APPOINTMENT AND ROLE OF INQUIRY OFFICER

INTRODUCTION

1. Rule 14(2) of the CCS(CCA) Rules, 1965 refers to the appointment of Inquiry Officer (IO). It provides that “Whenever the disciplinary authority (DA) is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour of a government servant, it may itself inquire into the truth thereof or appoint an authority to inquire into the truth thereof”. However, unless it is unavoidable, the disciplinary authority should refrain from being the Inquiry Officer and should instead appoint another officer for the purpose of conducting inquiry.

WHO SHOULD BE APPOINTED AS INQUIRY OFFICER

2. The principles of natural justice imply “fair hearing”, “unbiased judgement” and “clear speaking order”. It, therefore, follows that the person to be appointed as Inquiry Officer“:-

(i). should not be interested in the subject matter or the inquiry in any manner;
(ii). Should not be biased;
(iii). should not be a witness in the proceedings;
(iv). should not have expressed an opinion about the merits of the case;
(v). should be sufficiently senior to the charged officer to evoke confidence of all concerned.

APPLICATION AGAINST THE APPOINTMENT OF INQUIRY OFFICER

3. Whenever an application alleging bias against the Inquiry Officer is moved by the Charged Officer, the proceedings should be stayed and the application with relevant material should be forwarded to the Revisionary Authority for consideration and passing appropriate orders thereon. Such application should be moved as soon as the government servants become aware of the bias. Though no hard and fast rule can be laid down regarding the time when an application of bias against the Inquiry Officer should be moved yet it is advisable that such an application is moved at the earliest after the appointment of the Inquiry Officer. The reason being that the Government servant cannot be allowed to sit on the fance till the proceedings have progressed sufficiently or have been completed to move such an application if he finds that the decision is going on likely to go against him.
ROLE AND FUNCTIONS OF INQUIRY OFFICER

4. Though the Inquiry Officer is a creation of the disciplinary authority, he is not subject to the directions or influence of the later in regard to the conduct of inquiry, evaluation of evidence, or his findings. He is expected to function independently without any interference in the discharge of his functions.

5. To enable the Inquiry Officer to hold the inquiry, the Disciplinary Authority (DA) is required to furnish copies of the following documents to the Inquiry Officer (IO) along with his letter of appointment or immediately thereafter:-

(i). a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour along with the list of documents and list of witnesses required to prove the articles of charge,

(ii). copies of the statements of witnesses, if any, recorded during the preliminary inquiry/investigation by which the articles of charge are proposed to be sustained.

(iii). evidence proving the delivery of the relevant documents to the government servant charged.

(iv). a copy of the statement of defence, if any, submitted by the Government servant or a clear statement that the government servant has not relied within the specified time; and

(v). orders appointing the Presenting Officer (PO)

ACTION BY INQUIRY OFFICER

6. On receipt of the above documents, the IO will after studying the documents, send the notice to the Charged Officer within 10 days asking him to present himself for a preliminary hearing at the appointed time, place and date so fixed and to name a defence assistant. In case the defence assistant is a legal practitioner, to produce the Disciplinary Authority’s permission to engage him unless the PO is a legal practitioner in which case no such permission is necessary. The Government servant shall not take the assistance of any other government servant who has two pending cases in which he has to give assistance including the present one. The government servant may take the assistance of a retired govt. servant without application of any of the above conditions.

7. He will also intimate to the Presenting Officer (PO) the date, time and place of preliminary hearing.
8. On the day fixed for the preliminary hearing the IO will ask the charged officer.

(a). whether he has received the Charge Sheet
(b). whether has understood the charges
(c). whether he pleads guilty to any of the articles of charge, and if not,
(d). whether he has any defence to make.

9. If the charged officer pleads guilty unequivocally, to all or any of the charges, the IO will record the plea, sign the record and obtain the signatures of the Charged Officer thereon. In respect of these articles of charge, he has to return a finding of guilt. He can proceed with the Inquiry only in respect of those articles of charge which are not admitted by the GD in the preliminary hearing.

10. If the Charged Officer refuses to plead or omits to plead or pleads not guilty or accepts the charges conditionally or does not appeal on the fixed date without any valid reasons, the IO will record an order that the Charged Officer may for the purpose of preparing his defence.

(a). inspect listed documents within five days extendable by another five days;

(b). submit a list of witnesses to be examined on his behalf with their addresses indicating what issues they will help in clarifying; and

(c). submit a list of additional documents which he wishes to have access to; indicating the relevance of the documents in the presentation of his case within 10 days extendable by another ten days on the discretion of the IO

11. If PO/Charged Officer are present they will be supplied with copies of the above orders otherwise it will be sent to them through Registered Post AD to reach them in good time.

12. If IO does not consider the documents to be relevant he say, in writing, refuse to requisition them. However, he is required to give reasons for rejection.

13. If the Inquiry Officer considers the documents to be relevant he will arrange to have them requisitioned to be shown to the charged officer.

14. On the completion of the preliminaries, i.e. inspection of listed and additional documents by the Charged Officer, the Inquiry Officer will fix a date for regular hearing. In the notice sent for the purpose he will indicate the place, date and time for regular hearing. Summons will also be sent to prosecution as well as defence witnesses. Non compliance of summons by a government servant can be treated as 'conduct unbecoming of a government servant'.
15. On the date of regular hearing, PO will present listed documents one by one to the Inquiry Officer who will mark them as Ex.S1, Ex.S2, Ex.S3, etc., if these are not challenged by the CO can be marked only when it is produced through a witness, who certifies its genuineness.

16. Witnesses on behalf of the Disciplinary authority will then be examined by the PO, cross examined by CO and re-examined by the PO. Each witness will be given a number as SW.1, SW.2, SW3 etc, which means State Witness 1, State Witness 2, State Witness 3. A new sheet of paper will be used for recording evidence of each witness. IO may put such questions to a witness as he thinks fit to bring out the truth so that he has a fair and clear understanding of the case.

17. Before the close of the case on behalf of the Disciplinary Authority, PO may, with the permission of IO, produce new evidence. An adjournment of 3 clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned, should be given by the IO. New evidence will be permitted to fill up any gaps in the evidence. However, it can be permitted to fill up an inherent lacuna or defect in the evidence which has been produced originally. If the government servant demands a copy of the list of new evidence allowed to be presented, it shall be furnished to him. IO may himself call for new evidence or recall and re-examine any witness. Government servant may also be allowed to bring in new evidence if production of such evidence is necessary and in the interest of justice.

18. After the PO closes his case, the Inquiry Officer shall require the Charged Officer to state his defence, orally or in writing. If the defence is made orally, it shall be recorded by the IO who will give a copy of the PO after obtaining the signatures of the government servant thereon. If the statement of defence is in writing, CO will furnish a copy of the Presenting Officer.

19. IO shall inquire from the charged officer whether he would like to be his own witness. In case CO prefers to become his own witness he will be examined like any other defence witness. Evidence on behalf of the Charged Officer shall then be recorded.

20. Documents produced by the Charged Officer will be marked as Ex.D1, Ex.D2, Ex.D3, etc. Similarly, witnesses examined on behalf of the Charged Officer will be marked as DW1, DW2, DW3 etc. DW stands for Defence Witness.

21. On the conclusion of the case of the government servant, the IO may, and shall if the government servant has not examined himself as his own witness, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing against him.

22. The Inquiring Authority may permit the PO and the CO to argue their respective cases before him. PO will argue the case first and CO will, do so...
thereafter. IO may permit filing of written briefs, if so requested. PO will submit his written brief first to the IO with a copy of the CO. CO will, thereafter submit his written brief to the IO with no copy to the PO. This is because the last word must come from defence. Generally, a time of 3 to 7 days should be given for submission of written briefs.

**DAILY ORDER SHEET**

23. Immediately on receipt of his order of appointment, the Inquiry Officer should open a “Daily Order Sheet”. The procedure as laid down in the CCS(CCA) Rules, 1965 warrants the maintenance of an order sheet showing the various orders passed by the Inquiry Officer from time to time. In the absence of an order sheet it is difficult to know whether at the various stages, the Inquiry Officer has violated the procedure without prejudicing any of the rights of the Government Servant (A.K. Das Vs. Sr. Supdt. of Post Offices, AIR 1969 A&N 99). Daily order sheet thus contains a running record of all important events occurring during the course of the enquiry as well as the record of the business transacted on each day of hearing and the orders passed by the Inquiry Officer or oral or written representation of both the parties i.e. Presenting Officer and the Charged Officer. The entries in the daily order sheet should be signed by the Inquiry Officer to authenticate them. The entries relating to each date of hearing should also be signed by the Presenting Officer and the Charged Officer with date. Since the daily order is a record of important happenings during the course of the enquiry maintained by the Inquiry Officer, it has to be as per his direction. If the charged officer refuses to sign or records an objection on the order sheet at the time of signing, the Inquiry Officer should record the fact of refusal to sign by the charged officer and further give his comments on the objection and sign the record. He should not enter into an argument with the Charged Officer on this account. This is because the Supreme Court, in the case of Union of India Vs. TR Verma_AIR 1957 SC 882, has held that in the event of a dispute arising as to what happened before the Inquiry Tribunal, the statement of the Presiding Officer (i.e. the Inquiry Officer) in that regard is generally to be taken as correct. The daily order sheet should generally contain:-

(i). date-wise brief record of all important happenings in the course of Inquiry.

(ii). a brief statement of all oral or written representations by the charged officer or the Presenting Officer and orders passed thereon by the Inquiry Officer.

(iii). orders of the Inquiring Authority for holding of hearing, their adjournments etc.
**FINDINGS ON NEW CHARGE**

24. If in the opinion of the IO the proceedings establish an article of charge different from the original article of charge, he may not record his findings unless the government servant has either admitted the related facts or had a reasonable opportunity of defending himself against such articles of charge.

**EX-PARTY INQUIRY**

25. If the charged officer does not submit his written defence within the time specified or does not appear before IO or otherwise fails to refuses to comply with the provisions of the rules, the IO may hold the inquiry ex-parte recording reasons for doing so. Even in such a case, intimation about the next date of hearing is required to be sent by the IO to the CO on each occasion. A record of the proceedings of the day on which the CO was not present is made available to him.

**CHALLENGES OF INQUIRY OFFICER**

26. If an IO is changed in the middle of an inquiry the new IO can hear the case denove or from the stage which it had reached.

**STAY OF PROCEEDINGS**

27. Disciplinary proceedings should not normally be stayed except under orders of a court or under written orders of DA

**STANDARD OF PROOF**

28. The Supreme Court has held that standard of proof required in a disciplinary case is that of ‘preponderance of probability’ and not proof beyond reasonable doubt.

**EVALUATION OF EVIDENCE**

29. Oral inquiry is a quais-judicial proceedings. It is held to ascertain the truth or otherwise of the allegations. It forms the basis on which the disciplinary authority has to take a decision regarding the penalty, if any to be imposed. IO’s findings must, therefore, be based on evidence adduced during the inquiry. Proper evaluation of evidence is most important.

30. The inferences and conclusions should be based upon reason. IO should take particular care to see that no part of evidence, which the accused Government servant was not given opportunity to refute, explain or rebut, has been relied on against him. No material from personal knowledge of the IO which does not form part of evidence should be used while arriving at conclusions.

31. The IO is not the prosecutor. It is not his duty to somehow prove the charge. It is not for him to assume that the accused officer is guilty and to obtain admissions
from him. His objective is to sift the evidence with a view to arriving at the truth. If instead of putting questions with a view to elucidating resorts to searching cross-examination with a view to pinning down the accused officer to the acceptance of any statement event which is likely to be against his interest he ceases to be fair and unbiased judge which is primarily the role of an Inquiry Officer. Assumption of such a role defeats the very purpose of holding an impartial inquiry and thus vitiates the entire process. The Court have, time and again, held that when the Officer holding the inquiry takes a role different from that of a person who is to adjudicate the dispute impartially and without bias he becomes disqualified and the result of the inquiry cannot be termed as fair or unbiased.

32. The main functions of an inquiry officer are three fold:-

(a). to record both oral and documentary evidence
(b). to evaluate evidence
(c). to give his findings

He is in no case to comment on the quantum of penalty in cases where the charges are proved as that would amount to going beyond his charter and usurping the function of the Disciplinary Authority.

REPORT OF INQUIRY OFFICER

33. After the evidence has been taken and the arguments are over, the IO writes his port and submits it to DA along with the records of the inquiry. IO becomes officio functus after he has submitted the report.

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