CHAPTER VI
DISCIPLINARY PROCEEDINGS*

The power of the state under article 309 to prescribe conditions of service by law or by rules includes the power to regulate disciplinary proceedings against government servants. Whether the matter is regulated by rules or under acts of legislature they have the same effect and therefore it is obligatory for the state to act in conformity with those rules.\(^1\) The object of providing for and regulating disciplinary proceedings is to punish government servants guilty of corruption, misbehaviour, misconduct, negligence or inefficiency. It is to ensure a fair trial to the government servants against whom disciplinary proceedings are instituted and also to provide adequate safeguards against false allegations. Therefore, the rules prescribe certain mandatory procedures for holding disciplinary proceedings.

Rules regulating disciplinary proceedings

In the exercise of the power under the proviso to article 309 the President has framed rules titled as the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which regulate disciplinary proceedings against persons appointed to services and posts under the union. Similar rules have also been framed in each state.\(^2\) In substance, the rules are all of the same pattern. The salient features of the rules are: (1) the rules authorise the imposition of any one of the following penalties for good and sufficient reasons: -

(a) **Minor penalties:**
   (i) censure;
   (ii) withholding of the promotion;
   (iii) recovery from pay of the whole or part of any pecuniary loss caused to the government by negligence or breach of orders;
   (iv) withholding of increments.

(b) **Major penalties:**
   (i) compulsory retirement;
   (ii) removal from service which shall not be a disqualification for future employment under the government; and

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* Revised by S. Sivakumar, Research Professor, ILI.
2 See e.g., Mysore Civil Services (Classification, Control and Appeal) Rules, 1957.
(iii) dismissal from service which shall ordinarily be a disqualification for future employment under the government.  

The rules prescribe the holding of and the procedure for, regular departmental enquiry before the imposition of any one of the major penalties as well as the holding of an enquiry and the procedure for the imposition of minor penalties.

The rules provide for appeal to the prescribed authorities and reserve the power of review to the President or Governor as the case may be to review any order passed against a government servant.

No classification of delinquencies but only classification of procedure: If the rules classify the penalties of (i) reduction in rank including reduction to a lower stage in the time scale, (ii) removal, (iii) dismissal, (iv) compulsory retirement as major penalties, the holding of a regular departmental enquiry is a condition precedent for imposing any one of these punishments. The other four penalties viz., (i) fine, (ii) censure, (iii) recovery from pay and (iv) withholding of increments or promotion are classified as minor penalties and a summary procedure of asking for explanation and imposition of any one of these penalties after considering the explanation, if the same is not satisfactory are provided. According to the rules any penalty can be imposed on a government servant for good and sufficient reasons, and there is no classification of

3 (a) C.C.S. (CCA) Rules, 1965 - rule 11. (iii a) was inserted in the minor penalties as 'reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension' by notification No. 11012/5/2003-Estt.(A), dt. 23-8-2004 and in major penalties substituted the following by notification No. 11012/4/86-Estt(A), dt. 28-5-1992 : (v) save as provided for in clause (iii) (a), 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 increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he 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.

(b) In addition to the penalties specified in rule 11 of CCS (CCA) Rules, 1965. Mysore Rules specify fine as one fo the minor penalties which may be inflicted on class IV servants only. M.C.S. (CCA) Rules, 1957-rule 8.


delinquencies as major and minor. What is good and sufficient reason is left to the opinion of the disciplinary authority. It is open to the disciplinary authority to impose any penalty whether minor or major at its discretion, for any charge proved against a government servant. The only requirement is that the prescribed procedure should be followed.

**Rules silent about the particular procedure to be adopted in individual cases:** A disciplinary authority may initiate proceedings prescribed for imposing major penalties against a civil servant against whom no serious charge is alleged and impose a major penalty; and conversely, where the charge is of sufficiently serious nature, it may initiate enquiry under the rules prescribing the procedure for imposing minor penalties and impose any one of the minor penalties. For instance, where a civil servant is only guilty of overstaying after expiry of leave for a day, an enquiry under the rules as provided for imposing a major penalty could be upheld and he could be dismissed from service. Similarly, in cases where the charge is of serious nature like cheating the government or misappropriation of the government funds, an enquiry prescribed for imposing a minor penalty can be initiated and a minor penalty may be imposed. A review of orders passed in disciplinary proceedings reveals several cases where the punishment imposed is highly disproportionate to the charges proved *i.e.*, either the imposition of a heavy penalty for minor charges and a minor penalty for serious charges has been upheld in several cases. In the absence of a specific provision in the rules indicating the nature of the charges in respect of which the procedure prescribed for imposing major penalties should be adopted and those in respect of which the procedure prescribed for imposing minor penalties should be adopted, the disciplinary authority has to decide the penalty which it considers expedient to impose having regard to the nature of the charges first and then to initiate enquiry according to the appropriate procedure.

**Regulation regarding quantum of punishment may be necessary:** The difficulty of government servants on whom heavy penalties disproportionate to the charges are imposed and are also confirmed in appeal, is that the only judicial forum available to challenge the disciplinary proceedings is the writ jurisdiction in the exercise of which the courts have no power to interfere with the quantum of punishment. Therefore, once the charge is established even if it is of a trivial nature and the disciplinary authority has followed the prescribed procedure and the same is affirmed by a departmental appellate authority, if any, the court cannot interfere even if the highest penalty of dismissal is inflicted on a civil servant, and he has to suffer it. It is no doubt difficult to enumerate the various types of delinquencies which are likely to be committed by government servants, but it is possible and necessary to prescribe broad classifications or criteria for purposes of adopting the procedure prescribed for imposing major penalties or minor penalties as the case may be for guidance of disciplinary authorities which will also regulate
the imposition of penalties.\textsuperscript{9} Until that is done, the disciplinary and the appellate authorities (whenever provided), have to ensure that the penalty is commensurate with the gravity of the charges. The scope and extent of safeguards, provided in the rules in respect of various aspects concerning disciplinary proceedings against government servants are set out hereinafter.

**Departmental enquiry**

The departmental proceedings consist of several stages viz., initiation of proceedings; enquiry in respect of the charges levelled against the civil servant; and a final order which is passed after the conclusion of the enquiry. Article 311(1) guarantees that ‘no person who is a member of civil service shall be dismissed or removed by an authority subordinate to that by which he was appointed’. The article does not specify as to who shall initiate disciplinary proceedings but it is left to be prescribed by the concerned rules.\textsuperscript{10} Thus, what is evident from this is that one has to initiate disciplinary proceedings for imposing punishment. Disciplinary action can be initiated against a government servant even with regard to the exercise of quasi-judicial functions under the rules.\textsuperscript{11}

- **(a) Obligatory:** The holding of a regular departmental enquiry is a condition precedent for imposing any penalty against any civil servant. A rule which requires that an oral enquiry shall be held if the authority concerned so directs or if the charge-sheeted officer so desires is mandatory. This requirement is plainly based on consideration of natural justice and fair play. If the charge-sheeted officer wants to lead his own evidence in support of his plea, it is essential that he should be given an opportunity to lead such evidence. The failure on the part of the enquiry officer to fix a date for recording such oral evidence and give due intimation to the official concerned is a clear violation of statutory requirement.\textsuperscript{12} The imposition of even a minor penalty must be preceded by an enquiry as prescribed by the rules.\textsuperscript{13}

- **(b) Removal of temporary employee for misconduct:** A civil servant appointed on temporary basis may be removed on any valid ground without any enquiry. The enquiry is, however, mandatory for removing a temporary civil servant for misconduct.\textsuperscript{14}

- **(c) Removal before expiry of trial or re-employment:** When a retired civil servant is given re-employment for a specific period, his removal before the

\textsuperscript{9} E.g. delinquencies have been classified as major and minor in the Regulations framed by Bombay State Road Transport Corporation.

\textsuperscript{10} *P.V. S. Sastry v. Comptroller and Auditor General*, AIR 1993 SC 1188.


\textsuperscript{14} *Kanhialal v. District Judge*, SLR 1983(1) SC 621.
expiry of term per se amounts to penalty. Therefore, such removal must be preceded by a valid enquiry. An order of premature termination of re-employment without enquiry is invalid.\(^{15}\)

\((e)\) **Termination on grounds of medical unsuitability:** The termination of the service of a civil servant on the ground of being found medically unfit (after due medical examination) is no penalty for misconduct and no enquiry in accordance with the rules regulating disciplinary proceedings is necessary.\(^{16}\)

\((f)\) **Complicated matters affecting civil rights cannot be enquired into:** The plea by a civil servant charged with bigamy, prohibited under the service rules, that determination of the subsistence of the previous marriage being a mixed question of fact and law which the enquiry officer would have no jurisdiction to decide is, on the very face of it, without any substance.\(^{17}\)

**Departmental enquiry should be held when charges are denied even if the delinquent remains absent:** If the delinquent government servant admits the charges or pleads guilty, there is no need to hold any further enquiry. But the admission must be clear and unequivocal.\(^{18}\) Where the officer denies the charges, the enquiry has to be conducted in accordance with the rules. Whether the official opts for an oral enquiry or whether or not he is present at the enquiry, the prosecution should adduce adequate evidence to establish such charges. If no evidence is adduced, the enquiry officer may not rely upon the evidence recorded in the preliminary enquiry to determine guilt.\(^{19}\)

**When charges are admitted the punishment is valid:** A civil servant who admitted all the facts necessary to establish the charges framed against him and did not wish to cross-examine any witness or lead evidence, later on cannot question the validity of the proceedings culminating in the order of penalty imposed on him.\(^{20}\)

**Government servant remaining ex-parte cannot complain of want of opportunity:** Where in spite of the service of the show cause notice the civil servant appears on the first date of hearing, and remains absent on all subsequent dates when the enquiry is posted, it is a clear indication that the official has declined to take part in the proceedings. He cannot complain about the ex-parte proceedings. All that is required in the departmental enquiry is to afford an opportunity to the concerned civil servant. If the government

\(^{15}\) Dr. Umrao Mali Mathur v. State of Rajasthan, SLR 1976(1) Raj 658.

\(^{16}\) Jagannath Ghosh v. Divisional Forest Officer, SLR 1976(1) Cal 243.

\(^{17}\) M.S. Mann v. Union of India, SLR 1976(1) Del 350.


servant concerned refuses to participate in the enquiry, he must take the consequence.\textsuperscript{21}

\textit{Departmental enquiry permissible even if the charge constitutes an offence:} There is no requirement of law that whenever a charge framed against a government servant constitutes an offence under any law for the time being in force, he should be prosecuted in a criminal court. It is for the state to decide whether to prosecute a civil servant or to institute a departmental enquiry. The fact that the charge constituted an offence under any law in force does not bar disciplinary proceedings against the government servant. \textsuperscript{22}

**Procedure for imposition of major penalties**

Before inflicting any one of the major penalties the procedure prescribed for imposing the penalties under the rules\textsuperscript{23} must be complied with. The procedure prescribed for imposing major penalties regulate the reasonable opportunity guaranteed in article 311(2). All aspects relating to disciplinary proceedings including those dealt with under article 311(2) apply to the imposition of major penalties as specified in the rules. \textsuperscript{24}

\textit{Withholding of increments with cumulative effect is a major penalty:} Withholding of increments with cumulative effect amounts to a major penalty. As one of the minor penalties specified in the rules the real meaning of ‘withholding increments’ is that the increment due to an official is withheld for a specified period and the withheld increments are sanctioned to the officials concerned upon the expiry of the period. The only effect of such a minor punishment would be that an official will lose the amounts equal to the increments withheld during the period when it is withheld. But when increment is withheld with cumulative effect the withheld increments are never sanctioned. It amounts to putting the clock back in the service of an official and virtually amounts to reduction to a lower stage in the time scale. Hence, a punishment of withholding of increments with cumulative effect is a major penalty and the procedure prescribed for inflicting a major penalty should be followed before

\begin{itemize}
\item \textsuperscript{21} Jagdish Sekhri v. Union of India, SLR 1970 Del 571.
\item \textsuperscript{23} Mysore Civil Services (Classification, Control and Appeal) Rules. 1957- rule 11.
\begin{itemize}
\item (i) in case where no promotional vacancies arise for being filled or the vacancies are not filled during the period for which punishment of withholding of promotion is inflicted on a civil servant, he goes unpunished;
\item (ii) in case where a large number of promotions take place during C.C.S. (CCA) Rules, 1957-rule 14.
\end{itemize}
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inflicting such a punishment if reduction to a lower stage in a time scale is a major penalty under the rules.\textsuperscript{25}

\textit{Withholding of promotion with loss of seniority, whether amounts to major penalty:} Applying the same principle, the withholding of promotion as a minor penalty should mean that if the official concerned is found fit and promoted after the expiry of period of penalty his position has to be restored in the higher post above his juniors promoted in the meanwhile. If such restoration is not granted, it amounts to imposition of a major penalty as it would also amount to setting the clock back in the service of the officer. Therefore, when the punishment of withholding promotion is inflicted and the official is found fit and promoted after the expiry of the withheld period, his position in the higher post should be the same as in the substantive cadre. The position will be different if on the first occasion after the withheld period the case of the official concerned is considered for promotion and the officer is found unfit. In such cases, he stands superseded by his juniors. If on the other hand the civil servant concerned is not given seniority above his juniors promoted during the period when his promotion was withheld, it leads to the following anomalous results:

(i) in cases where no promotional vacancies arise for being filled or the vacancies are not filled during the period for which punishment of withholding of promotion is inflicted on a civil servant, he goes unpunished;

(ii) in cases where a large number of promotions take place during the particular period when the punishment of withholding of promotion is imposed on a civil servant, such a person suffers immensely.

A punishment of withholding promotion must have similar effect on all government servants on whom it is imposed, as it is in the case of all other penalties. Unless the seniority of a government servant is restored in the promotional post after the expiry of the period of withholding of promotion, if he is considered fit for promotion on the first occasion and promoted, it will have different consequences against different government servants on whom the said penalty is imposed depending on the fortuitous circumstances of the promotions taking place to the next higher category during the relevant period.

\textbf{Procedure for imposition of minor penalty}

As regards minor penalties, the rules prescribe that no such penalty shall be imposed unless the government servant is informed in writing of the proposal, he is given an opportunity to make representation and that the representation is considered by the disciplinary authority. The disciplinary

authority is also required to consult the commission where such consultation is necessary.\textsuperscript{26} Having regard to the mandatory provision of the rules regulating imposition of minor penalties, no minor penalty can be imposed unless the prescribed procedure is followed.\textsuperscript{27}

\textit{Major penalty procedure when started should be followed even when minor penalty is imposed:} When the disciplinary authority initiates proceedings under the rules which prescribe the procedure for imposing a major penalty, it is obligatory for the disciplinary authority to hold the enquiry in conformity with the rules. The mere fact that ultimately a minor penalty is imposed cannot be taken as the basis for an argument that any defect in holding the enquiry stands cured. The non-compliance with the mandatory provision in holding the enquiry vitiates the final order, though it imposes only a minor penalty and though the disciplinary authority could have imposed the said penalty without following the procedure prescribed for a major penalty. Once the enquiry proceedings are vitiated for violation of the rules under which the enquiry is held, such an illegal enquiry proceeding cannot be taken as the basis for imposing any penalty.\textsuperscript{28}

\textit{Minor penalty after holding enquiry prescribed for major penalty:} After holding a regular enquiry according to the procedure prescribed for imposing a major penalty, a minor penalty can be imposed. The only difference is that after the recording of the finding of guilt by the disciplinary authority there is no requirement as in the case of the imposition of major penalties, either to issue show cause notice or to furnish the copy of the enquiry officer’s report to the delinquent officer, where a minor penalty is imposed. Therefore, where only a minor punishment was imposed, the fact that after the completion of the enquiry any of the subsequent steps such as issuing a show cause notice or furnishing of the enquiry officer’s report prescribed for inflicting of a major penalty, were not adopted does not vitiate the order.\textsuperscript{29}

\textit{No show cause notice necessary to impose minor penalty after regular enquiry unless additional material is relied on:} The rules relating to imposition of a minor penalty do not require anything more than that the allegation on the basis of which the officer concerned is charged should be communicated and he should be given an opportunity to make any representation with regard to them. There is no requirement of his being told the specific punishment which

\begin{itemize}
\item \textsuperscript{26} C.C.S. (CCA) Rules, 1965-rule 16; M.C.S. (CCA) Rules, 1967 – rule 12.
\item \textsuperscript{28} Piyar Mohammed Tailwakdar v. Senior Superintendent of Post Office, 1974(1) SLR Gau 162.
\end{itemize}
Disciplinary Proceedings

is sought to be imposed and there is no question of giving a second opportunity after the enquiry is completed in respect of the punishment proposed to be imposed. If the report of the enquiry officer contains any material extraneous to the charges or anything in addition to what is found in the original statement of allegations, only then could he be said to have been prejudiced, and in such cases it may be necessary to furnish him with the copy of the enquiry report. In all other cases, where the delinquent official was associated with the enquiry held by the officer concerned, there is no requirement of furnishing the copy of the report before imposing the penalty.  

When the nature of the charge calls for an enquiry: The rules do confer power to impose a minor penalty by merely issuing a show cause notice setting out the allegations levelled against a civil servant concerned and after considering the reply, if any, furnished by the civil servant. This procedure, in the nature of things has to be followed in respect of allegations or lapses which require no proof of evidence. (e.g. a charge of unauthorised absence which is not or cannot be disputed by the official). But if charges are such which if denied can be proved only in a regular enquiry, it is impermissible to avoid the enquiry and to follow the procedure prescribed for minor penalties. In such a case the imposition of minor penalty cannot be made a ground to say that regular enquiry was unnecessary.  

Authority competent to initiate disciplinary proceedings

Disciplinary proceedings must be instituted by competent authority: An enquiry against a government servant must be instituted at the instance of a competent disciplinary authority. Where a civil servant is appointed by the head of the department who alone was competent under the rules to institute disciplinary proceedings for imposing a major penalty, any enquiry instituted by a subordinate officer (who is not the disciplinary authority) is without jurisdiction. In such a case, even the head of the department is not competent to impose punishment on the basis of the enquiry held under the orders of an authority not competent to do so. There can be no valid imposition of punishment on the basis of an enquiry held by an unauthorised agency. In Transport Commissioner v. Thiru A. Radha Krishna Moorthy, the court held that the initiation of enquiry can be by an officer subordinate to the appointing authority.

30 Shadilal Gupta v. State of Punjab, SLR 1973(1) SC 913. In view of this judgment, the view taken by the Mysore High Court in Veerachowdaiah v. State, 1972(2) Mys LJ 425 that show cause notice is necessary even for imposing minor penalty is not good law.
33 1995 1 SCC 332.
but the dismissal/removal shall not be by an authority subordinate to the appointing authority.

Where the state government is the disciplinary authority and the enquiry commissioner was appointed in accordance with the decision of the council of ministers, it cannot be held invalid on the ground that it is not issued by the head of the state.34

**Major penalty can be imposed in an enquiry instituted by an authority having the power to impose minor penalty:** An authority empowered to impose minor penalties in respect of specified categories of civil servants, after the enquiry, may, if it is of the opinion that a major penalty should be imposed, submit the records to the authority having the power to impose a major penalty and that authority can impose a major penalty. It cannot be said that because a major penalty is imposed, the appointment of the enquiry officer by an authority who had no power to impose a major penalty is invalid.35

**Power cannot be delegated:** The disciplinary power vested in a designated authority cannot be delegated.36 The authority to institute disciplinary proceedings against a judicial officer is vested in the high court. An enquiry held under the authority of the high court forms the foundation of any punishment that may be imposed on a judicial officer. An enquiry held though by a judge of the high court is invalid if he was not empowered by the high court.37 Similarly, where under the provisions of the Air Force Act only a court martial has the power to award punishment of dismissal, an order passed by any other authority is illegal.38

**Appointing authority alone competent unless any other officer is designated:** An authority other than the appointing authority must be designated as the disciplinary authority authorised to impose the punishment under the rules against a civil servant. In the absence of such a specification in the rules, the authority other than the appointing authority cannot institute disciplinary proceedings or impose a penalty on a civil servant.39

But where the rules provide that a particular designated officer is competent to institute disciplinary proceedings against a civil servant, the institution of a departmental enquiry by government and the imposition of punishment cannot

be held to be illegal. The expression ‘higher officer’ in such circumstances includes an authority like the government which is higher than the higher officer.\(^{40}\)

Where rules mention the words ‘head of office’ as an officer competent to institute disciplinary proceedings against subordinate officers in the police department, the institution of a departmental enquiry by the superintendent of police who is the head of the district is valid. In such a case, the superintendent of police should be construed as head of office for purposes of the disciplinary proceedings against all the subordinate police officers in the district under his control.\(^{41}\)

*The power to act as a disciplinary authority is a statutory power:* An officer placed in current charge of the duties of a post cannot exercise the statutory power vested in the disciplinary authority and therefore, is not competent to act as the disciplinary authority.\(^{42}\)

*Authority competent to institute disciplinary proceedings and to impose penalty:* The power to determine the appointment also is part of the power to make the appointment. When power to make an appointment to a particular post is conferred on the central government, the order of termination made by the state government is, therefore, invalid. Similarly, no authority other than the authority empowered by the rules can impose the penalty.\(^{43}\)

When the rules specify the authorities competent to initiate disciplinary proceedings only one of these can initiate the disciplinary proceedings.\(^{44}\)

The disciplinary authority for the old post on which the lien of a civil servant has come to end cannot initiate disciplinary proceedings against such civil servant even in respect of misconduct committed earlier.\(^{45}\)

When power is conferred on a higher authority to institute disciplinary proceedings, in addition to the disciplinary authority the proceedings instituted by such higher authority are valid.\(^{46}\)

*Officer competent to impose one of the penalties, competent to institute disciplinary proceedings:* When the rules designate an official to institute

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44 *B. Daniel v. Scientific Adviser to the Ministry of Defence*, SLR 1980(2) AP 477. It was held, in view of the rules, that in this case no other authority except the President of the union or the Governor of the state, as the case may be, can institute disciplinary proceedings.
45 *Pramabandhu Pradhan v. Collector, Cuttack*, 1977(1) SLR Ori 771; 1977(2) SLR Ori 522.
disciplinary proceedings if he is competent under the rules to impose any one of the penalties, an official competent to impose even one of those penalties is competent to institute disciplinary proceedings. The contention that only an officer empowered to impose each one of the penalties alone has the competence to institute disciplinary proceedings is untenable. In the contest the words 'any one of the penalties' means one of the penalties and not every one of the penalties.\footnote{Mallappa Basappa v. Controller of Weights & Measurers, 1983(2) Kar LJ 338.}

The disciplinary authority must be appointed by appointing authority: If the designated official is the disciplinary authority in respect of civil servants in the unit and the post is vacant, the head of another unit can be empowered to exercise the powers of the disciplinary authority. But such authorisation has to be made only by the appointing authority. Any other authority to which the power to transfer the heads of unit is delegated, cannot without transferring an officer functioning as head of one unit to another, authorise him to exercise disciplinary control over officers belonging to another unit. There is a clear distinction between the power to order combination of appointment, which means appointing one person to two posts, and the power to order transfer. An officer transferred ceases to hold charge of one post and begins to hold charge of another post. Therefore, disciplinary proceedings commenced by a head of one unit against a civil servant of another unit under authorisation given by an officer who has only the power to transfer is invalid.\footnote{Govindaraja v. Surveyor General of India, SLR 1981(2) Kar 320.}

Disciplinary authority for ordering joint enquiry: If a joint enquiry can be instituted only by an authority having the power to impose the penalty of dismissal against all the civil servants involved in the enquiry, the institution of disciplinary proceedings by an authority, who had power to impose only minor penalty on one of the delinquent officials is invalid.\footnote{Krishnamurthy C.S. v. State of Karnataka, 1983(2) Kar LJ 151; Rachaiah v. DIG of Police, 1979(2) Kar LJ 303.}

When framing of charge should be by disciplinary authority: If the rules require the disciplinary authority to frame article of charges and cause it to be served on the civil servant, the appointment of an enquiry officer even before the framing of the charges and the framing of the charges by the enquiry officer vitiates the disciplinary proceedings.\footnote{N.K. Nagaraja v. State of Karnataka, ILR 1979(1) Kar.564; Onkar Singh v. Union of India, SL.R 1975(2) Del 135.}

When the highest appointing authority is the competent authority: In cases where there are more than one appointing authority, and the rules authorise the appointing authority to order termination, the highest authority among them is to be treated as the appointing authority. An order of termination issued by an authority, who though competent to make appointment to a post, but is lower...
than the authority which has actually appointed the concerned civil servant is invalid.\textsuperscript{51}

\textit{In the absence of statutory provision:} In the absence of any statutory provision, dismissal of an employee would be purely a managerial function and an officer in the capacity of a general manager can pass the order of dismissal. Even assuming that he is not the competent authority under the rules which have no statutory force, the dismissal would only be wrongful giving rise to a claim for damages. The dismissal order cannot be interfered with in a writ petition on the ground that it was made by the officer named in non-statutory rules.\textsuperscript{52}

\textit{Disciplinary authority after reorganisation of states:} In a state reorganised under the provisions of the States Reorganisation Act, 1956, government of the new state may name the competent authority to impose punishments under the law which was in force in the erstwhile state before integration. In such a case, though the authority named by the new state had no competence to act as the disciplinary authority in the erstwhile state, it becomes a competent authority when named by the new state, under section 122 of the States Reorganisation Act.\textsuperscript{53}

\textbf{Statutory restrictions}

A disciplinary action against a civil servant must conform to all the statutory safeguards afforded to him. If the rules provide that no proceedings should be instituted without informing the designated authority, any non-compliant action would be illegal and any order of dismissal passed against a civil servant would be invalid.\textsuperscript{54}

\textit{Civil and criminal proceedings do not include departmental enquiry:} Where a statutory provision requires that no civil or criminal proceedings should be instituted against a civil servant without the sanction of the specified authority, such a provision has no application to the initiation of departmental enquiry proceedings. Civil and criminal proceedings are two well known expressions and they clearly relate to civil and criminal proceedings before the civil and criminal courts. The terms do not exhaust the totality of matters which can be called proceedings.\textsuperscript{55}

\begin{footnotes}
\item Om Prakash \textit{v.} Union of India, SLR 1975(2) SC 226; Krishna Kumar \textit{v.} Divl. Asst Engineer, AIR 1979 SC 1912.
\item Krishna Mohan Mookherjee \textit{v.} Secretary and Treasurer, State Bank of India, SLR 1983(1) SC 792.
\item M. Ramappa \textit{v.} Government of Andhra Pradesh, AIR 1964 SC 777.
\item P. Joseph John \textit{v.} State of T.C., AIR 1955 SC 160 at 165.
\end{footnotes}
Preliminary enquiry

Administrative instructions providing for the holding of a preliminary enquiry to find out whether there is any *prima facie* case made out against the government servant concerned for instituting a departmental enquiry, are only of an administrative nature and do not affect the validity of the disciplinary proceedings instituted against an official without first holding a preliminary enquiry. A departmental enquiry proceeding cannot be challenged on the ground that no preliminary enquiry was held.\(^{56}\)

There is no such principle of natural justice that, before holding a regular departmental enquiry, the disciplinary authority itself should hold a preliminary enquiry by first drawing up a charge memo and then calling for the written statement of defence before taking a decision to hold a regular departmental enquiry.\(^{57}\)

No vested right in procedure

There is no vested right in respect of the procedure under which a departmental enquiry should be held against a civil servant. It is competent for the Governor to amend the rules and entrust the departmental enquiry to the vigilance commission. A civil servant has no right to insist that the enquiry should be held only by departmental officers under the normal procedure and not by the vigilance commission.\(^{58}\)

*Right to choose any one of the alternative procedures:* When there are two sets of rules regulating disciplinary proceedings (like the Tribunal Rules and the Classification Control and Appeal Rules) and the rules give an option to a specified class of government servants to request that their cases should be tried under one set of rules, it is obligatory for the state to grant the option. An order rejecting such a request is illegal.\(^{59}\)

Joint enquiry

When a number of officers belonging to different cadres are jointly involved in misconduct, it is competent for the government to institute disciplinary proceedings jointly against all the officers. In such a case, the disciplinary authority which is competent to dismiss the highest officer involved, would be the authority competent to institute disciplinary proceedings against all the officers involved.\(^{60}\)

\(^{57}\) Secretary to Government of Tamil Nadu v. D. Subramanyam Rajadevan, AIR 1996 SC 2634.
Appointment of enquiry officer

Although article 311(1) does not speak as to who shall initiate disciplinary proceedings but that can be provided and prescribed by the rules. But if no such rules have been framed saying as to who shall initiate the departmental proceedings, then on the basis of article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceedings.  

No judicial tribunal can delegate its functions unless it is enabled by law to do so expressly or by necessary implication. But the power to dismiss a civil servant is an administrative power and not a judicial power. Therefore, there is no requirement of law that departmental enquiry should be held by the disciplinary authority itself. The disciplinary authority may nominate an officer to hold the departmental enquiry and make a report to it. This is the ordinary mode of exercise of administrative power. What cannot be delegated unless authorised by a law is the ultimate responsibility for the exercise of such power. So long as the final decision is taken by the statutory functionary, the mere deputation of an officer to make enquiry and to report does not render the final order passed by a competent authority invalid. Unless the rules prohibit the appointment of a particular class of officers from being appointed as enquiry officer, the validity of appointment of the enquiry officer cannot be questioned. Though under the C.C.A. Rules, there was prohibition for the appointment of a police officer as an enquiry officer when an enquiry is held by the vigilance commission under special provisions, the said rule cannot be invoked where the enquiry was held by the department under the general provisions, and the appointment of a police officer as an enquiry officer is not illegal.

Appointment of an officer of vigilance commission: Similarly, where under the special rules regulating disciplinary proceedings to be conducted by the vigilance commission, the authorisation by the commission of an officer belonging to the commission to hold an enquiry is not illegal.

Appointment of an officer re-employed after retirement: There is no defect in appointing an officer on re-employment after retirement as an enquiry officer to conduct disciplinary proceeding against a civil servant.

Enquiry officer must be free from bias

The rules of natural justice plays a significant role in judging the validity of judicial and administrative acts. Bias is taken to be a part of principle of natural justice.
justice which envisages that all decisions should be taken in good faith without any bias. The doctrine of natural justice must be followed in a departmental enquiry. There must be cogent evidence available on record to come to the conclusion as to whether in fact there did exit a bias which resulted in miscarriage of justice.66 When bias is alleged against an enquiry officer in a departmental proceeding, such bias undoubtedly would have to be established with evidence.67

A departmental enquiry which can form the basis for the imposition of a penalty on a civil servant must be conducted by an unbiased officer. Any enquiry conducted by a biased officer vitiates the departmental enquiry and any penalty imposed on the basis of such an enquiry is liable to be set aside. The enquiry officer, in the performance of his duty, is expected to keep an open mind about the guilt of the charged officer. The enquiry officer is not a mere evidence-recording machine. He has to admit only relevant evidence. He should decline to record wholly extraneous evidence. He should also give a reasonable opportunity to the charged officer to peruse the records for the purposes of preparing his defence. He should also give reasonable opportunity to the charged officer to cross-examine the witnesses and also to examine the witnesses in support of his case. The enquiry officer is not merely required to forward the entire papers to the punishing authority to find out whether or not the charges have been made out. He has to record his findings on the charges. In substance, his function is that of a judge dealing with the case. Such an officer should not be personally interested in the matter.68 When it is established that the enquiry officer suffered from bias the mere fact that the punishing authority considers the report and comes to its own conclusion would not cure the defect attached to the enquiry as the punishing authority acts upon the report of the enquiry conducted by the enquiry officer, and therefore, the entire proceedings would be vitiated as its foundation is itself vitiated by the bias of the enquiry officer.69

Tests to be applied to find out the existence of bias: The proper test for determination of bias is likelihood of bias. The likelihood of bias has to be determined from the circumstances by the court objectively or on the basis of the impression that may be reasonably left on the minds of the party aggrieved or the public at large. Decisions of real likelihood and 'reasonable suspicion' are really inconsistent with each other. The reviewing authority must, on the basis of the whole evidence before it, determine whether a reasonable man would in the circumstances infer that there is likelihood of bias. The court must look at the impression which other people have. This follows from the

67 Syed Rahimuddin v. Director General CSIR, 2001(3) SCJ 127.
principle that justice not only is to be done but should be seen to be done. If right-minded persons would think that there is a real likelihood of bias on the part of the inquiring officer, he must not conduct the enquiry. However, there must be a likelihood of bias. Surmise or conjecture is not enough. Circumstances from which a reasonable man would think it probable or likely that the inquiring officer will be prejudiced against the delinquent must exist. The court will not enquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. Therefore, when a delinquent civil servant expresses a reasonable apprehension that the enquiry officer was biased against him and that there was sufficient ground for such apprehension, the entire enquiry proceedings stand vitiated.

**Personal bias must be alleged:** Pecuniary bias, however slight, disqualifies a person from acting as a judge. The position, however, is different when personal bias is alleged. It is not necessary to show that his judgement is affected by personal bias. The test is whether there is a reasonable ground for assuming the possibility of bias, and whether it is likely to produce in the minds of the concerned persons a reasonable doubt about the fairness of the adjudication. Personal bias, however, must be established. A government servant who being aware of all the material facts, failed to raise the charge of bias against the enquiry officer cannot be permitted to challenge the proceedings on the ground of bias in writ proceedings.

**Persons conducting preliminary enquiry are not disqualified to be enquiry officers:** An officer who conducted the preliminary investigation and who has not formed an opinion as to the guilt of the concerned government servant but only recommends that there is a prima facie case for a departmental enquiry cannot be considered as a person unfit to be appointed as an enquiry officer to conduct a departmental enquiry against the civil servant concerned.

Similarly, the appointment of a subordinate officer as an enquiry officer does not demonstrate official bias on the ground that the subordinate officer usually sustains the findings of the preliminary enquiry.

**Bias of enquiry officer to be inferred:** When a superior officer holds an inter-departmental enquiry and records a finding of misconduct and thereafter

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70 Brindaban v. State of Uttar Pradesh, SLR 1973(1) All. 111; see also supra note 62(a).
72 Ibid.
an enquiry officer subordinate to him is appointed to hold a regular enquiry, it is reasonable to believe that the enquiry officer would be influenced by the opinion of the superior officer. Such an enquiry is invalid.\textsuperscript{75} Similarly, if an officer who had formed a clear opinion that the civil servant concerned was guilty and he holds the enquiry, the proceedings are bad on the ground of bias.\textsuperscript{76}

\textit{Appointment of the enquiry officer before issue of charge sheet:} The fact that an enquiry officer was appointed before the issue of charge sheet is no basis to say that the enquiry is vitiated by the bias of the disciplinary authority.\textsuperscript{77}

\textit{Any officer can be appointed as enquiring authority:} The disciplinary authority may validly appoint any government officer, working in any department, as enquiry officer. The contention that a departmental disciplinary authority cannot appoint an officer belonging to another department as enquiring authority is untenable.\textsuperscript{78}

\textbf{Article of charges}

\textit{Enquiring authority has no power to frame new charges:} Where the disciplinary authority framed specific charges against government servants and appointed, a board of enquiry, the board of enquiry cannot proceed to frame new charges and make findings on such new charges.\textsuperscript{79}

However, if during the recording of evidence, materials justifying an altogether different charge against the delinquent come to the notice of the enquiring authority, the official should be given an opportunity to defend himself. The proceedings cannot be impeached on the ground that the official has been found guilty of a charge not framed against him. However, if no such opportunity was given, the enquiry would be illegal.\textsuperscript{80}

\textit{Charges must be specific and statement of allegations must be furnished:} The charges framed against government servants should be specific and not vague and must be supported by statement of allegations. A charge memo served on a government servant without furnishing the statement of allegation is opposed to the mandatory rules relating to the framing of charges against a government servant. All subsequent proceedings to the issue of such a defective


\textsuperscript{76} \textit{Martin v. Union of India}, 1976(1) Kar LJ 128.

\textsuperscript{77} \textit{R.S. Sehgal v. Union of India}, SLR 1979(3) Del 523.


\textsuperscript{80} \textit{Lakshmana Rao v. Governor of Karnataka}, 1977(2) Kar LJ 380.
charge memo would be illegal.  

*Grounds of misconduct mentioned in statement of allegations not bad:*
But where the grounds of misconduct are referred to in the statement of allegations but not in the charge-sheet, it is only an irregularity and the charge memo cannot be considered as bad so long as the particulars relating to misconduct are furnished to the government servant.

The enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the disciplinary authority differs with the view of the enquiring authority and proposes to come to a different conclusion then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity of being heard before final findings on the charges are recorded and punishment imposed. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

**Legal assistance**

A government servant is permitted to take the assistance of another government servant of his choice. Any refusal on the part of the department to accord permission is illegal; unless, making him available is highly impracticable.

Unless rules explicitly permit, no retired government servant may provide assistance at an enquiry.

The enquiry officer or the disciplinary authority may not insist the government servant to engage any other colleague on the ground that the particular government servant whom he wishes to engage for defending him works at a place of distance.

It is well settled that where the presiding officer is a legally trained officer, the delinquent can request to be represented by a lawyer and the refusal, thus would amount to denial of a reasonable opportunity and violation of the principles of natural justice.

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85 Sarin HC v. Union of India, AIR 1976 SC 1686.
87 Board of Trustee the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni, AIR 1983 SC 109.
Where under the rules a civil servant can engage, with the permission of the inquiring authority, an advocate to defend him and the facts of the case are too complicated for the government servant to handle without the assistance of a counsel, refusal to permit such assistance would amount to denial of a reasonable opportunity to defend. Consequently, the disciplinary proceedings and the final order of punishment imposed would be illegal.  

Unless the facts of a particular case so warrant a government servant has no right to engage a lawyer. No civil servant can claim legal assistance as of right.  

But when the state engages a trained prosecutor to present its case, the refusal to a government servant to permit to engage a legal practitioner is illegal and vitiates the enquiry.

Rule of evidence for departmental enquiries

The rule of evidence applicable to departmental proceedings is not the same as the one applicable for trials before criminal courts which are governed by the provisions of the Indian Evidence Act. The technical rule relating to the sufficiency of evidence does not apply to a departmental enquiry. An authority conducting the departmental enquiry should be guided by rules of equity and natural justice and is not bound by the formal rules of evidence.

Reliance on evidence of co-delinquent officers: In a departmental enquiry, there is no inhibition against placing reliance on the evidence of a co-delinquent officer. Even in criminal cases it has been laid down as a rule of prudence and not as a rule of law that the court should look for material corroboration to the evidence given by an accomplice. This rule has no application even to the civil cases. Therefore, if the concerned authority chooses to rely on the testimony of an accomplice, this does not vitiate the finding.

However, enquiry stands vitiated by reliance on the final statement of the co-accused which implicates a civil servant, which the latter has no opportunity to contest.

Natural justice

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence. The doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. In Baldwin’s case the doctrine was held to be incapable of exact definition but would include what a reasonable man would regard as a fair procedure in particular circumstances. The apex court observed that the doctrine of natural justice must be followed in a departmental enquiry.

Departmental enquiry has to be conducted in conformity with the principles of natural justice: In holding a departmental enquiry, the authorities exercising the power are bound by the principles of natural justice. The following principles of natural justice are applicable to the disciplinary proceedings against government servants;

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

If these principles are observed in holding a departmental enquiry, it is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. If there was an enquiry consistent with the rules and principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

Copies of documents need not be furnished: The principles of natural justice do not include the right of a civil servant to get copies of documents and that there is no provision in rule 15 of the Civil Services (Classification, Control and Appeal) Rules, 1965 for supply of copies of such documents. But they do require giving of opportunity to look into the records on the basis of which the charges are framed.

97 State Bank of India v. Ramesh Dinkar Punde, 2007 (2) SLR 303.
Notice must be served on the delinquent: It is absolutely necessary that a civil servant should be notified about the institution of a departmental enquiry proposed to be held against him. The mere fact that the registered letter containing the notice sent to him was returned unserved with a postal remark that the addressee is not available is not a sufficient ground to proceed *ex parte*. In the absence of a specific proof that the civil servant concerned refused the notice, the department cannot proceed *ex parte*. Any such *ex parte* proceeding would be violative of the principles of natural justice.\(^9^9\)

Examination of delinquent before examination of prosecution witness illegal: An enquiry in which a delinquent officer is examined at the very commencement and thereafter several times as and when the evidence of witnesses is recorded cannot be held to be a fair enquiry giving the delinquent officer a reasonable opportunity to defend himself. It is improper to examine the delinquent official in the first instance and to put questions to him in the form of cross-examination. It is necessary in a domestic enquiry that the prosecution should lead evidence against the delinquent official in the first instance, give him an opportunity to cross-examine the witnesses and then be given an opportunity to explain the evidence adduced against him. Therefore, a departmental enquiry in which the delinquent official is examined in the first instance is opposed to natural justice and is invalid. So is the case in which defence witnesses are asked to give evidence before the examination of prosecution witnesses.\(^1^0^0\)

Production of extraneous material vitiates enquiry: When a departmental enquiry is instituted against a civil servant on a specific charge, the evidence adduced during the enquiry must be in support of the charges framed against the official concerned. It is not open to the authorities to produce extraneous allegations with which an official is not charged and the introduction of such extraneous material would certainly prejudice the enquiry. By production of extraneous material the enquiry proceeding stands vitiated.\(^1^0^1\)

Enquiry officer has no power to compel the attendance of witnesses: If a material witness whom the delinquent government servant wants to examine does not attend the enquiry to give evidence in spite of the summons issued by the enquiry officer, non-examination of such a witness cannot be made a ground for invalidating the departmental proceedings. The enquiry officer cannot compel the attendance of a witness who is not under the control of the

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\(^1^0^1\) *State of Assam v. Mohan Chandra*, SLR 1973(1) SC 401.
administration. Therefore, so long as effort was made by the enquiry officer to bring the witness, the enquiry proceedings cannot be held to be vitiated.\textsuperscript{102}

Witnesses should be examined in the presence of delinquent official: The principles of natural justice require that the witnesses deposing against a government servant must be examined in his presence. The person against whom a charge is made should know the evidence given against him so that he may be in a position to give his explanation. The examination of witnesses should in its entirety take place before the party charged and he should have the opportunity to cross-examine those witnesses.\textsuperscript{103} The principles of natural justice are not violated when a statement given by a witness previously is put to him in the presence of the delinquent official and a copy of the evidence is given to him and he is given an opportunity to cross-examine. To require in such a case that the contents of the previous statement should be repeated by the witness word by word or sentence by sentence is to insist on bare technicalities. The rules of natural justice are complied with when previous statements given by witnesses are read over to them and marked on their admission, copies thereof are given to the person charged and he is given an opportunity to cross-examine them.\textsuperscript{104} Unless witnesses are examined in support of the charges framed against a civil servant they do not become witnesses in the departmental enquiry and a civil servant is not bound to cross-examine them. Therefore, statements of witnesses are admissible only when the witnesses who have given statements at some antecedent dates during the preliminary investigation are produced at the enquiry and admit the earlier statements made by them and these are brought on record. Where the witnesses who gave earlier statements did not appear before the inquiring authority and did not admit the correctness of the statements, no reliance can be placed on statements for purpose of finding the official guilty.\textsuperscript{105}

Examination of witnesses not mentioned in the charge memo: The mere fact that some of the witnesses whose names were not mentioned in the charge memo were examined as witnesses during the enquiry does not vitiate the disciplinary proceedings. No provision of law or rule prohibits an enquiry officer from examining the witnesses not mentioned in the charge sheet if he considers it necessary to do so, so long as the witnesses are examined in the

\footnotesize{102} Sudhir Narayan v. Union of India, 1968 L&l Cases 1535.


presence of the delinquent official and he is given an opportunity to cross-

**Prosecution at liberty to examine witness of their choice:** There is no duty on the prosecution to examine witnesses named by the delinquent. The prosecution is entitled to examine only such witnesses whom they desire to examine in support of the charges. While it is open for the delinquent official to examine any witness of his choice, he cannot compel the prosecution to examine any particular witness.  

**Summoning of witness – discretion:** The enquiry officer may reject the request of a delinquent official to summon a witness if he is satisfied that the witness is not necessary or material for the case, and the object is to harass the witness.

**Disciplinary proceedings:** If the inquiring officer does not allow a witness to answer the relevant question natural justice principles are violated.

**Failure to examine passengers:** In a disciplinary proceeding against a conductor of a stage carriage, charged with collecting fares from the passengers without issuing tickets, the failure to examine the passenger does not vitiate the enquiry.

**The enquiry officer cross-examining the defence witnesses:** The entire enquiry is vitiated because of violation of natural justice when the enquiry officer seeks to cross-examine the defence witnesses and even suggests that they were uttering falsehood to support the delinquent official on account of friendship.

**Strict rules of evidence not applicable:** Hearsay evidence: Strict rules of evidence are not applicable to disciplinary proceedings. Even hearsay evidence is admissible. While relying on hearsay evidence, care should be taken to see that such hearsay evidence has reasonable nexus and credibility. Once such nexus exists, a finding recorded on the basis of such evidence is valid.

**Reliance on earlier statements:** Reliance placed on earlier statements of witnesses which support the charge, though they resile from such statements during the enquiry, constitutes no infirmity, provided the former statements

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were furnished to the delinquent and he was given an opportunity to cross-
examine those witnesses.\textsuperscript{113}

\textit{Natural justice - complainant becoming a presenting officer}: No rule of
natural justice requires that the person who had lodged the complaint against
an employee cannot be a presenting officer and a prosecutor in a domestic
enquiry. The well-known rule is that a prosecutor cannot be a judge, not that
complainant should not be a prosecutor.\textsuperscript{114}

\textit{Not appointing presenting officer}: Even when the rules regulating
disciplinary proceedings provide for the appointment of presenting officer to
conduct the case, no infirmity would be caused if a presenting officer is not
appointed. The enquiry becomes invalid only if the enquiry officer functions
also as the presenting officer and cross-examines the defence witnesses.\textsuperscript{115}

\textit{Enquiring officer putting questions to the witnesses}: The enquiry officer
is entitled to put questions to the witnesses for clarification wherever necessary.
So long as the delinquent employee is permitted to cross-examine the witnesses
after the enquiring authority put questions to the witnesses, the enquiry
proceedings cannot be impeached as unfair.\textsuperscript{116}

\textit{Recording of evidence in the absence of delinquent}: The examination of
prosecution witnesses during the pendency of the application of concerned
employee for defence assistance and on the date when the delinquent could
not attend the proceedings on account of his illness, is violative of rules of
natural justice and reasonable opportunity.\textsuperscript{117}

\textit{Temporary withdrawal of defending officer}: In a court martial proceeding
against a military personnel, temporary withdrawal of the defending officer
does not amount to denial of reasonable opportunity when the accused was
also being assisted by an advocate who was also a retired military officer and
who cross-examined all the witnesses.\textsuperscript{118}

\textit{Enquiry committee – change of members}: When the enquiry is entrusted
to more than one enquiry officer and one or more of the members of the
enquiry committee become unavailable (on account of retirement or due to
any other cause) it is not necessary that the enquiry which has already been
held in part must be continued by more than one enquiry officer or by the
same enquiry officers until the end. There could be no solid objection for the

\textsuperscript{116} \textit{Mulchandani Electrical and Radio Industries Ltd. v. The Workmen}, AIR 1975 SC 2125.
\textsuperscript{117} \textit{Malkiat Singh v. Delhi Electricity Supply Undertaking}, SLR 1985(1) Del 742.
\textsuperscript{118} \textit{Hardev Singh v. Union of India}, SLR 1980(2) Del 549.
continuation of the enquiry by persons even if they ceased to hold their offices which they held at the time when they held the original enquiry. 119

Decision on the basis of statement in some other enquiry – illegal: When a civil servant denies a charge of misappropriation a formal enquiry becomes unavoidable. The civil servant cannot be found guilty without enquiry drawing conclusion from statements made by him in the past in another enquiry. 120

Failure of the enquiry officer to question the delinquent officer: The rule which requires that if the delinquent official does not choose to testify the enquiry officer shall put questions to the delinquent civil servant concerning the circumstances which appeared against him in the evidence recorded, has been held not a mandatory provision. The failure on the part of the enquiry officer to put such questions by itself does not vitiate the enquiry unless any prejudice is found to have been caused to the official concerned for not doing so. 121

Non-furnishing of preliminary enquiry report: If the civil servant requires a copy of the preliminary report, it must be furnished to him, even though it is...
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not relied on behalf of the disciplinary authority, for the purpose of effective cross-examination of the prosecution witnesses. Non-furnishing renders the enquiry invalid on the ground of violation of the rules of natural justice.¹²²

But non-furnishing of the preliminary report does not vitiate the enquiry when the officer was fully associated with the preliminary enquiry, was fully aware of the allegations levelled against him and the preliminary enquiry report did not contain any additional allegations.¹²³ Similarly, failure to supply the report of the vigilance officer, not made use of in the enquiry, is no violation of rules of natural justice.¹²⁴

**Inspection of documents – stage:** According to the rules regulating disciplinary proceedings, it is necessary only to furnish the list of documents and witnesses along with the issue of the article of charges. A civil servant is not entitled to inspect all the documents at that stage. It is only after he furnishes his reply to the article of charges and disciplinary proceedings actually commence that he would be entitled to the inspection of documents for the purpose of preparing the defence.¹²⁵

The genuineness of the documents produced during enquiry was not in dispute and therefore their authors need not be examined. Omission to mark the exhibits during the course of enquiry does not vitiate the enquiry.¹²⁶

However, the failure to allow access to all the documentary evidence to the delinquent civil servant at the stage of preparing for defence is a clear violation of the rules and the enquiry is invalid.¹²⁷

**Documents summoned but not inspected:** It is quite unreasonable for the concerned officer to decline to inspect the documents on the ground that the enquiry officer ought to have sent him a written reply to his letter requesting for documents when he in fact summoned these. In such circumstances, it cannot be held that there has been violation of natural justice.¹²⁸

**Acquiescence in the non-supply of documents:** Non-supply of lists of documents or of witnesses along with the charge sheet is no ground for impeaching an enquiry when the delinquent official did not seek the lists.¹²⁹

**Right to produce documents and put questions to test veracity:** It is the basic right of a person against whom a witness deposes to cross-examine him

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¹²⁴ Abdul Sattar v. Union of India, SLR 1983(2) Ker 327.
¹²⁵ Katarki v. High Court of Karnataka, 1983(1) Kar LJ 211.
¹²⁶ Director General, Indian Council of Medical Research v. Anil Kumar Ghosh (Dr.), AIR 1998 SC 2592.
¹²⁷ Bhardwai S.D. v. Union of India, SLR 1983(1) HP 32.
with reference to his credibility and veracity. The enquiry would be held invalid where the entire evidence against a civil servant is the oral testimony of a witness and the delinquent was prevented from producing judicial decisions which characterised the witness as highly unreliable and a person having no regard to truth, for, such enquiry cannot be said to be fair and proper.  

**Right to cross-examine one's own witness:** The practice of the courts in permitting a party to put to his own witness questions, which may be put in cross-examination, is necessary for the purpose of assessing the credibility of the witness. Therefore, such a practice could also be legitimately followed in disciplinary enquiries if it is considered necessary for finding out the credibility of the witness.

**Reliance on extraneous material:** Where the final order imposing a penalty against a civil servant discloses that after completion of the departmental enquiry and the issue of a show-cause notice, the government had gathered further material and took it into consideration, a clear violation of the principles of natural justice occurs. The principles of natural justice require that all the evidence or material in support of the charges should be placed on record in the presence of the delinquent officer in such a way so as to afford him an opportunity to meet and explain or rebut it. Therefore, reliance on materials subsequently gathered vitiates the final order.

**Enquiry officer cannot introduce his personal knowledge into enquiry proceedings:** The enquiry officer cannot introduce personal knowledge and take into consideration extraneous matters while submitting the report holding the officer guilty. Where he does so, the delinquent government servant would have had no opportunity to rebut these extraneous considerations. Therefore, any order passed on the basis of such a report is liable to be quashed being violative of natural justice.

**Enquiry officer himself giving evidence:** If the enquiry officer himself were to give evidence against the delinquent official there is serious violation of natural justice. The act of enquiry officer recording his own testimony in the case is shocking to the notions of judicial propriety and fair play. It also clearly discloses considerable bias of the enquiry officer against the civil servant concerned. Such a proceeding stands vitiated as being in violation of the rules of natural justice.

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Denial of copies of documents: Denial of copies of documents relied on by the prosecution in the charge memo which are necessary for the cross-examination of witnesses amounts to violation of the principles of natural justice and also denial of reasonable opportunity as contemplated under article 311. No material should be relied on against a government servant without his being given an opportunity of explaining them. Where the enquiry officer relied on the past record of the petitioner indicating that some punishment had been inflicted on him and no opportunity had been given to him to explain his past record, the procedure adopted violates the principles of natural justice.\textsuperscript{135}

Party remaining absent – no duty to give opportunity: The principles of natural justice require that an opportunity should be given to a civil servant before taking disciplinary action against him. But where a delinquent does not avail an opportunity to furnish his written reply, and further opportunity to inform the authority as to whether he wished to be heard in person or through a representation, the enquiry officer is entitled to hold the departmental enquiry on the material before him and on the basis of the allegations in the show cause notice. The authority cannot compel appearance of the delinquent official before him. There is no requirement that a further notice should be given stating that the matter will be dealt with on a certain date.\textsuperscript{136}

Enquiry officer not entitled to shut out defence evidence: An enquiry officer is, no doubt, empowered to regulate the oral enquiry if the charge-sheeted officer starts cross-examining the departmental witnesses in an irrelevant manner. Such cross-examination can be checked and controlled. If the officer desires to examine the witnesses whose evidence may appear to the enquiry officer to be thoroughly irrelevant, he may refuse to examine such witnesses, but in doing so, he will have to record the 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 can be legitimately controlled by the enquiry officer. He would be justified in conducting the enquiry in such a way that its proceedings are not allowed to be unduly or deliberately prolonged. But the enquiry officer cannot say that he would not hold any oral enquiry, particularly when the delinquent officer wants to examine the witnesses to give relevant evidence. The refusal to give an opportunity to examine witnesses when the delinquent official wanted to examine them, introduce a fatal infirmity in the enquiry, in the absence of a valid recorded reasons.\textsuperscript{137}

\textsuperscript{136} Jethmal v. Union of India, AIR 1970 SC 1310.
Competence to make the report: Where a tribunal consists of more than one member and the statutory provision authorises the holding of an enquiry by a single member, the member who held the enquiry alone is competent to report his findings to the government and his report shall be deemed to be the report of the tribunal. A single member who has not held any enquiry but merely heard the arguments, cannot be deemed to have held the enquiry in question and therefore, he has no competence to make a report to the government, and any report submitted by a member who has not conducted the enquiry and the consequent order passed on the basis of such a report are illegal.\textsuperscript{138}

Findings in departmental enquiries

Finding must be specific: The finding in a departmental enquiry by the enquiry officer or the disciplinary authority must be specific. It is the duty of the disciplinary authority to focus attention on the record so as to enable itself to reach a proper conclusion regarding the proof of the charge. Where a charge framed against a government servant consisted of more than one part and the disciplinary authority proceeded to state that a part of the charge was proved, the omission to state with precision as to which part of the charge was established makes the finding defective. Such a finding invites the criticism that there was no application of the mind on the part of the disciplinary authority to the facts including the representation.\textsuperscript{139}

Enquiry officer's finding not binding on disciplinary authority: The findings of fact recorded by an enquiry officer to whom the enquiry is entrusted are not binding on the disciplinary authority which may take a different view on the evidence and come to its own conclusion on all or any of the charges framed against the servant. It can never be suggested that the findings recorded by the enquiry officer conclude the matter. Therefore, even where the enquiry officer has found the government servant concerned not guilty, it is competent for the disciplinary authority to disagree with the findings and find the officer guilty.\textsuperscript{140}

Recording of findings by disciplinary authority: The disciplinary authority which is different from the enquiring authority has to record its findings on the charges framed before issuing a show-cause notice. But there is no requirement that the disciplinary authority should give reasons for agreeing with the findings of the enquiry officer. It is unreasonable to suggest that the disciplinary authority should give reasons as to why it accepts the findings of


\textsuperscript{140} Union of India v. H.C. Goyal. AIR 1964 SC 364; 1964(4) SCR 718; Mallanaik v. Divisional Commissioner. 1974(1) Kar LJ SN 7.
the enquiry authority. If the disciplinary authority disagrees with the findings of the enquiry authority wholly or partially then it is essential that it must record its findings giving reasons. Even then the reasons need not be detailed or elaborate.\textsuperscript{141}

**Notice issued with enquiry report valid:** It is desirable that the disciplinary authority should record its findings agreeing or disagreeing with the report of the enquiry before issuing a show cause notice. But failure to expressly record a finding does not necessarily render the notice invalid. When a show cause notice is issued along with a copy of the enquiry officer's report, even in the absence of a specific recording by the disciplinary authority it clearly suggests that the authority has agreed with the findings. Final orders passed by the disciplinary authority cannot be held to be illegal for want of recording of the findings.\textsuperscript{142}

**Finding of guilt on a part of the charge inconsistent with finding of exoneration:** When the accusation against the official was that there was a misrepresentation which involved misuse of official position and the disciplinary authority held that there was no misrepresentation by the delinquent official but recorded a finding that a part of the charge relating to the misuse of official position is proved, such a finding is unsustainable. By reason of the fact that the basic ingredient of the charge, namely, misrepresentation was not established, the second part of the charge also fails. Hence it is not possible for the authority to hold in such circumstances that a part of the charge is proved, which is inconsistent with the finding of exoneration. Finding on a charge not framed is illegal.\textsuperscript{143}

**Finding without evidence:** Before a government servant is found guilty in a departmental enquiry, the charges must be proved on the basis of evidence adduced at the enquiry. In the absence of any evidence, a government servant cannot be found guilty. A finding based on no evidence cannot be sustained.\textsuperscript{144}

**Show cause notice**

**Issue of show cause notice before major penalty mandatory:** After the disciplinary authority records its findings on the charges and before imposing any one of the major penalties, it is mandatory for the authority to issue a

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\textsuperscript{142} State of Assam v. Bimal Kumar, AIR 1963 SC 1612.


show cause notice to the civil servant. A civil servant is entitled to make a representation not only against the findings recorded but also against the quantum of penalty proposed. Failure to give a show cause notice renders the penalty imposed invalid.145 A show cause notice should be issued by a competent authority.146 When the state government is the disciplinary authority in respect of a civil servant, notice issued under the signature of the chief secretary who under the rules of business was in charge of the portfolio ‘service and appointments’ amounted to sufficient compliance with article 166 of the Constitution and it cannot be termed as issued by an incompetent authority.147

**Furnishing of enquiry officer’s report mandatory:** Before imposing a major penalty on a civil servant it is mandatory that the disciplinary authority should furnish to the delinquent government servant a copy of the report of the enquiry along with the show cause notice. Failure to furnish a copy of the enquiry officer’s report renders the final order illegal both on the ground of violation of the rules as also violation of rules of natural justice.148 However, in State of U.P. v. P.V. Harendra149 the apex court has held that it has to be seen whether by non-furnishing of the enquiry report the delinquent officer has suffered any prejudice.

**Failure to furnish copy of vigilance commissioner’s report:** Where along with the report of the enquiry officer the vigilance commissioner also sent his recommendations to the government regarding imposition of penalty, principles of natural justice require that a copy of the same should also be furnished to the civil servant along with the show cause notice. Failure to furnish the same renders the final order illegal as offending the principles of natural justice.150

**Show cause notice must disclose material information:** A show cause notice is issued with the object of giving a person a reasonable opportunity to give his reply. Therefore, the show cause notice must specify the charges and allegations and should also disclose the reasons for coming to the conclusion. The mere statement in the show cause notice that the civil servant’s explanation was unsatisfactory does not satisfy the requirement of the show cause notice. It is essential that the show cause notice indicate the precise scope for the charge and also indicate the point on which the officer concerned is expected to give a reply.151

146 Ibid.
149 2001 (2) SCC 1091.
Second opportunity is not a rule of natural justice: Giving of a show cause notice regarding imposition of penalty after full opportunity was given to an employee during a domestic enquiry is not the requirement of the rules of natural justice. But if the rules governing disciplinary proceedings require the giving of second opportunity, non-compliance vitiates the final order.\(^\text{152}\)

**Final order in disciplinary proceedings**

*Final order must be a considered order:* After the disciplinary authority records its findings and issues a show cause notice to the delinquent civil servant he is, at that stage, entitled to make representation questioning not only the correctness of the findings recorded against him but also against the quantum of proposed punishment. It is the duty of the disciplinary authority to consider the representation made by the delinquent official on both the matters and to give its reasons for not accepting his explanation. The final order in disciplinary proceedings therefore must disclose the application of the mind of the disciplinary authority to the representation. Hence, a final order of penalty by the disciplinary authority simply rejecting the representation of the government servant stating that there were no fresh grounds to consider would be invalid.\(^\text{153}\)

When it is apparent from the order passed by the disciplinary authority that the authority merely stated that all the charges are proved even though the enquiring officer had dropped one of the charges and that the disciplinary authority did not apply its mind to the report and the records of the enquiry as required by rules, the order is illegal.\(^\text{154}\) The disciplinary authority is legally required to follow the rules before inflicting the punishment. Therefore, an order made by the disciplinary authority without considering the records of the enquiring authority including the representation made by the delinquent official is illegal.\(^\text{155}\) The application of the judicial mind must be discernible from the records. The defect of want of reasoning in the order of quasi-


\(^{154}\) See *supra* note 142.

\(^{155}\) See *supra* note 143.
judicial authority could not be remedied by looking into the files maintained by
the government and constructing reasons in support of the order.\textsuperscript{156} Expressing
agreement with the reasons given by the Union Public Service Commission on
due consideration of the reply of the officer by the President fulfils the
requirements of the rule.\textsuperscript{157}

\textit{Records disclosing additional material vitiate the penalty:} Though the
final order does not refer to any additional charge, where the records which
culminated in the order imposing penalty disclose several other charges and
reports against the civil servant, it is obvious that these will have influenced
the authority who imposed the punishment. When the delinquent was not
given an opportunity to rebut these charges, the order imposing penalty is
bad.\textsuperscript{158}

\textit{Reliance on past record for awarding higher punishment:} Reliance on past
misconduct or record of service for imposing higher penalty in the final order
for the first time is opposed to the principles of natural justice. If the disciplinary
authority considered it necessary to impose a higher penalty on account of the
past record of service or misconduct, it should be specifically stated in the
show cause notice and an opportunity should be given to the civil servant to
offer his explanation. Failure to refer to the past record in the show cause
notice and placing reliance on the same in passing the final order is opposed to
the principles of natural justice.\textsuperscript{159}

But where the past record is relied on for imposing a lesser punishment
and not for increasing the quantum or nature of punishment, it is not necessary
for the authority to state in the show cause notice that his past record will be
taken into consideration.\textsuperscript{160}

\textit{Application of mind by disciplinary authority itself is necessary:} The
disciplinary power vested in a designated authority must be exercised by the
application of the mind of that authority and the order must be passed in its
individual judgment. An order passed with the guidance of another authority
though higher to it is invalid.\textsuperscript{161}

\textit{Consultation with the public service commission:} The provisions relating
to consultation under article 320(3) (C) of the Constitution with the public
service commission are not mandatory but only directory.\textsuperscript{162} Even in a case
where the state consults the commission, there is no requirement that the state

\textsuperscript{156} State of Mysore v. Manche Gowda, AIR 1964 SC 506: (1964) 4 SCR 540.
\textsuperscript{157} A Pratap Singh Dardi v. The Secretary, W.P.3035/1977 D 3-8-83 (Kar).
\textsuperscript{158} Ekambaram v. General Manager, MGRTD, 1961 Mys LJ 1066.
\textsuperscript{159} See supra note 139.
\textsuperscript{162} State of Uttar Pradesh v. Manbedhanal Srivastava, AIR 1957 SC 912.
should consult the public service commission as many times as the government servant chooses to make representation or review petitions.\textsuperscript{163}

But when statutory rules framed by the appropriate authority require an authority to pass an order only after consultation with the public service commission, it is mandatory that before issuing a valid order, the authority must consult the public service commission.\textsuperscript{164}

\textit{Public service commission – advice not binding:} Except in cases where consultation with the public service commission is dispensed with, it is the duty of the disciplinary authority to consult the commission and seek its advice in the matter of imposition of punishment on a public servant. But the advice given by the commission cannot be considered as binding on the disciplinary authority.\textsuperscript{165}

\textit{Communication necessary:} An order of dismissal passed against a civil servant would not be effective unless it is communicated to the officer concerned. An order of dismissal passed by an authority cannot be said to take effect unless the officer concerned knows about the said order and is otherwise communicated to all the other parties concerned. The mere passing of an order of dismissal cannot have the effect of terminating the services of the officer concerned nor does it invalidate actions taken by him in exercise of his power and jurisdiction. He is entitled to his salary during the period between the date when the order was passed and the date when it was communicated to him.\textsuperscript{166}

\textit{Order of dismissal with retrospective effect to the extent of prospective effect valid:} An order of dismissal stating that it will come into effect from an earlier date is in substance an order of dismissal as from the date of the order with an additional condition that it should operate retrospectively as from an anterior date. In such cases, that part of the order which dismisses a civil servant and the part of the order which gives retrospective effect to the dismissal are clearly severable. Therefore, the order insofar as it gives retrospective effect is invalid, and that part of the order which dismisses the civil servant can be given effect to prospectively.\textsuperscript{167}

\textbf{Enquiry into charges once exonerated}

Where in a departmental enquiry a government servant is exonerated on some of the charges and punishment is imposed on the basis of the rest of the

\begin{itemize}
\item \textsuperscript{163} \textit{P. Joseph John v. State of T.C.}, AIR 1955 SC 160.
\item \textsuperscript{164} \textit{K.S. Srinivasan v. Union of India}, AIR 1958 SC 419; 1958 SCR 1295.
\item \textsuperscript{165} \textit{D. Made Gowda v. State}, 1965(2) Mys LJ 490.
\item \textsuperscript{167} \textit{Jeevarathnam v. State of Madras}, AIR 1966 SC 951.
\end{itemize}
charges proved against him and the punishment so imposed is quashed by the court, in a *de novo* enquiry the disciplinary authority cannot enquire into the charges of which the civil servant has once been exonerated. Exoneration of charges debars any further enquiry in respect of the same charges.\(^{168}\)

**Enquiry into matters before crossing of efficiency bar**

In a departmental enquiry, the authorities cannot consider any of the adverse confidential reports against an official relating to a period earlier to the crossing of the efficiency bar. Where a government servant was allowed to cross the efficiency bar by the competent authority the said decision on the part of the authority creates a bar for enquiring into the antecedent confidential reports prior to the said date.\(^{169}\)

**Appeal**

*No power to enhance punishment unless conferred:* In the absence of a specific provision of law or any rule conferring on an appellate authority power to convert an order of exoneration into one of punishment, an appellate authority may either dismiss the appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. But it cannot certainly impose on an appellant a higher penalty and condemn him to a position worse than the one he would be in, if he had not resorted to appeal.\(^{170}\)

*No power to reopen matters which are not subject matter of appeal:* In a case where a civil servant was reverted pending departmental enquiry but was prosecuted and acquitted and thereafter reinstated with the direction that the period of reversion should be treated as leave without pay, and the civil servant filed an appeal against the order denying him full pay during the period of reversion, the appellate authority on such an appeal has no competence to set aside the order of reinstatement itself. The competence of the appellate authority to pass an order is with respect to the subject matter of an appeal and not with respect to the subject matter in respect of which an appeal was not before the appellate authority.\(^{171}\)

*Power to withhold appeal:* When the rules prescribe that the appeals should be submitted through the disciplinary authority within the specified period of limitation and further authorise the authority to withhold the appeals filed after the period of limitation if no reasonable cause for the delay is shown, the authority may validly pass an order withholding time-barred appeals in the


absence of a reasonable cause shown for the delay. The existence of power in the appellate authority to condone the delay is no ground to set aside the order of disciplinary authority withholding the appeal passed in legitimate exercise of the power conferred on it.\textsuperscript{172}

**Appellate order**

*Form and content:* In an appeal presented against an order imposing a penalty on a civil servant, the rules require that the appellate authority should consider:

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

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

(iii) whether the penalty imposed is adequate, inadequate or severe.\textsuperscript{173}

It is only after examining all these aspects that the appellate authority is empowered to pass orders. The order must be a speaking order containing reasons if not in detail, at least briefly dealing with all the grounds which it is statutorily required to consider. A mere order by an appellate authority stating that all the grounds urged in the appeal are considered and that the appellate authority found no substance and therefore the appeal is rejected would be illegal and invalid.\textsuperscript{174}

*Jurisdiction of the appellate authority to record evidence:* The jurisdiction of the appellate authority to record evidence is not limited only to those cases where no evidence was recorded at the domestic enquiry and the principles of natural justice were violated. The appellate authority shall also have jurisdiction to record evidence, if necessary, in order to come to its own conclusion on the vital question whether the employee was guilty or not of the charges framed against him.\textsuperscript{175}

\textsuperscript{172} Jathanna v. Superintending Engineer, 1974(1) Kar LJ SN 37.


\textsuperscript{175} United Planters Association of Southern India v. K. G. Sangameswaram, (1997) 4 SCC 741.
Oral hearing not necessary: An appellate authority empowered to decide the appeals filed by government servants has to dispose of an appeal taking into consideration all the circumstances of the case in accordance with the rules regulating the exercise of appellate power. A rule conferring power on the appellate authority to decide the appeal does not entail by any implication an obligation to afford a personal hearing to persons filing the appeal.\textsuperscript{176} The appellate authority, when the rules required application of mind on several factors and serious contentions had been raised, was bound to assign reasons so as to enable the court to ascertain as to whether he had applied his mind to the relevant factors which the statute required him to do so.\textsuperscript{177}

Appeal should be decided by unbiased officer: An appeal by a government servant on whom punishment is imposed must be decided by an appellate authority which is unbiased. Bias in an appellate authority renders the order bad for violation of the principles of natural justice.\textsuperscript{178}

Appellate order cures certain procedural defects: If the appellate authority disposes of the appeal on consideration of all the points urged in the appeal and those required to be considered by the rules, such consideration cures the defects pointed out against the original order in the matter of appreciation of evidence. Thereafter, such defect in the order of the disciplinary authority is immaterial as thereafter it is the appellate order which alone subsists. No relief can be granted on such grounds, unless it is shown that the appellate order is defective.\textsuperscript{179}

Non-furnishing of enquiry report: If the grievance of the civil servant is that a copy of the enquiry report was furnished not before but after the disciplinary authority made the order, and the civil servant had urged all the grounds available to him against the report of the enquiring authority which were considered by the appellate authority, the order of the disciplinary authority cannot be set aside on the ground that initially the report was not furnished. In such a case, a civil servant could succeed only by pointing out infirmities in the appellate order. He may not raise the ground of non-furnishing of the enquiry report when he had full opportunity of contesting the enquiry report before the appellate authority.\textsuperscript{180} The non-supply of enquiry report to the delinquent officer by the enquiry officer violates the principle of natural justice.\textsuperscript{181}

\textsuperscript{176} Bhagatram v. Union of India, SLR 1969 Del 66.
\textsuperscript{177} Narinder Mohan Arya v. United Insurance Co. Ltd., AIR 2006 SC 1748.
\textsuperscript{178} Mohinder Singh v. State of Punjab, SLR 1968 P&H 470.
\textsuperscript{181} Subramoniam v. The Secretary to Government Department of Co-operatives and Agriculture, 1968 SLR 812 (AP).
Appeal cannot be dismissed for default: An appeal against an order of penalty has to be disposed of on merits. As oral hearing is not obligatory, there is no power to dismiss the appeal for default of appearance of the appellant on a specified date even if the appellant was called upon to appear in person.\(^{182}\)

Appeal – no power to deny arrears of salary: When according to the rules, the appellate authority passes an order setting aside the order imposing penalty of dismissal from service and directs his reinstatement and also directs the holding of \textit{de novo} enquiry, it is not competent for the appellate authority to direct reinstatement without arrears of salary.\(^ {183}\)

Deprivation of right of appeal

Rule 26 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provides that every person aggrieved against the order of the disciplinary authority may prefer an appeal and he shall do so separately and in his own name. Where a joint departmental enquiry is held against several officers belonging to different classes and grades and for that purpose the authority having power to impose punishment on the highest officer involved in the joint departmental enquiry acts as the disciplinary authority and as a consequence the officers holding lower cadres are denied the right of appeal, such deprivation of the right of appeal is not illegal. If compliance with a particular rule results in denial of the right of appeal, the mere fact that there is no right of appeal which was otherwise available to a government servant cannot be regarded as a ground for interfering with the order of punishment.\(^ {184}\)

Disposal of appeal by the minister is equivalent to the disposal of appeal by the President: Disposal of an appeal presented to the President by the concerned minister under the rules regulating disciplinary proceedings, is equivalent to the disposal of the appeal by the President as the President is only a constitutional head. The minister’s order is valid.\(^ {185}\)

In \textit{Ranjan},\(^ {186}\) the order imposing the penalty was made by a disciplinary authority other than the government. The appeal presented against that order to the President was disposed of by the minister himself and not by the President, on the advice of the council of ministers. The order was upheld applying the ratio of the decision of \textit{Samsher Singh}\(^ {187}\) to the effect that the


\(^{183}\) Deganatii C.B. v. KSRTC. SLR 1985(1) Kar 66; Ram Chandra Panigrahi v. Superintendent of Post Offices, SLR 1985(1) Ori 81.


\(^{186}\) Ranjan, ibid.

\(^{187}\) Samsher, supra note 185.
President/Governor are only constitutional heads and any order passed by a competent authority under the rules of business would tantamount to an order passed by the President or the Governor as the case may be.

This view raises certain practical difficulties in cases where the government itself passed the order imposing penalty on a civil servant as the disciplinary authority under the rules or having regard to the provisions of clause (1) of article 311 and an appeal is provided to the President/Governor. When the government is the disciplinary authority the final order imposing the penalty, naturally, is required to be passed by the concerned minister. The rules regulating conditions of service provide an appeal to the President/Governor, in cases where the disciplinary authority is the government. If the view that the appeal can be disposed of by the concerned minister himself without tendering the advice and sending the same to the President/Governor for passing the order were to apply to such a case, it would mean the appeal presented against an order passed by the government (i.e. the minister) could also be disposed of by the same minister. If this were to be the legal position, the appeal is purposeless. Either the appeal provision should be removed or a provision should be made to the effect that whenever an appeal is presented to the President or the Governor as the case may be, against an order made by the government, the order in appeal should be passed by the President or the Governor, as the case may be, on the advice of the entire council of ministers or a committee of ministers, by making such a provision under the rules of business.

A similar question also arises in respect of an order passed by the President or the Governor under clause (c) of article 311(2) read with article 310 of the Constitution. The pleasure is conferred on the President or the Governor under article 310. Clause (c) to the second proviso to article 311(2) empowers only the President or the Governor to dispense with the enquiry against a civil servant if it is considered inexpedient in the interest of the security of the state. The earlier view of the Supreme Court in Sardarilal was that the order under clause (c) should be passed by the President or the Governor, in the exercise of his discretion on personal satisfaction. This view was overruled in Samsher Singh and it was held, that what was required under clause (c) was not the personal satisfaction of the President or the Governor but the constitutional satisfaction, namely, the advice tendered by the council of ministers. Even so, the question arises whether an order dispensing with the enquiry in the interest of the security of the state can be passed by the concerned minister without the matter being referred to the President or the Governor, as the case may be, for passing formal orders or the President or Governor alone should pass the order but only on the advice of the council of ministers. The analogy of the power exercised under article 233 or 235 by the high court and

188 Sardarilal v. Union of India, AIR 1971 SC 1547.
the power exercised by the Governor as appointing authority/disciplinary
authority is also helpful to appreciate this legal issue. Though in the matter of
imposition of penalty on a member of a judicial service, the final word is that
of the high court, still a formal order has to be issued by the Governor. If the
high court itself were to proceed to issue the final order, it would be invalid.\footnote{189}

Therefore, it appears that in respect of other civil servants also wherever
the power is conferred on the President or the Governor under the Constitution
or the law, to pass an order on an appeal presented by them against an order of
the government made as the disciplinary authority or an order under clause (c)
to the second proviso of article 311(2), though the final word is that of the
minister or council of ministers, the formal order has to be passed by the
President or the Governor or whether even in such cases minister’s order
should be regarded as equivalent to that of the President/Governor, requires to
be considered and answered specifically in an appropriate case.

Similarly, when departmental enquiry could be held under one or the other
of the two sets of rules, the fact that under one there is right of appeal and is
not in another, is no ground to hold that the enquiry held under the rules under
which there is no right of appeal is illegal.\footnote{190}

Review

\textit{No review unless power is conferred}: In the absence of any specific rule
authorising the authority to review an order passed in disciplinary proceedings
it is not permissible for an authority to embark upon such a review.\footnote{191}

\textit{Review of proceedings must be initiated within the period of limitation}: Where the rules prescribe that a designated authority has the power to review
an order passed in disciplinary proceedings within a specified period, such a
power must be exercised by the authority within the time limit.\footnote{192} The mere
act of calling for records without anything more cannot certainly be equated
with the initiation of the proceedings for review. The review proceedings
commence only when the competent authority decides to review and directs
the issue of notice to the delinquent officer, calling upon him to show cause as
to why the punishment meted out to him should not be enhanced. It is no
doubt open for the authority concerned to take a reasonable time for completing
the process of review, and it is not necessary that it should be completed
within the period of limitation. But it is imperative that the proceedings for
review should commence before the expiry of the prescribed period of limitation
from the date of the order sought to be reviewed.\footnote{193}

\footnote{189} Ibid.
\footnote{190} State of Orissa \textit{v.} Bidhyabhushan Mahapatra, AIR 1963 SC 779.
\footnote{192} Gururajachar \textit{v.} State of Mysore, 1963(1) Mys LJ 262.
\footnote{193} Shoukat Khan \textit{v.} Director of Postal Services, SLR 1972 AP 875.
Enhancement of punishment: An opportunity must be given to a civil servant to represent his case before enhancing the penalty already imposed on him. Enhancement of punishment without a show cause notice and without considering the representations made thereto is illegal and invalid. If the punishment so imposed is the punishment of removal, dismissal or reduction in rank, then such a punishment is also violative of article 311(2) of the Constitution.\textsuperscript{194}

Enhancement does not amount to double punishment: (a) Enhancement of punishment already imposed on a civil servant by an appellate authority or an authority having the power of review or revision does not amount to imposition of double punishment. The real effect of imposition of an enhanced punishment by such authority is that it substitutes the original punishment imposed on the civil servant.\textsuperscript{195}

(b) In a case where punishment imposed by a disciplinary authority is stoppage of five increments and the reviewing authority after several years, enhanced the punishment to one of dismissal, the civil servant is entitled to the refund of the amounts already withheld from his pay.\textsuperscript{196} The basic fundamentals of review are that the application for review must come within the four corners of the order and it is permissible where there is patent mistake on the face of the judgment.\textsuperscript{197}

Power to enhance punishment must be conferred by rules: (a) The power of enhancement of punishment cannot be implied. Such a power must be specifically conferred by the rules. In the absence of such specific conferment of power it is not competent for an authority to enhance the punishment.\textsuperscript{198}

(b) Where under the rules regulating disciplinary proceedings, no major penalty could be inflicted against a civil servant in cases where enquiry is not held by a gazetted officer of the department and the enquiry was ordered to be held by a subordinate officer, the appellate authority cannot impose a major penalty on the basis of the findings recorded in the enquiry held by a subordinate officer. The appellate authority cannot impose a higher punishment than the one could be imposed in an enquiry held by a subordinate officer.\textsuperscript{199}

\textsuperscript{194} M. Venugopaly. Union of India, SLR 1971(1) AP 853.
\textsuperscript{196} Ibid.
\textsuperscript{197} Mahindra Chakraborty v. Union of India, 1986 (3) SLR 184.
Revisitional power

Order of acquittal cannot be reversed unless power is conferred: It is not competent for the revising authority to enhance the punishment unless power is specifically conferred for enhancing the punishment. Where the statutory provision conferring revisional power on the government only authorised revision it is not competent for the government to interfere with an order of acquittal passed in favour of a civil servant.

Revisitional power cannot be exercised retrospectively: When at the time a final order in a disciplinary proceeding was made and when the appellate orders were made, no power of revision existed and such a power was conferred subsequently, the power of revision cannot be exercised retrospectively as against the proceedings which had come to a close before the conferment of the revisional power.

Revisitional power cannot be conferred by rules when not authorised by the Act: A power of revision to enhance the penalty imposed on a government servant cannot be conferred on an authority, unless the Act under which the rule is framed authorised the conferment of such revisional power. In the absence of such a provision in the Act a rule creating the revisional power is invalid and an order passed thereunder is also invalid.

De novo enquiry

Where the final order passed in a departmental proceedings imposing punishment against a civil servant is set aside by the court on the ground that a mandatory procedure has not been complied with or the enquiry contravenes the principles of natural justice and the merits of the charges are not investigated there is no bar for the state to hold a de novo enquiry in respect of the same charges. When the earlier departmental proceeding was really dismissed on the basis of a technicality, it was open to the competent authority to initiate a de novo enquiry.

Charges exonerated cannot be revived in de novo enquiry: It is competent for the disciplinary authority to hold a de novo enquiry from the stage at

which illegality was committed after the order imposing punishment is set aside. But where out of several charges framed against the delinquent some of them are dropped and the punishment was imposed only on the basis of the remaining charges and the punishment was judicially set aside, no de novo enquiry can be held against all the charges including those which had been dropped earlier.\(^{206}\)

Similar is the effect where the order of punishment imposed on a civil servant concerns more than one charge and it absolves the officer of some of the charges. In the appeal before the departmental authority against the order imposing the punishment, it is not competent for the appellate authority to investigate the correctness or otherwise of the finding of the charges which were not established.\(^{207}\)

*Departmental enquiry – repetition:* Once a regular departmental enquiry has been held, the duty of the disciplinary authority is to pass the final orders either finding the delinquent officer guilty or acquitting him. If there is some defect in the enquiry conducted by the enquiry officer, the disciplinary authority can direct the enquiry officer to conduct further enquiries in respect of that matter. But it cannot direct a fresh enquiry to be conducted by some other officer. The disciplinary authority has always enough powers to reconsider the evidence and come to its own conclusion. But it is incompetent for the disciplinary authority to set aside the enquiry proceedings and to direct a fresh enquiry.\(^{208}\)

*Constitution of a second court martial is without jurisdiction:* When a court martial is constituted under the provisions of the Army Act and the trial is completed, and the findings recorded by such court martial, it is not open for the state to appoint a second court martial. If a second court martial is appointed, the trial conducted by the second court martial and the findings recorded by it is without jurisdiction.\(^{209}\)

*De novo enquiry after exoneration not permissible:* Though the rule of double jeopardy has no application to the disciplinary proceedings against a civil servant, unless there is a rule authorising the holding of a second enquiry, it is not competent for the disciplinary authority to hold a second enquiry after a civil servant has been exonerated in an enquiry and the case came to be closed. The absence of power under a rule to do so inhibits the holding of a second enquiry.\(^{210}\)


\(^{209}\) Major Manoharal v. Union of India, SLR 1971(1) P&H 717.

Disciplinary Proceedings

Enhancement of penalty — de novo enquiry not necessary: When an enquiry in accordance with the rules has already been held, there is no requirement to hold any fresh enquiry for enhancing the punishment. The rules which require the holding of an enquiry before enhancing the penalty would apply only to cases where a summary enquiry had been held for the purpose of imposition of a minor penalty and the reviewing authority concerned intends to impose a major penalty, which could be imposed only in an enquiry held for that purpose.211

Withdrawal of charge sheet and issue of fresh charge sheet: Withdrawal of a charge sheet already issued and framing of charges in identical terms does not amount to a second enquiry. It is valid.212

No complete enquiry — no bar for initiating enquiry: If certain steps had been taken for instituting disciplinary proceedings against a civil servant, there is no jurisdictional bar for taking further steps once again to hold a regular departmental enquiry. In such a case the enquiry itself would be a first enquiry as the earlier enquiry continued only up to a particular stage and did not conclude. 213

Abandonment

Abandonment of disciplinary proceedings — continuance of enquiry not competent: Where after the issue of a show cause notice to a government official and his furnishing the explanation, no further action is taken for a considerable period, the one and the only inference that can be drawn under the circumstances is that the disciplinary authority has abandoned the proceedings. It is not competent for the disciplinary authority to revive the same disciplinary proceedings subsequently and to impose punishment against a civil servant.214

Similarly, promotion after the issue of a show cause notice and the submission of the explanation by a civil servant constitutes a clear case of abandonment of the disciplinary proceedings. Once the disciplinary authority condones the delinquency of a civil servant and drops the proceedings, it may not revive and continue the enquiry and impose punishment.215

213 Sharma R.C. v. Union of India, SLR 1976(2) SC 265.
215 Lai Audhraj Singh v. State of Madhya Pradesh, SLR 1968 MP 88; Adithyaraman v. State of Madras AIR 1971 Mad 170; G.R.Gururajachar v. State of Mysore, 1972(1) Mys.LJ 142. It was held that when promotion was ordered by government during the pendency of enhancement proceedings before the governor, there was no "abandonment."
Departmental enquiry and criminal trial

**Holding departmental enquiry pending criminal trial permissible:** An enquiry by a domestic tribunal in good faith in exercise of the powers statutorily vested in it and the regulations framed thereunder into the charge of misconduct against an employee does not amount to contempt of court merely because an enquiry in respect of the same charges is pending before a civil or a criminal court. The initiation and continuation of disciplinary proceedings in good faith do not obstruct or interfere with the course of justice in the pending proceedings. An employee is free to move the court for an order restraining the continuation of the disciplinary proceedings. If he obtains a stay order, wilful violation of that order would of course amount to contempt. In the absence of a stay order the disciplinary authority is free to exercise its lawful powers.  

**Discharge—no bar for departmental enquiry:** Acquittal by a criminal court on a technical ground such as default of appearance of the complainant, is no bar for holding a departmental enquiry on the same charge and on the same evidence. Though such acquittal bars a second prosecution before the criminal court it does not bar a departmental enquiry. 

**Service rules barring departmental enquiry after acquittal mandatory:** A rule which provides that when an officer has been tried and acquitted by a criminal court, he may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment, has to be construed as mandatory and not directory. Therefore when a civil servant is prosecuted for a criminal offence and acquitted he must as a rule be reinstated. Further, no departmental enquiry can be held against him on the same charge. 

**Does acquittal bar a departmental enquiry on the same charge?** There is divergence of opinion on this question. A division bench of the Mysore High Court had held that normally if a person holding a civil post is found to have committed an offence punishable under the Penal Code he should in the first instance be prosecuted in a criminal court for that offence. The disciplinary authority also has the power to order a departmental enquiry into the charges although it is punishable by a criminal court. But if the department in which the petitioner was holding the civil post chooses to invoke the criminal court and the court acquits the civil servant, it would be extremely improper for any disciplinary authority to inquire again into that charge and hold him guilty on
the very evidence which was produced before the criminal court and which it
disbelieved.  

The institution of disciplinary proceedings against an officer
after his acquittal by a criminal court would not only amount to disregarding
the decision of the court but it would also shake the confidence of the public
in the judiciary. Therefore, the disciplinary authority cannot resort to hold a
departmental enquiry after acquittal of a civil servant by a competent criminal
court.

The above view was overruled by a full bench of the Mysore High Court
relying on the Supreme Court decision in Bhau Rao in which there is the
clearest indication that as criminal trial and disciplinary proceedings differ
both qualitatively (in the matter of their scope and consequence) a departmental
enquiry could precede or proceed simultaneously, or after conclusion even if
resulting in acquittal. The Bombay and Gujarat High Courts have taken a
similar view.

However, the preponderant view taken by various high courts is that no
disciplinary action may be pursued in respect of these charges when the civil
servant had been acquitted honourably by the criminal court.

The full bench of the Madhya Pradesh High Court has examined the matter
in depth and held that there was no jurisdictional bar for the government to
hold a departmental enquiry against a civil servant on charges identical with
those of which he was acquitted by a criminal court. Such a departmental
enquiry can be held:

1. if acquittal by criminal courts is on technical grounds;
2. if the criminal case itself indicates the retention of government servant
   as undesirable;
3. on a different charge although it may arise out of same facts;

219 Ekambaram v. General Manager, Mysore Government Road Transport Department,
State v. Mana Singh, 1966 Mys LJ SN 185; Sri Rama v. Superintendent of Police,
221 T.V Gowda v. State of Mysore, ILR 1975 Mys 895(FB); Balaiah v. Inquiring Authority,
1983(1) Kar LJ 541.
Administration, Delhi, SLR 1976(1)Del 133; Sabih Ram v. Delhi Administration, SLR
1984(2) Del 133; Diveskar R.J. v. Union of India, SLR 1985(1) MP 214; Naidu A.P. v.
General Manager, South Central Railway, SLR 1983 (1) AP 527; Rajendra Kumar
Paul v. Union of India, SLR 1976 (2) Cal 295; Govind Ram Sahgal v. State of Uttar
Pradesh, SLR 1981 (2) All 458.
(4) if departmental authorities can punish on same facts for some lesser charge which may not amount to criminal offence but may amount to grave dereliction of duties;

(5) if the acquittal is on the ground of giving the benefit of doubt.\textsuperscript{224}

The view taken by the full benches of Madhya Pradesh and Karnataka High Courts show that disciplinary proceedings can be validly initiated on charges of misconduct arising on the basis of the same set of facts on which the charges were framed in the criminal trial. For instance, an officer in the treasury might be prosecuted for a criminal offence like entering into a conspiracy with another individual for encashment of a forged bill. Even if the charge is disproved, disciplinary proceedings can be instituted for his negligence in permitting the encashment of a forged bill by not making proper scrutiny about alteration or interlineations made which on careful examination would have disclosed. As the scope of criminal trial and departmental enquiry are different and ingredients of the charges and final results are also different, the question whether departmental enquiry despite acquittal amounts to abuse of power or the finding recorded are perverse and based on no evidence is a mater to be considered on the facts and circumstances of each case, after the enquiry is held and punishment is imposed.

The question is now fully resolved by the Supreme Court in \textit{Modak}.\textsuperscript{225} Repelling the contention that the departmental enquiry cannot be continued after the employee was acquitted, the Supreme Court said thus:

This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its direction (discretion) in any way fettered.\textsuperscript{226}

Therefore, no writ of prohibition can lie preventing the competent authority from continuing or instituting disciplinary proceedings against a civil servant after acquittal in respect of the same allegations of which he was acquitted.

However, if the rules regulating the disciplinary proceedings themselves prohibit the holding of enquiry against a civil servant on a charge of which he

\textsuperscript{224} Harinarayan Dubey v. State of M.P., SLR 1976(1) MP 585(FB).
\textsuperscript{225} Corporation of Nagpur v. Ramachandra G. Modak, AIR 1984 SC 626; Jasodhara Misra v. State of Bihar, 1979(1) LLJ 262.
\textsuperscript{226} Modak at 629.
was acquitted, then there is jurisdictional bar to hold the enquiry in respect of
the same charge.227

Disciplinary proceedings after retirement

The Civil Services (Classification, Control and Appeal) Rules authorise
the imposition of a penalty only on a government servant. A government servant
as defined under the relevant rules is a person who is a member of the civil
services of the state or holds a civil post in connection with the affairs of the
state. A person who is retired from government service cannot be considered
as a government servant. Therefore, no disciplinary proceedings against a
retired government servant can be held under the rules.228 A mere pendency
of a departmental enquiry does not stop the retirement of a civil servant.
Enquiry continued beyond the age of superannuation is illegal.229 Therefore,
if a disciplinary action is sought to be taken against a government servant, this
must be done before the official retires. If the disciplinary action cannot be
taken before the date of 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.230 But continuance in service must be
authorised by the rules. The rules which provide that a government servant
who had reached the age of compulsory retirement can be continued beyond
the age of retirement, only if he is physically fit and his retention is considered
necessary on public grounds, do not authorise the disciplinary authority to
continue a government servant after the age of compulsory retirement for
purposes of holding disciplinary proceedings against him. If the retention of a
government servant beyond the age of superannuation for purposes of
disciplinary proceedings is not authorised by the rules, a departmental enquiry
cannot also be continued against a government servant after the date of
compulsory retirement.231 However, when the rules regulating conditions of
service specifically authorise the holding or continuing of departmental enquiry
after retirement, to find out whether the official concerned was guilty of
misconduct or negligence, for the limited purpose of withdrawing the pension
or part of the pension or for recovery of any loss caused by the government

1109.
230 See supra note 228.
servant concerned, a departmental enquiry can be held or continued after retirement in terms of and subject to the conditions specified in such rules.\textsuperscript{232}

*Order imposing penalty after retirement invalid:* When during the pendency of a departmental enquiry a civil servant retires the state may not impose any of the penalties which can be inflicted on a person in government service. Hence, the imposition of punishment of censure after retirement is invalid. However, the state may order recovery of loss caused by a government servant and can also order reduction of pension.\textsuperscript{233}

*Departmental enquiry after retirement:* When the rule authorised the competent authority to institute disciplinary proceedings against a civil servant after retirement in respect of an event which took place within a period of four years prior to the date of his retirement and within a period of four years after the date of retirement, no enquiry can be instituted either in respect of an event which took place prior to four years prior to retirement or even in respect of an event which took place after the expiry of four years after retirement. The enquiry must be deemed to have commenced on the date on which the charge-sheet is served on the concerned retired civil servant. If by the time the charge sheet is served, the period of four years expired, the institution of enquiry is without authority of law.\textsuperscript{234}

*Repeal of rule authorising continuance does not affect the departmental enquiry:* The repeal of a rule providing for the retention of a government servant beyond the age of superannuation for purposes of holding or continuing a departmental enquiry does not affect the continuance of the government servant in service and also the continuance of the departmental enquiry. An order passed in such a departmental enquiry against a civil servant is valid.\textsuperscript{235}

*Sanction if prescribed is mandatory:* If the rules require the governmental sanction for the institution of disciplinary proceeding against a retired civil servant, initiation of proceeding without such sanction is without jurisdiction.\textsuperscript{236}

**Avoiding of enquiry by temporary employee**

If the rules entitle a temporary government servant to bring about termination of his services by giving a month’s notice or one month’s salary in lieu of notice he is legally entitled to terminate his services even when he is under suspension pending disciplinary proceedings. Notice given by a temporary government servant terminating his service with immediate effect and asking


\textsuperscript{236} Dr. C. Kalyanam v. Government of Tamil Nadu, SLR 1983(1) Mad 25.
the government to deduct one month's salary out of the amounts due to him is a valid notice; it is not open for the government to continue the enquiry thereafter.\textsuperscript{237}

**Right to full salary**

When an order of removal passed against a civil servant is held void by the court, the civil servant is entitled to be reinstated automatically in the service of the state. After ordering reinstatement, it is not competent for the state to pass an order of reinstatement with the condition that he will be given salary only for a period of three years prior to the passing of the order of reinstatement.\textsuperscript{238}

**Court martial – powers**

(a) The court martial constituted under the Army Act has the power to impose the penalty of imprisonment against a member of the armed forces found guilty of the charges levelled against him as also the penalty of reduction in rank.\textsuperscript{239}

(b) A rule which provides that in the proceedings of a court of enquiry opportunities should be given to all the concerned arm, personnel, whenever in such enquiry character or military reputation of such personnel is likely to be affected, does not imply that enquiry by a court of enquiry is a condition precedent for nominating a court martial. Power to constitute a court of enquiry is only an enabling provision and not a precondition to the enquiry by a court martial.\textsuperscript{240}

**Review**

*Power to review:* When according to the rules, only the appellate authority is vested with the power to review an order made by a disciplinary authority, it is not open to any other authority including a higher authority not mentioned under the rules to review the order.\textsuperscript{241}

*Review of penalties:* When power to review an order made in disciplinary proceedings is conferred on more than one authority and one of the authorities exercises the power, no other authority can exercise the power of review.\textsuperscript{242}

When a specified reviewing authority empowered to enhance the penalty is required to give that opportunity only when the authority imposes a penalty

\textsuperscript{238} Babu Ram v. Union of India, SLR 1973(1) Pat 958.
\textsuperscript{239} Shanmugam R. v. Officer Commanding, SLR 1984(1) Mad 108.
\textsuperscript{240} Prithi Pal Singh v. Union of India, AIR 1982 SC 1413.
\textsuperscript{241} Nayak S H. v. Assistant Executive Engineer, 1984(1) SLR 121.
\textsuperscript{242} Ishar Dass v. Northern Railway, SLR 1979(3) P&H 173.
where no penalty had been prescribed or imposes a higher penalty. The requirement to give opportunity is not attracted if it decides to set aside the order and remands the case to the disciplinary authority for enquiry. When rules specify requirements of natural justice for types of order, no opportunity need be given in other types of orders.\textsuperscript{243}

\textit{Review when there is no period of limitation}: Where the law providing for review or revision to a designated authority against an order made by the disciplinary authority fixes no period of limitation, the rejection of the revision petition as time-barred is invalid. Such petition should be disposed of on merits.\textsuperscript{244}

\textsuperscript{243} Ganganarasaiah v. Managing Director, K.S.R.T.C., ILR 1985 Kar 2758.

\textsuperscript{244} S. Hanumantha v. State of Karnataka, ILR 1981 (1) Kar. SNRD 27.