (vol. I)
of removal, 426, (vol. I)
of specified post, 331, (vol. I)
of “subordinate,” 45, (vol. II)
of “suspension,” 531, (vol. I)
of “unless contrary is proved”
in Section 5 (3), Prevention of
Corruption Act, 1947, 57,
(vol. II)
of workman, 213, (vol. II)

Merit position
reservation by Government of
right of of appointment to any
particular cadre irrespective of,
120, (vol. I)

Missconduct
see Conduct and Misconduct
meaning of, 232, (vol. II)
ordinary law of master and
servant, 14, (vol. II)
scope of, 232, (vol. II)
whether conduct can be treated
as, 3, (vol. I)

Motive
if immaterial; applicability of Art.
311 (2) of the Constitution, 69,
(vol. I)

Mauzādars
337, (vol. I)

Munsifs
village Munsifs, 359, (vol. I)
Mysore Civil Service (Classification, Control and Appeal) Rules 1967

Rule 2 of the, 380, (vol. I)
Rule 8 of the, 380, (vol. I)
Rule 9 of the 391, (vol. I)
Rule 11 of the 381, (vol. I)

Mysore Civil Service Rule, 1958

what is normal age of retirement under the, 54, (vol. I)

Mysore Recruitment of Gazetted Probationer Rules, 1959

Rule 9, if violative of Arts. 14 and 16 of the Constitution, 120, (vol. I)

Mysore Seniority Rules

seniority and reversion—Rule 2 (c) of the, 533 (vol. I)

Mysore Seniority Rules 1956

reversion of persons promoted earlier on adhoc and out of seniority basis—subsequent reversion on account of return of senior incumbents from deputation—whether Rule 2 (c) applies to reversion cases, 514 (vol. I)

Natural justice

and domestic tribunal, 5, (vol. I)
requirements of, 208, (vol. I)
tribunal to hold the enquiry on the basis of, 46, (vol. I)

Nature

and scope of departmental inquiry, 225, (vol. I)

Nature of penalties

Rule 8 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967, 380, (vol. I)

Non-selection posts

seniority on promotion to, 26, (vol. I)

Non-supply

of copy of enquiry officer’s report, effect of, 288, (vol. I)

Notice

disciplinary authority tentatively determining to impose particular, before explanation to show cause notice, if illegal, 282, (vol. I)
punishing authority failing to indicate in its concurrence with conclusions of enquiry officer, 276, (vol. I)
terminating his service given by servant during period of suspension—Legality—disciplinary proceedings, if valid, 307, (vol. I)
to delinquent officer, 230, (vol. I)
to show cause, 275, (vol. I)
to show cause not issued formally in the name of Rajpramukh—if provisions of Art. 166 contravened and show cause notice invalid, 282, (vol. I)

Object

of Art. 14 of the Constitution, 48, (vol. I)

Obtaining pecuniary advantage

meaning of, 55, (vol. II)

Officers

1, C. S. Officers, 407, (vol. I)

Officers and Servants

and expenses of the Supreme Court, 383, (vol. I)
and the expenses of High Courts, 384, (vol. I)

Officials of Courts

application of preceding section to railways, customs, postal and telegraph services and, 87, (vol. I)

Official Secrets Act

Section 5 of the, 78, (vol. II)

Officiating capacities

revision of persons working in, 510, (vol. I)

Officiating persons

345, (vol. I)

Officiating post

reduction from temporary or, 516, (vol. I)
Order

extending service unilaterally, if valid, 503, (vol. I)
of dismissal based on several grounds some of which unsustain able—order, if bad, 294, (vol. I)
of dismissal—when takes effect, 448, (vol. I)
of dismissal with retrospective effect, if valid, 448, (vol. I)
terminating service based on events prior to coming into force of rules, 449, (vol. I)
for disobedience to process, 256,

Penal Code

law relating to prevention of corruption if contained in the provisions of, 33, (vol. II)
offence under section 5 (1) (a), if different from offence under section 405 of the, 51, (vol. II)
Section 4 of the Prevention of Corruption Act, 1947, if repeals Section 409, of the, 50, (vol. II)
Section 165 of the, 44, (vol. II)
Section 165-A, of the, 45, (vol. II)

Penalty

for disobedience to process, 256, (vol. I)

Pension

and grants, 94, (vol. II)
compulsory retirement and reduction of, 492, (vol. I)
enforceable right of a Government servant, 166, (vol. I)
meaning of, 93, (vol. II)
question of in sterling, 103, (vol. II)
recovery from, loss suffered by Government, 96, (vol. II)
reduction in, 96, (vol. II)
reduction of, if amounts to reduction in rank, 515, (vol. I)
right to receive, follows by virtue of the rules and not from the order granting the, 95, (vol. II)
to Chief Justices appointed after the enforcement of High Court Judges (Conditions of Service) Act, 28 of 1954, 103, (vol. II)
pension—(concl.)
under the Pensions Act (XXIII of 1871), scope of, 93, (vol. II)
whether arrear of, can be claimed period of limitation for, 94, (vol. II)
whether order of granting, to State servant could be altered, by succeeding Government, 97, (vol. II)
whether President can fix a different rate of exchange than right to take, at official rate of exchange, 98, (vol. II)
whether property, 95, (vol. II)

Pensions Act, 1871

pension under the, scope of, 93, (vol. II)

Period of probation

344, (vol. I)

Permanent employees

protection of Article 311, if not limited to, 321, (vol. I)

Permanent post

mere transfer of Government servant holding, to new post, if removal, 425, (vol. I)

Persons

dismissal, removal or reduction in rank of, employed in civil capacities under the Union or a State, 63, (vol. I)
officiating in a post, 345, (vol. I)
tenure of office of, employed in civil capacities in India Section 240, Government of India Act, 1935, 85, (vol. I)

Personal hearing

of an employee, 291, (vol. I)

Pleasure

doctrine of, 81, (vol. I)
position under the present law, 92, (vol. I)
whether controlled by Article 311 of the Constitution, 96, (vol. I)
whether extends to compelling servant to continue in service even after the age of superannuation, 101, (vol. I)
Police Act

prosecution under section 29 of
the, is not necessary before
taking departmental proceed-
ings, 395, (vol. I)
Rules made under the, 163,
(vol. I)

Police officers

compulsory retirement of, 393,
(vol. I)
reasonable opportunity, 390,
(vol. I)

Police services

385, (vol. I)

history of the status of the sub-
ordinate Police Force, 385,
(vol. I)
para 4 6 of the U. P. Police
Regulations, scope and effect of
the, 389, (vol. I)
reasonable opportunity to police
officers, 390, (vol. I)
re-organisation of States;
reversion of officiating sub-
Inspectors of Police to the post
of Head Constable, 592, (vol. I)
selection in the, promotion, prin-
ciples, 576, (vol. I)

Position

of tenure of pleasure under the
present law, 92, (vol. I)

Post(s)

Government to lay down qualifi-
cations a test for the post, 35,
(vol. I)
reservation of appointments and,
109, (vol. I)
reservation of, in favour of Hindu,
Muslim and Christian is repug-
nant to the provisions of Article
16 (2), 36, (vol. I)

seniority on promotion to non-
selection, 26, (vol. I)
termination of service due to
abolition of, if Article 311
applies, 433, (vol. I)

Postal and telegraph services

application of preceding section
to railways customs, and offi-
cials of courts, 87, (vol. I)

Postings transfer etc.
in case of subordinate judicial,
373, (vol. I)

Power(s)
of civil court to interfere, 296,
(vol. I)
of commissioners, 255, (vol. I)
of commissioners—the protec-
tion service of their process,
255, (vol. I)
of court etc. acting under com-
mission, 255, (vol. I)
of Government to invoke revi-
sional jurisdiction, 393, (vol. I)
of High Court to issue writs in the
matter of promotion, 562,
(vol. I)
of inquiring officer and penalty
for disobedience to process, 255,
(vol. I)
of legislature to make laws, 132,
(vol. I)
of President to dismiss civil ser-
vant: Article 311 (2) (e), 448,
(vol. I)
of reservation conferred on the
State, how can be exercised, 39,
(vol. I)
to promulgate ordinance under
Article 123 of the Constitution,
73, (vol. I)
to suspend employee, 535, (vol. I)
what is true condition precedent
for the exercise of, conferred
by Article 16 (4) of the Consti-
tution, 32, (vol. I)

Preliminary enquiry

against a temporary public ser-
vant scope—Article 311 (2) is
not attracted, 334, (vol. I)
before services are terminated in
terms of contract, 435, (vol. I)
first stage enquiry, 227, (vol. I)

President

powers of, to dismiss civil serv-
ants Article 311 (2) (e) 448
vast powers exercised by the, 74
(vol. I)

Presumption

of corruption, amassing of
wealth in excess of official
remuneration, 44, (vol. II)
presumption—(concl.)

property in excess of remuneration, 58, (vol. II)
under section 4 of the Prevention of Corruption Act, 1947, if mandatory, 48, (vol. II)
under section 4 of the Prevention of Corruption Act, 1947 when arises, 48, (vol. II)

Presumption of corruption

see Provisions as to Chairman of the Managing Committee of a Municipality, 38, (vol. II) conviction under section 165-A for offering bribe to the Central Excise Inspector—Evidence of Inspector if requires corroboration, 45, (vol. II)

"Head clerk" if an officer within the meaning of Section 21 (2) as amended by Act II of 1958, 38, (vol. II)

ingredients of offence to be established, 52, (vol. II) ingredients of offence under Section 161, Penal Code, 41, (vol. II) law relating to, if contained in the provisions of Penal Code, 39, (vol. II)

law relating to, deals with “public servants” only, 35, (vol. II) Section 165, Penal Code, 44, (vol. II) teacher receiving money to get employment in other department, 52, (vol. II) tender of pardon by Special Judge matters to be considered, 85, (vol. II)

Prevention of Corruption

tender of pardon: proper procedure, 85, (vol. II) test of a public servant, 37, (vol. II) to bribe a Commissioner having no jurisdiction, 45, (vol. II) what the prosecution has to prove? 49, (vol. II)

Prevention of Corruption Act, 1947

constitutionality of Section 4 of the, 47, (vol. II) ingredients of the offence under section 5 (1) (a) and 5 (1) (d) of the, 54, (vol. II) proof to establish offence under section 5 (1) (e) of the, 53, (vol. II) provisions of the, 46, (vol. II) scope of section 6, 65, (vol. II) section 4, if repeals section 409, Penal Code, 50, (vol. II) section 5 (1) (b) scope of, 51, (vol. II) section 5 (1) (c), if creates a new offence, 54, (vol. II) section 5 (1) (e), if constitutional, 51, (vol. II) section 5 (3), if creates a separate offence, 56, (vol. II) section 7 of the, 68, (vol. II)

Previous record

when can be taken into consideration to determine punishment, 291 (vol. I) for disciplinary action against at temporary public servant, 333, (vol. I) of promotion to selection posts legal action, 555, (vol. I) with regard to protection of Article 311, if not limited to permanent employees, if it extends to temporary employees also, 321, (vol. I)

Prior permission

62, (vol. II)

Private employee

dismissal of, 172 (vol. II) general law of master and servant, 163, (vol. II) grounds of dismissal 273, (vol. II) measure of damage—servants duty to minimise damages, 279, (vol. II) relationship of master and servant, 165, (vol. II) remedies for wrongful dismissal, 178, (vol. II)
Private employee—(concl.)

remedies for wrongful dismissal and Specific Relief Act, 178, (vol. II)
termination of service, 172, (vol. II)

Probation
meaning of, 107, (vol. II)
period of, 344, (vol. I)

Probationers
335, (vol. I)
allowing the, to continue in their posts after the probationary period, 108, (vol. II)
by implication, 108, (vol. II)
reasonable salary to workmen who are, 109, (vol. II)
Tahsildar as a, charged excess travelling allowance and could not pass departmental examination, 109, (vol. II)
whether can be discharged during the period of probation, 113, (vol. II)
who is, 107, (vol. II)

Probationer’s service
termination of, as per rules, 432, (vol. I)

Procedure
and principles for disciplinary action against a temporary public servant, 233, (vol. I)
followed in enquiry after constitution, if discriminatory, 387, (vol. I)

Procedure for major penalties
Rule 11 of the Mysore Civil Services (Classification Control and Appeal) Rules, 1967, 381, (vol. I)

Proceedings
against employee, 218, (vol. I)
against employee—charge in personnel after examination of some witnesses—dismissal of employee based on report of inquiry committee after charge in personnel, 218, (vol. I)
whether fresh proceedings can be started in respect of same

Proceedings—(concl.)
matter: double jeopardy, 303, (vol. I)

Promotees
and direct recruits, if they constitute different classes 27, (vol. I)
directly recruited and, if they form one class, no discrimination, 305, (vol. I)
promoted during a particular period—who should be relatively regarded as being senior to them, 591, (vol. I)
rules prescribing different methods for determining seniority of direct recruits and, 568, (vol. I)

Promotions
absence of statutory rule, regulating to selection grade posts Government to issue administrative instructions, 563, (vol. I)
after the commencement of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, 588, (vol. I)
appointment and, of persons as District Judge—order of Governor, if illegal, 371, (vol. I)
deputation of public servant to another department—promotion in parent department during pterior of deputation—right of public servant on deputation, 561, (vol. I)
enforceable right of a Government servant, 166, (vol. I)
if there was no reservation for appointments made by, 121, (vol. I)
in grade based on seniority, cum-merit—fixation of seniority contrary to rule, relief, 586, (vol. I)
matters of, if included in the term matters relating to employment, 30, (vol. I)
on ad hoc basis or on the basis of provisional seniority list, 562, (vol. I)

once made, if liable to be upset on the revision of seniority whether order upsetting promotion violative of Article, 16, 560, (vol. I)
Promotions—(contd.)

power of High Court to issue writs in the matter of, 562, (vol. I)
seniority for, as junior Accountants, Junior Inspectors of Station or Stores Accounts, 25, (vol. I)
seniority on, to non-selection posts, 26, (vol. I)
to selection posts, legal action—principles, 555, (vol. I)
to selection posts—rules not framed—whether Government can issue administrative instructions on the point, 557, (vol. I)
under section 29, Police Act, is not necessary before taking departmental proceedings, 395, (vol. I)

Prosecution

duty of the, to establish charge, 58, (vol. II)

Protection

given by the rules to the Government servants, against dismissal, removal or reduction in rank, 95, (vol. I)

Protection of Article 311

if it not extends to temporary employees also, 321, (vol. I)
not limited to permanent employee : if it extends to temporary employees also, 321, (vol. I)
not limited to permanent employee : if it extends to temporary employees also : Principles, 321, contd. page (vol. I)
who can claim, 321, (vol. I)

Public Order

refers inter alia, to security of the State, 58, (vol. I)

Public servant(s)

accused ceasing to be, at the time of trial, 67, (vol. II)
Chartered Accountant directed to investigate affairs of Insurance Company, if not a, 39, (vol. II)
Commissioner appointed without jurisdiction, if not, 38, (vol. II)

Public servant(s)—(contd.)

Governments decisions to retain some, in service after the age of retirement, if violative of Article 14, (vol. I)
Head clerk of Electricity Board, if, 47, (vol. II)

law relating to Prevention of Corruption deals with only, 35, (vol. II)
need not be specified public servants, 40, (vol. II)

preliminary enquiry against a temporary, scope, Article 311 (2) is not attracted, 334, (vol. II)

procedure and principles for disciplinary action against a temporary, 333, (vol. I)
railway servant, if a, 55, (vol. II)
suspension of, dismissal declared invalid by the court, if Fundamental Rules, 54 applicable, 544, (vol. I)
tests of a, 37, (vol. II)

Public Servants in-charge

omission to specify, 44, (vol. II)

Public Servants (Inquiries) Act, 1850

conduct of Government prosecution, 329, (vol. II)
copy of charge and list to be furnished to accused, 330, (vol. II)

if enquiry under the Act was violative of Article, 14, 44, (vol. I)

penalty for disobedience to the process, 256, (vol. I)

powers of Commissioners and powers of court etc., 255, (vol. I)

provisions under, 329-32, (vol. II)
report of Commissioner's proceedings, 331, (vol. II)
Public Service Commission

See State Public Service Commission

See Union Public Service Commission

Public Service commission, 103, (vol. I)
consultation with, 293, (vol. I)
dismissal of Registrar of High Court consultation of, if necessary, 106, (vol. I)
if functions entirely advisory, 103, (vol. I)
if to be consulted in all discriminatory matters, 105, (vol. I)
not consulted where service was terminated on one month’s notice, effect of, 106, (vol. I)
provisions of Article 320 (3) of the Constitution, if mandatory, 103, (vol. I)

Punishing Authority

failing to indicate in notice its concurrence with conclusions of Enquiry Officer, 276, (vol. I)
relying on charges on which employee was acquitted, effect of, 294, (vol. I)

Punishment(s)

—61, (vol. II)

See Industrial Workers
compulsory retirement when, 20, 461, (vol. I)
compulsory retirement, when punishment: Applicability of Article 311, 450, (vol. I)
disciplinary proceedings, 295, (vol. I)
if enquiry not to be held by authority competent to impose, 236, (vol. I)
previous record—when can be taken into consideration to determine, 291, (vol. I)
proposed punishment based on previous punishment a bad record, 280, (vol. I)
reduction in rank when, a, 511 (vol. I)
reversion when, 519, (vol. I)
show cause notice against any of the three major, effects of, 278, (vol. I)

Punishment(s)—(condd.)
to industrial workers, 247, (vol. II)
to industrial workers, kinds of, 247, (vol. II)
whether enquiry officer need make recommendations as to, 270, (vol. I)

Punishment order
communication of, 296, (vol. I)

Punjab Civil Services (Executive) Rules, 1932

Rules made under section 96-B of the Government of India Act, 1915, 162, (vol. I)

Punjab Civil Services Rules, 1941

Rules made under section 241 (2) of the Government of India Act, 1935, 162, (vol. I)

Punjab Civil Service Rules, 1959

Government servant on leave preparatory to retirement, if can be suspended, 545, (vol. I)

Punjab Land Revenue Act, 1887

Punjab Tahsildari Rules, 1932, framed under the, 163, (vol. I)

Punjab Medical Service Class I (Recruitment and Conditions of Service) Rules

if prohibit direct appointment to selection grade, 577, (vol. I)

Punjab Tahsildari Rules, 1932

framed under the Punjab Land Revenue Act, 1887, 163, (vol. I)
validity of, 156, (vol. I)

Qualifications

for appointment, 107, (vol. I)

Quasi-Judicial Act

what is, a, 6, (vol. I)

Quasi-permanent employees

350, (vol. I)

Quasi permanent service

meaning of, 357, (vol. I)
when a Government servant shall be deemed to be in, 351, (vol. I)
Railway Board

circulars, letters, and schemes issued by the, have a statutory force as a rule, 163, (vol. I)

Railway Establishment Code

if Rules, 148 (3) and 149 (3) violative of Article 311, 140, (vol. I)
Rules 148, 1702 and 1712, 397, (vol. I)
Rules 148 (3) and 149 (3), if violate Article 311, 396, (vol. I)

Railway Fundamental Rules

seniority after transfer, 586, (vol. I)

Railway official

termination of service of, 124, (vol. I)

Railway servant

if a public servant, 55, (vol. II)
railway services, 369, (vol. I)

Railway Services (Safeguarding of National Security) Rules, 1949

Rules 3 and 7, of the, 441, (vol. I)
if Rule 3 ultra vires, Constitution, 153, (vol. I)

Railways

application of preceding section to, customs, postal and telegraph services, and officials of courts, 87, (vol. I)

Rajasthan Civil Services (Rationalisation of Pay Scales) Rules and Schedule, 1965

validity of, 152, (vol. I)

Rajasthan Higher Judiciary Service Rules, 1955

validity of, 155, (vol. I)

Rajasthan Service Rules 1951

Rule 23-A (2) of the, 445, (vol. I)

Rajasthan Subordinate Officers (Ministerial Staff) Rules, 1957

Rule 7 of the, 445, (vol. I)

Reasonable opportunity

of showing cause against the action proposed to be taken against him—Rule 55 of the Civil Services (Classification, Control, and Appeal) Rules, 90, (vol. I)
requirement of, 189, (vol. I)
to police officers, 390, (vol. I)

Reasonable opportunity of showing cause against the action proposed to be taken

meaning of, 77, (vol. I)

Reasons

for agreeing with enquiring officer need not be given unless rules specifically require, 277, (vol. I)

Recovery of loss

stoppage of efficiency bar and disciplinary proceedings started but dropped subsequently—efficiency bar, if automatically crossed, 11, (vol. II)

Recruitment

of persons other than District Judge, 374, (vol. I)
and conditions of service, Section, 241, (vol. I)

reduction and reversion, 505, (vol. I)

Reduction in rank

confirmation of officiating Tahsildar—Pepsu merged with Punjab—cancellation of order of confirmation deconfirming concerned Tahsildar, whether amounts to, 513, (vol. I)
Reduction in rank—(concl.)

dismissal, removal or, of persons, employed in civil Capacities under the Union or a State, 63, 186, (vol. I)
due to integration of States, 512, (vol. I)
losing some places in seniority list, if amounts to, 513, (vol. I)
meaning of, 505, (vol. I)
protection given by the rules to the Government servant against, dismissal or removal, 65, (vol. I)
reduction of pension, if amounts to, 515, (vol. I)
scope of, 505, (vol. I)
transfer from one post to another carrying the same scale of pay does not amount to, 519, (vol. I)
what it implies, 379, (vol. I)
when a punishment, 511, (vol. I)

Reduction in pensions

if amounts to reduction in rank, 515, (vol. I)

Registrar of the High Court

combined cadre comprising District Judges, and Judicial officers in Secretariat—procedure to be followed in appointment, postings and transfer, etc., 375, (vol. I)
dismissal of the consultation with the Public Service Commission, if necessary, 106, (vol. I)

Regulations

made under section 49 of the Life Insurance Corporation Act, 1956, 138, (vol. I)
making of exigencies of service are guiding factors, 138, (vol. I)

Relevant consideration 42, (vol. II)

Removal

absence from duty without leave—removal—order of removal
generated by grant of leave whether removal invalid, 438, (vol. I)
appointing authority, 317, (vol. I)
authority who can dismiss or remove a Government servant 309, (vol. I)
dismissal or reduction in rank of persons employed in civil Capacities under the Union or State, 63, 186, (vol. I)
mere transfer of Government servant holding permanent post, to new post, if, 425 (vol. I)
no dismissal or removal by an authority subordinate to appointing authority, 319, (vol. I)
protection given by the rules to the Government servants against, dismissal or reduction in rank, 65, (vol. I)
who can remove or dismiss, 309, (vol. I)

Removal and dismissal

general, 421, (vol. I)
meaning of, 426, (vol. I)
preliminary enquiry before services are terminated, in terms of contract, 435, (vol. I)
scope of, 426, (vol. I)
termination of probationer’s services as per rules, 432, (vol. I)
termination of services, when would amount to removal or dismissal, 422, (vol. I)

Reply

to show cause notice, 290, (vol. I)

Reports

adverse entries in confidential, whether an opportunity to be heard to be given, 472, (vol. I)

Requirements

of natural justice, 208, (vol. I)
of reasonable opportunity, 189, (vol. II)
Reservation

by Government of right of appointment to any particular cadre irrespective of merit position, 120 (vol. I)
if there was no, for appointments made by promotion, 121, (vol. I)

Reservation of posts

if favour of Hindu, Muslim and Christian is repugnant to the provisions of Article 16 (2) of the Constitution, 36, (vol. I)
of appointments and posts, 109, (vol. I)
power of, conferred on the State, how can be exercised, 99, (vol. I)

Residence

law as to, for appointment in a particular part of State, 119, (vol. I)

Resignation

contract of service how terminable l, (vol. I)
dismissal or discharge after, 439, (vol. I)
provisions as to l, (vol. II)
when effective l, (vol. II)

Retirement

compulsory retirement and reduction of pension, 492, (vol. I)
compulsory retirement: dispute retarding date of birth, 496, (vol. I)
compulsory retirement: Fundamental Rule 56, (j) validity: adverse entries in confidential report: whether an opportunity to be heard to be given, 472, (vol. I)
compulsory retirement of police officers, 393, (vol. I)
compulsory retirement: order extending service unilaterally, if valid, 503, (vol. I)

Retirement—(contd.)

compulsory retirement right to Government to continue the employee in service pending enquiry: Rule: validity of, 482, (vol. I)
compulsory retirement: what is, 450, (vol. I)
compulsory retirement: when: no punishment, 461, (vol. I)
compulsory retirement, when punishment: applicability of Art. 311, 450, (vol. I)
due to change of age of superannuation, 488, (vol. I)
enforceable right of a Government servant, 177, (vol. I)
Government servant on leave preparatory to, if can be suspended, 545, (vol. I)
Government’s decision to retain some public servants in service after the age of, if violative of Art. 14, 466, (vol. I)
leave preparatory to, 177, (vol. I)
order of compulsory retirement after enquiry: no reason for agreeing with findings of Enquiry Tribunal, effect of, 493, (vol. I)
permission to retire: Government servant can change his mind subsequently, 488, (vol. I)
rule as to age of, classification in fixing age of retirement: validity of, 465, (vol. I)
rules fixing no minimum service period for, validity of, 483, (vol. I)
rules for, public interest; validity of, 467, (vol. I)
temporary appointment; continuance of person after superannuation without approval of Government, if proper, 493, (vol. I)

Retirement leave

no order of suspension can be passed during post, 543, (vol. I)
Retrenchment

what is, 292, (vol. II)
rule of, 295, (vol. II)
when justified and when not justified, 293, (vol. II)
when mala fide 296, (vol. II)

Retrenchment and lay-off
See Industrial workers

Retrospective operation

service rules and, 18, (vol. I)

Reversion

from temporary or officiating post, 516, (vol. I)
Government’s order of repatriation to parent department, if, 528, (vol. I)
of persons promoted earlier on ad hoc and out of seniority basis—subsequent reversion on account of return of senior incumbents from deputation: whether Rule 2 (c), of the Mysore Seniority Rules, 1956 applies to reversion cases, 514, (vol. I)
of persons working in officiating capacities, 510, (vol. I)
seniority and, Rule 2 (c) Mysore Seniority Rules, 552, (vol. I)
when punishment, 519, (vol. I)

Reversion and reduction

505, (vol. I)

Revisional jurisdiction

power of Government to invoke, 393, (vol. I)

Right against exploitation

Articles 23 and 24 of the Constitution, 51, (vol. I)

Right of appointment

reservation by Government of, to any particular cadre irrespective of merit position, 120, (vol. I)

Right to constitutional remedies

Articles 32 to 37 of the Constitution, 51, (vol. I)

Right to equality

Artic 14, Constitution, is the first of the five Articles grouped together under the heading, 48, (vol. I)

Articles 14 to 18 of the Constitution, 51, (vol. I)

Right to freedom

Articles 19 to 22 of the Constitution, 51, (vol. I)

Right to property

Articles 31, 31-A and 31-B of the Constitution, 51, (vol. I)

Rights

Waiver of other, 53, (vol. I)

Rule (s)

as to age of retirement: classification in fixing age of retirement: validity of, 465, (vol. I)
circulars, letters and schemes issued by the Railway Board have a statutory force as a, 163, (vol. I)
fixing no minimum service, period for retirement: validity of, 483 (vol. I)
for retirement: public interest: validity of, 467, (vol. I)
framed under section 241 (2) of the Government of India Act, 1935, 162, (vol. I)
made under Police Act, 163, (vol. I)
statutory force of 162, (vol. I)
statutory force of, 162, (vol. I)
examination of witnesses: whether rules of evidence to be followed, 241, (vol. I)

Salary

enforceable right of a Government, servant 165, (vol. I)
Sanction

59, (vol. II) for prosecution granted by appointing authority, validity of, 68, (vol. II) sanctioning authority had applied his mind, proof of, 67, (vol. II) strict compliance, 67, (vol. II)

"Satisfactorily"

in, Section 5 (3) Prevention of Corruption Act, 1947, meaning of, 57, (vol. II)

Scales of pay

enforceable right of a Government servant, 166, (vol. I)

Scheduled Castes

are by large backward in comparison with other communities in the country, 37, (vol. I)

Scope


Second stage enquiry

charge against the employee, 271, (vol. I) defence written statement, 271, (vol. I) interim orders, if any, 271, (vol. I)

Second stage enquiry—(contd.)

oral and documentary evidence considering during the enquiry, 271, (vol. I)

report of the enquiry officer, 271, (vol. I)

statement of allegations, 271, (vol. I)

Selection

for recruitment by competitive examination, if discrimination, 558, (vol. I)

Selection by Board

on the basis of interviews, if discriminates doctrine of equality, 18, (vol. I)

Selection grade posts

absence of statutory rules regulating promotions to, Government to issue administrative instructions, 563, (vol. I)

Selection post

In the Indian Police Service—promotions—principles, 576, (vol. I) promotion to legal action, principles, 555, (vol. I) promotions to rules not framed—whether Government can issue administrative instructions on the point, 557, (vol. I)

Punjab Medical Service Class I (Recruitment and Conditions of Service Rules, if prohibit) direct appointment to selection grade, 577, (vol. I)

State Government is sole judge for making appointment—High Court cannot interfere, 577, (vol. I)

whether seniority relevant in making selection—Bihar and Orissa Agricultural Service Class I, Rules, 1935, if repealed by 1945 Rules, 576, (vol. I)
Seniority

after transfer—Railway Fundamental Rules, 586, (vol. I)
considering seniority in one cadre for another cadre—legality of, 566, (vol. I)
date of passing the departmental examination test to regulate, 25, 572, (vol. I)
enforceable right of a Government servant, 166, (vol. I)
fixation of, on the basis of previous service—Rule 1 (f), (iii) and (iv), if violative of Articles 14 and 16, 574, (vol. I)
for promotion as Junior Accountants, Junior Inspectors of Station or Stores Accounts, 25, 571, (vol. I)
how seniority is determined in the electricity branch, 592, (vol. I)
how, is to be determined, 586, (vol. I)
ignoring seniority for officiating in senior post, 586, (vol. I)
junior, scale officers if can claim right of officiating in a higher post merely by reason of his, 557, (vol. I)
on promotion to non-selection posts, 26, (vol. I)
promotion once made, if liable to be upset on revision of, whether order upsetting promotion violative of Article 16, 560, (vol. I)
rules prescribing different methods for determining of direct recruits and promôtées, 568, (vol. I)

Seniority and merits

566, (vol. I)

competitive examination—Government's right of appointment of any candidate to any particular cadre irrespective of merit—Articles 14 and 16 of the Constitution, if violated, 584, (vol. I)

rule regularising a particular appointment—Constitution of India—Article 309—validity of, 588, (vol. I)

Seniority—(cont'd.)

selection post—State Government is sole Judge for making appointment—High Court cannot interfere, 577, (vol. I)

whether a State Government has power to take a retrospective declaration about a post being equivalent to a senior post, 589, (vol. I)

Seniority and reversion

Rule 2 (e), Mysore Seniority Rules, 583, (vol. I)

Seniority list

losing some places in, if amounts to reduction in rank, 510, (vol. I)
promotion on ad hoc basis or on the basis of provisional, 562, (vol. I)

Seniority Rules

framed in 1949—if seniority liable to be changed after the Constitution came into force, 575, (vol. I)

Servant(s)

classification of, 7, (vol. I)
genral law of master and, 163, (vol. II)

Government servants and Articles 19 and 309 of the Constitution, 54, (vol. I)

independent contractor and, 168, (vol. II)

liability in tort of State for acts of its, 7, (vol. I)

master and, scope and test to determine, 165, (vol. II)

misconduct—ordinary law of master and, 14, (vol. II)

of Life Insurance Corporation, 358, (vol. I)

of statutory companies and corporations, etc., 412, (vol. I)

relationship of master and, 165, (vol. II)

vicarious liability of State for wrongful act of its, 9, (vol. I)
Servants—(concl.d.)

when a departmental action is justiciable, 4, (vol. I)
whether pleasure extends to compelling to continue in service even after the age of superannuation, 101, (vol. I)
written and unwritten Code of Conduct for Government, 1, (vol. I)

Service—(concl.d.)

termination of, for security reasons: Proviso (c) to Article 311 (2), Constitution, 300, (vol. I)
termination of, one montlis, notice—Public Service Commission no consulted—effect of, 106, (vol. I)
termination of, under—rules, 441, (vol. I)
termination of, when would amount to removal or dismissal, 422, (vol. I)
termination of, of private employees, 172, (vol. II)
whether mode of suspension is different in different, 554, (vol. I)
whether pleasure extends to compelling servant to continue in, even after the age of superannuation, 101, (vol. I)

Service matters

conduct of Government business under Article 166 and, 62, (vol. I)

Service Rules

alteration in, 182, (vol. I)
and constitutional provisions, 138, (vol. I)
and executive instructions, 133, (vol. I)
and retrospective operation, 18, (vol. I)
bonus, 166, (vol. I)
cadre, 176, (vol. I)
dearness allowance, 166, (vol. I)
deputation, 172, (vol. I)
disciplinary action, 177, (vol. I)
enforceability of, 163, (vol. I)
enforceability of, salary, 165 (vol. I)
leave preparatory to retirement, 177, (vol. I)
pension, 166, (vol. I)
promotion, 166, (vol. I)
retirement, 177, (vol. I)
scales of pay, 166, (vol. I)
Service Rules—(concl.d.)

seniority, 166, (vol. I)
suspension, 177, (vol. I)
transfer, 177, (vol. I)
whether constitute terms of a contract, 136, (vol. I)
notice to, 275, (vol. I)

Show cause

notice to, 275, (vol. I)
against any of three major punishments : effects of, 278, (vol. I)
disciplinary authority tentatively determining to impose particular punishment before explanation to, if illegal, 282, (vol. I)
issued to Government servant, 78, (vol. I)
notice to show cause not issued formally in the name of Rajpramukh, if provisions of Article 166 contravened and show cause notice invalid, 282, (vol. I)
reply to, 290, (vol. I)
supplying of statement of allegations at the stage of second, if admissible, 207, (vol. I)

Special services

—363, (vol. I)
appointment and promotion of persons as District Judges : order of Governor, if illegal, 371, (vol. I)
combined cadre comprising District Judges, Registrar, High Court and judicial officers in Secretariat—procedure to be followed in appointment, postings and transfer, etc. 375, (vol. I)
consultation with State Public Service Commission if necessary in case of subordinate judiciary 375, (vol. I)

I. C. S. Officers, 407, (vol. I)
Judiciary—High Court Judges, 363, (vol. I)
police services, 385, (vol. I)

Special services—(concl.d.)

postings, transfer, etc., 373, (vol. I)
Railway Services, 396, (vol. I)
recruitment of persons other than District Judges, 374, (vol. I)
“reduction in rank”—what it implies, 379, (vol. I)
 servants of statutory companies and corporations, etc., 412
(subordinate judiciary, 367, (vol. I)

Specified post

meaning of, 351, (vol. I)

Staff

of the Supreme Court and High Courts, 383, (vol. I)

State

dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a, 63, (vol. I)
extent of executive power of, and constitutional guarantees, 61, (vol. I)
Governor to keep fully secure of the, 79, (vol. I)
if, has a different connotation in Part III relating to fundamental rights, 41, (vol. I)

law as to residence for appointment in a particular part of a, 119, (vol. I)
not to discriminate between a citizen and a citizen who answers the same description, 37, (vol. I)
power of reservation conferred on the, how can be exercised, 39, (vol. I)
“Public order” refers inter alia to the security of the, 58, (vol. I)
reduction in rank due to integration of, 512, (vol. I)
vicarious liability of, for wrongful act of its servants, 9, (vol. I)
State Public Service Commission

consultation, if necessary in case of subordinate judiciary, 375, (vol. I)
if to be consulted in all disciplinary matters, 105, (vol. I) Superannuation

retirement due to change of age of, 488, (vol. I)
whether pleasure extends to compelling servant to continue in service even after the age of, 101, (vol. I)

Superior Civil Services (Revision of Pay and Pension Rules) 1924

rules made under section 96-B of the Government of India Act, 1915, 162. (vol. I)

Supreme Court

officers and servants and the expenses of the, 383, (vol. I)
staff of the, and High Court, 383, (vol. I)

Suspension

See industrial workers and disciplinary proceedings—if initiation of disciplinary proceeding is condition precedent to, 552, (vol. I)

appointing authority, if can suspend, 540, (vol. I)
disciplinary matters, if include, 544, (vol. I)
dismissal declared illegal, if, suspension revived, 541, (vol. I)
interim suspension can be passed even when no enquiry is pending, 537, (vol. I)
meaning of, 531, (vol. I)
kinds of, 554, (vol. I)

no order of, can be passed during post retirement leave, 545, (vol. I)

no suspension by extending service unilaterally, 544, (vol. I)
notice terminating his services given by the servant during the period of legality, disciplinary proceedings, if valid, 307, (vol. I)

of public servant—dismissal declared invalid by the Court if Fundamental Rule 52 applicable, 544, (vol. I)
of servant, 177 (vol. I)

Statutes

Rules made under, 163, (vol. I) Statutory companies

servant of, and corporations, etc. 412, (vol. I)
Statutory force

of Rules, 162, (vol. I)
Stores Accounts

seniority for promotions Junior Accountants, Junior Inspectors of Station; or, 25, (vol. I)

 Strikes and demonstrations

—149 (vol. I) Sub-Insppector

reverted to the “post” of Head Constable, if discrimination, 28, (vol. I)

“Subject to the provisions of this Constitution.” 124 (vol. I) Subordinate

meaning of, 45, (vol. II) Subordinate Courts

control over, 376, (vol. I) Subordinate Judiciary

consultation with High Court, if necessary, 367, (vol. I) postings, transfer, etc., in case of 873, (vol. I)

scope of Articles 233 to 237, 367, (vol. I)
Suspension—(condld.)

power to suspend employee, 535, (vol. I)
scope of, 531, (vol. I)
subsistence allowance, quantum of, 545, (vol. I)
whether mode of, is different in different services, 554, (vol. I)

Suspension order
when it takes effect, 546, (vol. I)

Tahsildars
358, (vol. I)

Telegraph services
application of preceding section to railways, customs, postal and, officials of courts, 87, (vol. I)

Temporary appointment
continuance of person after superannuation without approval of Government, if proper, 493, (vol. I)

Temporary or officiating post
reversion from, 516, (vol. I)

Temporary public servant
preliminary enquiry against a scope—Article 311 (2) is not attracted, 334, (vol. I)
procedure and principles for disciplinary action against, a 333, (vol. I)

Tenure of office
of persons employed in civil capacities in India—Section 240 of the Government of India Act, 1935, 85, (vol. I)

Tenure of pleasure
81, (vol. I)
historical background, 81, (vol. I)
position under the present law, 92, (vol. I)
whether controlled by Article 311, of the Constitution, 96, (vol. I)
whether—extends to compelling servant to continue in service even after the age of superannuation, 101 (vol. I)

Termination
of probationers’ service as per rules, 432, (vol. I)
of service due to abolition of post, if Article 311 applies, 433, (vol. I)
of service for security reasons: proviso (c) to Article 311 (2), Constitution, 300, (vol. I)
of service, of railway official, 124, (vol. I)
of service on one month’s notice—Public Service Commission not consulted—effect of, 106, (vol. I)
of service under—Rules, 441, (vol. I)
of service—when would amount to removal or dismissal, 422, (vol. I)
order terminating service based on events prior to coming into force of rules, 449, (vol. I)
preliminary enquiry before services are terminated in terms of contract, 435, (vol. I)

Termination of services
different methods of, 34, (vol. I)
of private employees, 172, (vol. II)

Terms of contract
whether service rules constitute, 136, (vol. I)

Tests
of a public servants, 37, (vol. II)

Tort
liability in, of State for acts of its servants, 7, (vol. I)

Transfer
enforceable right of a servant, 177, (vol. I)
from one post to another carrying the same scales of pay does not amount to reduction in rank, 519, (vol. I)
mere transfer of Government servant holding permanent post to new post, if removal, 4, 5, (vol. I)
Tribunal

enquiry by a, having no jurisdiction, effect of, 260, (vol. I)

U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947

and power to dismiss, 386, (vol. I)
if hit by Article 14, of the Constitution, 150, (vol. I)

U. P. Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953

departmental enquiry defined under, 255, (vol. I)
Government defined under, 255, (vol. I)
Inquiring Officer defined under, 255, (vol. I)
meaning of administrative tribunal defined under, 255, (vol. I)
power of inquiring officer and penalty for disobedience to process, 255, (vol. I)

U. P. Higher Judicial Service Rules

if constitutional, 155, (vol. I)

U. P. Police Regulations

Para 486 of the, scope and effect of the, 389, (vol. I)

Union

dismissal, removal or reduction in rank of persons employed in civil capacities under the, or a State, 63, (vol. I)

Union Public Service Commission

—103, (vol. I)
if to be consulted in all disciplinary matters, 105, (vol. I)

"Unless contrary is proved"

in Section 5 (3), Prevention of Corruption Act, 1947, meaning of, 57, (vol. II)

Validity

of Bombay Civil Service Classification and Recruitment Rules, 157, (vol. I)
of Bombay Civil Service Rules, 155, (vol. I)
of Rule 4-A of the Central and Civil Services (Conduct) Rules, 1955, 57, (vol. I)
of Rules 4-A and 4-B Central Civil Services (Conduct) Rules, 1955, 146, (vol. I)
of rule as to age of retirement: classification in fixing age of retirement 465, (vol. I)
of rules for retirement: public interest, 467, (vol. I)
of the civil services (Safeguarding of National Security) Rules, 1949, 156, (vol. I)
of the Indian Administrative Service (Regulation of Seniority) Rules, 1954, 154, (vol. I)
of the Punjab Tahsildari Rules, 1932, 136, (vol. I)
of the Rajasthan Civil Services (Rationalisation of Pay Scales), Rules, and Schedules, 1965, 152, (vol. I)
of the Rajasthan Higher Judiciary Service Rules, 1955, 155, (vol. I)

Vacarious liability

of State for wrongful act of its servants, 90, (vol. I)

Village Munsifs

355, (vol. I)

Waiver

of fundamental rights, 47, (vol. I)
of other rights, 53, (vol. I)
Who can claim protection of Article 311

321, (vol. I)
civilians in Defence Service, 358, (vol. I)
Mouzadars, 357, (vol. I)
preliminary enquiry against a temporary public servant—
scope—Article 311 (2) is not attracted, 334, (vol. I)
probationers, 335, (vol. I)
procedure and principles for disciplinary action against a temporary public servant, 333, (vol. I)
quasi-permanent employees, 350
servants of Life Insurance Corporation, 358, (vol. I)
Tahsildars, 352, (vol. I)
Village Munsifs, 355, (vol. I)

Who can dismiss or remove
—309, (vol. I)

Witnesses
cross-examination of, 245, (vol. I)

Workmen
classification of, of industrial workers, 186, (vol. II)
dispute over standing orders of industrial workers, 192, (vol. II)
meaning of, 213, (vol. II)
supervisory staff when deemed to be, 216, (vol. II)

Wrongful act
vicarious liability of State for, of its servants, 9, (vol. I)

Wrongful dismissal
remedies for, and the Specific Relief Act, of private employees, 179, (vol. II)
remedies for, of private employees, 178, (vol. II)