GOVERNMENT OF MEGHALAYA

THE MEGHALAYA CIVIL SERVICES (DISCIPLINE & APPEAL) RULES, 2019 WITH DIGEST

Personnel and Administrative Reforms (B) Department

THE MEGHALAYA CIVIL SERVICES (DISCIPLINE & APPEAL) RULES, 2019
WITH DIGEST

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CHAPTER-I

NOTIFICATION

The 23rd January, 2020.

NO.PER(AR).21/2010/Pt. I/30. – In exercise of the powers conferred by the provisio to Article 309 of the Constitution of India, the Governor of Meghalaya is pleased to repeal the existing Meghalaya Civil Services (Disciplinary & Appeal) Rules 2011 namely :-

1. Short title and commencement - (1) These Rules may be called the Meghalaya Civil Services (Discipline and Appeal) Rules, 2019.

(2) They shall come into force from the date of notification in the official Gazette.

2. Interpretation - In these Rules, unless the context otherwise requires :

(a) "**Appellate Authority**" - means the authority to whom appeal lies;

(b) "**Appointing Authority**" - in relation to a Government servant means –

(i) the authority empowered to make appointments to the Service of which the Government servant is, for the time being, a member, or to the grade of the Service in which the Government servant is, for the time being, included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or

(iv) where the Government servant, having been a permanent member of any other Service, or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post, whichever authority is the highest authority;

(c) "**Cadre authority**", in relation to a Service, has the same meaning as in the Rules regulating that Service;

(d) "**Commission**" - means the Meghalaya Public Service Commission;

(e) "**Competent Authority**" means any authority notified by the Government from time to time, for different categories of employees and may include Appointing Authority and Disciplinary Authority.

(f) "**Department**" means any establishment or organization declared by the Governor by a notification in the official Gazette to be a Department of the Government of Meghalaya;

(g) "**Disciplinary Authority**" means the authority competent under these Rules to impose on a Government servant any of the penalties specified in Rule 7;

(h) "**Government Servant**" - means a person who is a member of a service or who holds a civil post in connection with the affairs of the State of Meghalaya and includes any person whose services are temporarily placed at the disposal of the Central Government or any State Government or a local or other authority and also any person in the service of a State Government or the Central Government or a local authority whose services are temporarily placed at the disposal of the Government of Meghalaya;

(i) "**Head of the Department**" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the Head of the Department under the Fundamental Rules and Supplementary Rules;

(j) "**Head of the Office**" for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the Head of the office under the relevant Financial Rules;

(k) "**Schedule**" - means the Schedule appended to these Rules; and

(l) "**Secretary**" means the Secretary to the Government of Meghalaya in any Department, and includes –

(i) **The Chief Secretary**

(ii) **The Additional Chief Secretary**

(iii) **The Principal Secretary**

(iv) **The Commissioner & Secretary**

3. Application –

(1) These Rules shall apply to all Government servants except : -

(a) persons in casual employment and **contractual appointment**.

(b) members of the All India Services.

(c) any person subject to discharge from service on less than one month's notice,

(d) any person for whom special provision is made, in respect of matters covered by these Rules, by or under any law for the time being in force, or by or under any agreement entered into by or with the previous approval of the Governor before or after the commencement of these Rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the Governor may, by order, exclude any class of Government servants from the operation of all or any of these Rules.

(3) Notwithstanding anything contained in sub-rule (1) these rules shall apply to every Government servant temporarily transferred to a service or post coming within exception (b) in sub-rule (1) to whom, but for such transfer, these rules would apply.

(4) Notwithstanding anything contained in sub-rule (1) the Governor may, by notification published in the Official Gazette exclude from the operation of all or any of these rules any Government servant or class of Government servant to whom the Governor shall declare that the rules cannot suitably be applied and these rules shall thereupon to the extent of such exclusion cease to apply accordingly:

Provided that no such declaration shall be made in respect of any Government servant who holds a pensionable post or holds a permanent whole-time post.

(5) If any doubt arises as to whether these Rules or any of them apply to any person, the matter shall be referred to the Governor, whose decision thereon shall be final.

4. Protection of rights and privileges conferred by any law or agreement - Nothing in these Rules shall operate to deprive any Government servant of any right or privilege to which he is entitled –

(a) by or under any law for the time being in force, or

(b) by the terms of any agreement subsisting between such person and the Governor at the commencement of these Rules

PART II : APPOINTING AUTHORITIES

5. Appointment to State Services - All appointment to State Services shall be made by the authorities specified in the Schedule :

Provided that the Governor may, by notification in the official Gazette, amend the Schedule from time to time.

PART III : SUSPENSION

6. **Suspension** - (1) The Competent Authority, or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf, may place a Government servant under suspension;

(a) Where a disciplinary proceeding against him is contemplated or is pending, or

(b) Where, in the opinion of the aforesaid authority, he has engaged himself in activities prejudicial to the interest of the security of the State : or

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of the Competent Authority –

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION – The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or with any other directions, the order or his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the

circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Competent Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5) (a) Subject to the provisions contained in sub-rule (7), any order of suspension made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until termination of all or any such proceedings.

(c) An order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made, or is deemed to have made, the order or by any authority to which that authority is subordinate.

(6) An order of suspension made, or deemed to have been made, under this Rule shall be reviewed by the authority which is competent to modify or revoke the suspension before expiry of ninety days from the effective date of suspension on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this Rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days ;

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension.

PART IV : DISCIPLINE

7. Nature of penalties :

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely –

Minor Penalties –

(i) Censure;

(ii) Withholding of increments or promotion;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iv) 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.

(v) Withholding of increments of pay;

Major Penalties –

(vi) Save as provided for in clause (iv), 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;

(vii) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period ;

(viii) Compulsory retirement;

(ix) Removal from service which shall not be a disqualification for future employment under the Government;

(x) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government :

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established **by a Court of Law**, the penalty mentioned in clause (ix) or clause (x) shall be imposed :

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION – The following shall not amount to a penalty within the meaning of this Rule, namely :-

(a) withholding of increments of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the Service to which he belongs, or post which he holds, or the terms of his appointment;

(b) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(c) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible;

(d) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;

(e) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation;

(f) replacement of the services of a Government servant, whose services had been borrowed from a State Government, or any authority under the control of a State Government, at the disposal of the State Government, or the authority from which the services of such Government servant had been borrowed;

(g) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;

(h) **termination of the services –**

(i) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or

(ii) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.

(iii) any compensation awarded on the recommendation of the Complaints Committee referred to in the proviso to sub-rule (2) of Rule 10 for inquiring into any complaint of sexual harassment within the meaning of Rule 3C of the Meghalaya Civil Services (Conduct) Rules, 2019.

8. Disciplinary Authority –

(1) The Governor may impose any one or more of the penalties specified in Rule 7 on any Government servant

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (3) anyone or more of the penalties specified in Rule 7 may be imposed on a Member of a State Service by the Appointing Authority or by any other authority empowered in this behalf by a general or special order of the Governor.

(3) Notwithstanding anything contained in this Rule no penalty specified in clauses (iv) to (vii) of Rule 7 shall be imposed by an authority lower than the Appointing Authority.

9. Authority to Institute Proceedings –

(1) The Governor, or any other authority empowered by him by general or special order may –

(a) institute disciplinary proceedings against any Government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose, under these Rules, any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these Rules to impose any of the penalties specified in clauses (i) to (v) of Rule 7 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (vi) to (x) of Rule 7 notwithstanding that such disciplinary authority is not competent under these Rules to impose any of the latter penalties.

PART V : PROCEDURE FOR IMPOSING PENALTIES

10. Procedure for imposing Major Penalties –

(1) No order imposing any of thc penalties specified in clauses (vi) to (x) of Rule 7 shall be made except after an inquiry is held, as far as may be, in the manner provided in this Rule and Rule 11.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this Rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3C of the Meghalaya Civil Services (Conduct) Rules, 2019, the Complaints Committee, established by the State for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these Rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these Rules.

EXPLANATION 1 - Where the Disciplinary Authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority.

EXPLANATION 2 - Where the Disciplinary Authority appoints a retired Government servant as Inquiring Authority, any reference in sub-rule (7) to sub-rule 20 and in sub-rule (22) of this rule shall include such authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this Rule and Rule 11, the Disciplinary Authority shall draw up, or cause to be drawn up : -

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The Disciplinary Authority shall deliver, or cause to be delivered, to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary so to do, appoint, under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 11 .

(b) If no written statement of defense is submitted by the Government servant, the Disciplinary Authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under sub-rule (2), an Inquiring Authority for the purpose.

(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an Inquiring Authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present, on its behalf, the case in support of the articles of charge.

EXPLANATION – For the purpose of this Rule, the expression 'Government servant' includes a person who has ceased to be in Government service.

(6) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority –

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of the defense, if any, submitted by the Government servant;

(iii) a copy of the statements of witnesses, if any, referred to in sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government servant shall appear in person before the Inquiring Authority on such day and at such time, within ten working days from the date of receipt by the Inquiring Authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the Inquiring Authority may, by notice in writing, specify, in this behalf, or within such further time, not exceeding ten days, as the Inquiring Authority may allow.

(8) (a) The Government servant may take the assistance of any other Government servant, including a retired Government servant, posted in any office, either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits;

Provided that the Government servant may take the assistance of any other Government servant posted at any other station, if the Inquiring Authority, having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits.

Note : The Government servant shall not take the assistance of any other Government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(9) If the Government servant, who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the Inquiring Authority, such authority shall ask him whether he is guilty or has any defence to make. If he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

10) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) If the Government servant fails to appear within the specified time, or refuses, or omits to plead, the Inquiring Authority shall require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence :

(i) inspect, within five days of the order, or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

NOTE – If the Government servant applies, **in writing**, for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the Inquiring Authority shall furnish him with such copies as early as possible and, in any case, not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

(iii) give a notice, within ten days of the order, or within such further time not exceeding ten days as the Inquiring Authority may allow, for the discovery or production of any documents which are in the possession of Government, but not mentioned in the list referred to in Sub-rule (3).

NOTE – The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The Inquiring Authority shall, on receipt of the notice for the discovery or production of documents, forward the same, or copies thereof, to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :

Provided that the Inquiring Authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the Inquiring Authority :

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the Inquiring Authority accordingly and the Inquiring Authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by, or on behalf, of the Presenting Officer and may be cross-examined by, or on behalf of, the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary, before the close of the case on behalf of the Disciplinary Authority, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant, or may itself call for new evidence, or recall and re-examine any witness, and in such case the Government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Inquiring Authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record. The Inquiring Authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

NOTE – New evidence shall not be permitted, or called for, or any witness shall not be recalled, to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the Disciplinary Authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the Disciplinary Authority.

(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective cases, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose, or does not appear in person before the Inquiring Authority, or otherwise fails, or refuses to comply with the provisions of this Rule, the Inquiring Authority may hold the inquiry ex parte.

(21) (a) Where a Disciplinary Authority competent to impose any of the penalties specified in clause (i) to (v) of Rule 7 (but not competent to impose any of the penalties specified in clauses (vi) to (x) of Rule 7), has itself inquired into or caused to be inquired into, the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any Inquiring Authority appointed by it, is of the opinion that the penalties specified in clauses (vi) to (x) of Rule 7 should be imposed on the Government servant, that authority shall forward the records of the inquiry to such Disciplinary Authority as is competent to impose the last mentioned penalties.

(b) The Disciplinary Authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine, cross-examine and re-examine the witness and may impose on the Government servant such penalty as it may deem fit in accordance with these Rules.

(22) Whenever any Inquiring Authority, after having heard and recorded the whole, or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself :

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain –

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor ;

EXPLANATION - If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge :

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include –

(a) the report prepared by it under clause (i).

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both, during the course of the inquiry; and

(e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

11. Action on Inquiry Report –

(1) The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 10, as far as may be.

(2) The Disciplinary Authority shall forward, or cause to be forwarded, a copy of the report of the inquiry, if any, held by the disciplinary authority or, where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of the inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(3) (a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward, or cause to be forwarded, to the Commission for its advice;

(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any article of charge; and

(ii) comments of the Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any, and all the case records of the inquiry proceedings.

(b) The Disciplinary Authority shall forward, or cause to be forwarded, a copy of the advice of the Commission received under clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, on the advice of the Commission.

(4) The Disciplinary Authority shall consider the representation under sub-rule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (5) and sub-rules (6).

(5) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 7 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 12, make an order imposing such penalty.

(6) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (vi) to (xi) of Rule 7 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.

12. Procedure for imposing Minor Penalties –

(1) Subject to the provisions of sub-rule (5) of Rule 11, no order imposing on a Government servant any of the penalties specified in clause (i) to (v) of Rule 7 shall be made except after –

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to sub-rule (23) of Rule 10, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward, or cause to be forwarded, a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation, or submission, on the advice of the Commission, to the Disciplinary Authority within fifteen days; and

(e) recording a finding on each imputation or misconduct or misbehaviour.

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if, in a case, it is proposed, after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to adversely affect the amount of pension payable to the Government servant, or to withhold increments of pay for a period exceeding three years, or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to sub-rules (23) of Rule 10, before making any order imposing on the Government servant any such penalty.

(3) The record of the proceedings in such cases shall include –

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) representation, if any, of the Government servant on the advice of the Commission;
- (vii) the findings on each imputation of misconduct or misbehaviour; and
- (viii) the orders on the case together with the reasons therefor.

13. Communication of orders –

Orders made by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of its finding on each article of charge, or, where the Disciplinary Authority is not the inquiring authority, a statement of the findings of the Disciplinary Authority, together with brief reasons for its disagreement, if any, with the findings of the inquiring authority and, where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

14. Common Proceedings –

(1) Where two or more Government servants are concerned in any case, the Governor, or any other authority competent to impose the penalty of dismissal from service on all such Government servants, may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

NOTE –If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (3) of Rule 8, any such order shall specify –

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceeding;

(ii) the penalties specified in Rule 7 which such Disciplinary Authority shall be competent to impose;

(iii) either the procedure laid down in Rule 10 and Rule 11 or Rule 12 shall be followed in the proceeding.

15. Special Procedure in certain cases –

Notwithstanding anything contained in Rule 10 to Rule 14;

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or

(iii) where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit :

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed, before any order is made in a case under clause (i) :

Provided, further, that the Commission shall be consulted, where such consultation is necessary and the Government servant has been given an opportunity of representing against the advice of the Commission, before any orders are made in any case under this Rule.

16. Provisions regarding lent Officers - (1) Where the services of a Government servant are lent to the Central Government, any State Government or to a local or other Authority (hereinafter in this Rule referred to as "the Borrowing Authority"), the Borrowing Authority shall have the powers of the Appointing Authority for the purpose of placing such Government servant under suspension and of the Disciplinary Authority for the purpose of conducting a disciplinary proceeding against him :

Provided that the Borrowing Authority shall forthwith inform the Authority which lent the services of the Government servant (hereinafter in this Rule referred to as "the Lending Authority") of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant –

(i) if the Borrowing Authority is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 7 should be imposed on him, it may, in consultation with the Lending Authority, pass such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the Borrowing Authority and the Lending Authority, the services of the Government servant shall be replaced at the disposal of the Lending Authority;

(ii) if the Borrowing Authority is of the opinion that any of the penalties specified in clauses (vi) to (x) of Rule 7 should be imposed on him, it shall replace his services at the disposal of the Lending Authority and transmit to it the proceedings of the inquiry and thereupon the Lending Authority may, if it is the Disciplinary Authority, pass such orders thereon as it deems necessary, or, if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass such orders on the case as it deems necessary :

Provided that in passing any such order the Disciplinary Authority shall comply with the provisions of sub-rule (3) & sub-rule (4) of Rule 11.

Explanation - The Disciplinary Authority may make an order under this Clause on the record of the inquiry transmitted to it by the Borrowing Authority, or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 10.

17. Provisions regarding borrowed Officers –

(1) where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant, whose services have been borrowed from the Central Government, any State Government or a local or other authority, the authority lending his services (hereinafter in this Rule referred to as "the Lending Authority"), shall forthwith be informed of the circumstances leading to the order of suspension of the Government servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant :

(i) if the Disciplinary Authority is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 7 should be imposed on him, it may, subject to the provisions of sub-rule (3) of Rule 11 and after consultation with the Lending Authority pass such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the Borrowing Authority and the Lending Authority the services of the Government servant shall be replaced at the disposal of the Lending Authority;

(ii) if the Disciplinary Authority is of the opinion that any of the penalties specified in Clauses (vi) to (x) of Rule 7 should be imposed on him, it shall replace his services at the disposal of the Lending Authority and transmit to it the proceedings of the inquiry for such action as it deems necessary

PART VI – APPEALS

18. Orders against which no appeal lies –

Notwithstanding anything contained in this Part, no appeal shall lie against –

(i) any order made by the Governor;

(ii) any order of an interlocutory nature, or of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of an inquiry under Rule 10.

19. Orders against which appeal lies –

Subject to the provisions of Rule 18, a Government servant may prefer an appeal against all or any of the following orders, namely : -

(i) an order of suspension made, or deemed to have been made, under Rule 6;

(ii) an order imposing any of the penalties specified in Rule 7, whether made by the disciplinary authority or by any appellate or revising authority;

(iii) an order enhancing any penalty, imposed under Rule 7;

(iv) an order which –

(a) denies, or varies to his disadvantage, his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or

(b) interprets to his disadvantage the provisions of any such rule or agreement;

(v) an order –

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;

(c) reducing, or withholding, the pension or denying the maximum pension admissible to him under the Rules;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension, or for the period during which he is deemed to be under suspension, or for any portion thereof;

(e) determining his pay and allowances –

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay, to the date of his reinstatement or restoration to his service, grade or post; or

(f) determining whether or not the period, from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post, shall be treated as a period spent on duty for any purpose.

EXPLANATION - In this Rule –

(i) the expression 'Government servant' includes a person who has ceased to be in Government service;

(ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefits.

20. Appellate Authority –

(1) A Government servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 19 to the authority specified in this behalf either in the Schedule or by a general or special order of the Governor or, where no such authority is specified,

(i) where such Government servant is, or was, a member of Group 'A' or Group 'B'.

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Governor where such order is made by any other authority;

(ii) where such Government servant is or was a member of Group 'C' or Group 'D' to the authority to which the authority making the order appealed against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1) –

(i) an appeal against an order in a common proceeding held under Rule 14 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate :

Provided that where such authority is subordinate to the Governor, in respect of a Government servant for whom the Governor is the appellate authority in terms of Sub-clause (b) of Clause (i) of sub-rule (1), the appeal shall lie to the Governor.

(ii) where the person, who made the order appealed against, becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.

(3) A Government servant may prefer an appeal against an order imposing any of the penalties specified in Rule 7 to the Governor, where no such appeal lies to him under sub-rule (1) or sub-rule (2), if such penalty is imposed by any authority other than the Governor, on such Government servant in respect of his activities connected with his work as an office-bearer of an association, federation or union.

21. Period of limitation for appeals - No appeal preferred under this part shall be entertained unless such appeal is submitted within a period of forty five days from the date on which the appellant receives a copy of the order appealed against :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

22. Form and contents of appeal –

(1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be addressed to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority, which made the order appealed against, shall, on receipt of a copy of the appeal, forward the same, with its comments thereon, together with the relevant records, to the appellate authority without any avoidable delay, and without waiting for any direction from the appellate authority.

23. Consideration of appeal –

(1) In the case of an appeal against an order of Suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 6, and having regard to the circumstances and gravity of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 7, the Appellate Authority shall consider –

(a) whether the procedure prescribed in these Rules been complied with, and, if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in the failure of justice;

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

(c) whether the penalty imposed is excessive, adequate or inadequate; and, after consultation with the Commission, if such consultation is necessary in the case, pass orders –

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority, with such direction as it may deem fit in the circumstances of the case:

Provided that –

(a) The Commission shall be consulted in all cases where such consultation is necessary and the Government servant has been given an opportunity of representing against the advice of the Commission;

(b) the Appellate Authority shall not impose any enhanced penalty which neither such authority, nor the authority which made the order appealed against, is competent in the case to impose;

(c) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (vi) to (x) of Rule 7 and an inquiry under Rule 10 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 15, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 10, and thereafter, on consideration of the proceedings of such inquiry, pass such orders as it may deem fit : -

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (vi) to (x) of Rule 7 and an enquiry under Rule 10 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 12, of making a representation against such enhanced penalty.

(3) In an appeal against any order specified in Rule 19, the Appellate Authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

(4) While considering an appeal it will not be necessary to hear the officer in person by the appellate authority.

24. Expeditious disposal of appeals - When an appeal under these Rules is preferred, it shall be disposed of as expeditiously as possible and, in any case, within a period of three months from the date of receipt of the appeal by the Appellate Authority.

25. Implementation of Orders in appeal - The authority which made the order appealed against shall forthwith give effect to the orders passed by the Appellate Authority.

PART VII - REVISION AND REVIEW

26. Revision :

(1) Notwithstanding anything contained in these Rules –

(i) the Governor; or

(ii) the appellate authority, within six months of the date of the order proposed to be revised, or

(iii) any other authority specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these Rules, or under the Rules repealed by Rule 30, from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may –

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit :

Provided that no order imposing, or enhancing, any penalty shall be made by any revising authority, unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed. Further, where it is proposed to impose any of the penalties specified in clauses (vi) to (x) of Rule 7, or to enhance the penalty, imposed by the order sought to be revised, to any of the penalties specified in those Clauses, and, if an inquiry under Rule 10 has not already been held in the case, no such penalty shall be imposed except after holding an inquiry in the manner laid down in Rule 10, subject to the provisions of Rule 15, and except after consultation with the Commission, where such consultation is necessary, and the Government servant has been given an opportunity of representing against the advice of the Commission.

(2) No proceeding for revision shall be commenced until after –

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules.

27. Review :

The Governor may, at any time, either on his own motion, or otherwise, review any order passed under these Rules, when any new material or evidence, which could not be produced, or was not available, at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice :

Provided that no order imposing, or enhancing, any penalty shall be made by the Governor, unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed. Further, where it is proposed to impose any of the major penalties specified in Rule 7, or to enhance the minor penalty, imposed by the order sought to be reviewed, to any of the major penalties and, if an enquiry under Rule 10 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 10, subject to the provisions of Rule 15, and except after consultation with the Commission, where such consultation is necessary, and the Government servant has been given an opportunity of representing against the advice of the Commission.

PART VIII – MISCELLANEOUS

28. Service of Orders, Notices, etc. :

Every order, notice and other process made or issued under these Rules shall be served in person on the Government servant concerned or communicated to him by registered post.

29. Power to relax time-limit and to condone delay :

Save as otherwise expressly provided in these Rules, the authority competent under these Rules to make any order may, for good and sufficient reasons, or if sufficient cause is shown, extend the time specified in these Rules for anything required to be done under these Rules or condone any delay.

30. Repeal and savings –

(1) The Meghalaya Services (Discipline and Appeal) Rules 2011 is hereby repealed :

Provided that –

(a) such repeal shall not affect the previous operation of the said Rules or anything done or any action taken there under;

(b) any proceedings under the said Rules or orders pending at the commencement of these Rules shall be continued and disposed off as far as may be, in accordance with the provisions of these Rules.

(2) Nothing in these Rules shall operate to deprive any person, to whom these Rules apply, of any right of appeal which had accrued to him under the Rules, or orders so repealed by sub-rule (1), in respect of any order passed before the commencement of these Rules.

(3) An appeal pending at or preferred after the commencement of these Rules against an order made before such commencement shall be considered and orders thereon shall be passed, in accordance with these Rules.

31. Removal of doubts –

If any doubt arises as to the interpretation of any of the provisions of these Rules, the matter shall be referred to the Governor, or such other authority as may be specified by the Governor, by general or special order, and the Governor, or such other authority, shall decide the same.

Sd/-
(Smti. R. Lyngdoh)
Commissioner & Secretary to the Govt. of Meghalaya,
Personnel & Admv. Reforms (B) Department.

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SCHEDULE

[See Rule 5 and sub rule (1) of Rule 20]

Sl. No.	Description of Services	Appointing Authority	Appellate Authority
1	2	3	4
1.	Meghalaya Civil Services	Governor	Governor
2.	Meghalaya Judicial Service (i) Grade I (ii) Grade II (iii) Grade III	-do-	-do-
3.	Meghalaya Legal Service	-do-	-do-
4.	All Gazetted Staff (excluding the Ministerial Gazetted Staff) of the Offices of the Governor's Secretariat	-do-	-do-
5.	All Gazetted Officers of the Office of Meghalaya Public Service Commission	-do-	-do-
6.	All Gazetted Officers under the Departments	-do-	-do-
7.	All Gazetted Officers of Meghalaya Secretariat Service	-do-	-do-
8.	Meghalaya Stenographers Service (i) Senior Grade (ii) Steno Grade I	-do-	-do-
9.	Meghalaya Subordinate Secretariat Services (Non Gazetted)	Chief Secretary	-do-
10.	Meghalaya Administrative Training Institute Instructors/faculty	-do-	-do-
11.	Stenographers Grade II/III in the Meghalaya Secretariat	-do-	-do-
12.	All Ministerial Gazetted staff of the Office of the Governor's Secretariat	Secretary to the Governor	-do-
13.	All Non-Gazetted staff of the Office to the Governor's Secretariat	-do-	-do-
14.	All Non-Gazetted staff of the Meghalaya Public Service Commission	Secretary, MPSC	Chairman, MPSC
15.	All Grade IV staff of the Meghalaya Civil Secretariat	Dy. Secretary/ Under Secretary, Sectt. Admn. Department	Chief Secretary
16.	All Grade IV staff in the Meghalaya Secretariat {PWD (R&B)}	Secretary, PWD	-do-

Sl. No.	Description of Services	Appointing Authority	Appellate Authority
1	2	3	4
17.	Stenographers Grade II & III in the Heads of Departments	Heads of Department	Secretary of the Department
18.	Stenographers Grade II & III in Deputy Commissioner's Office	Deputy Commissioner	Commissioner of Division
19.	All Gazetted Officers of Heads of Department	Governor	Governor
20.	All Non-Gazetted posts under the control of Heads of Department other than the posts in respect of which specific provisions have been made separately	Heads of Department	Secretary of the Department
21.	All Gazetted posts in the Office of the Deputy Commissioners & Sub-Divisional Officer (C)	Governor	Governor
22.	Head Assistant in the Office of the Deputy Commissioners & Sub-Divisional Officer (C)	Commissioner of Division	Commissioner of Division
23.	All Non-Gazetted posts in the Office of the Deputy Commissioners & Sub-Divisional Officer (C)	Deputy Commissioner concerned	Commissioner of Division
24.	All Gazetted posts of the Meghalaya House, New Delhi, Kolkata, Mumbai, Vellore, Guwahati	Governor	Governor
25.	All Non-Gazetted posts of the Meghalaya House	Deputy Secretary, General Admn. Department	Chief Secretary
26.	All Non-Gazetted posts of the Meghalaya Government Press	Heads of Department	Secretary of the Department

Sd/-
(Smti. R. Lyngdoh)
Commissioner & Secretary to the Govt. of Meghalaya,
Personnel & Admv. Reforms (B) Department.

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COPY

GOVERNMENT OF MEGHALAYA
PERSONNEL & ADMV. REFORMS (B) DEPARTMENT

******

NO: PER(AR). 6/2011/60, **Dated Shillong, the 1st February 2012.**

OFFICE MEMORANDUM

The undersigned is directed to refer to sub-rule (9.5) of Rule 9 of the Meghalaya Services (Discipline & Appeal) Rules, 2011 wherein it is stated that the Disciplinary Authority may nominate any person to present the case in support of the charges before the Authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the Presenting Officer nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits.

However, there are some doubts as to the interpretation of the word any other Government servant while engaging as Defence Assistant as the Rule itself does not specifically mentioned either "Serving" or "Retired" Government servant.

To remove doubts the matter has therefore been re-examined and decided that the words "any other Government servant" appeared in the above Rule implies both serving and retired Government servant.

The above clarification of the Rules should be strictly adhered to while engaging Government servant for appointment as Defence Assistant under the provision of the Disciplinary and Appeal Rules.

Sd/-
SMTI L. DIENGDOH,
Secretary,
Personnel & Admv. Reforms (B) Department

....

M. NO: PER(AR). 6/2011/60-A, **Dated Shillong, the 1st February 2012.**

Copy to –

1. All Administrative Department.
2. All Heads of Department.

By Order etc.,

Sd/-
(SMTI T. DKHAR)
Deputy Secretary to the Govt. of Meghalaya
Personnel & Admv. Reforms (B) Department

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COPY

GOVERNMENT OF MEGHALAYA

PERSONNEL & ADMV. REFORMS (B) DEPARTMENT

******

NO: PER(AR). 21/2010/Pt. I/2, **Dated Shillong, the 3rd February 2012.**

OFFICE MEMORANDUM

The undersigned is directed to refer to Sub-rule (9.12) of the Meghalaya Service (Discipline & Appeal) Rules, 2011. It is clarified that sub-rule (9.12) of the Meghalaya Service (Discipline & Appeal) Rules 2011 permits the Disciplinary Authority to impose the penalty of censure at the initial stage of the proceedings without going through the procedure of enquiry as laid down, if the penalty of censure is considered adequate. However, in such cases, the Government servant is to be informed in writing, of the proposed action to be taken against him and of the allegation on which it is proposed to be taken. This is to enable the delinquent employee an opportunity to make any representation against him. Such representation, if any, should be taken into consideration by the Disciplinary Authority under sub-rule (13) of Rule 9 of the Rules mentioned above. It is further clarified that issue of second show cause notice prior to imposing of penalties is not required, for those cases falling within the ambit of Rule 9(10) and 9(11) of the above mentioned Rules.

Sd/-

(SMTI L. DIENGDOH),
Secretary to the Govt. of Meghalaya,
Personnel & Admv. Reforms (B) Department.

....

M. NO: PER(AR). 21/2010/Pt. I/2-A, **Dated Shillong, the 3rd February 2012.**

Copy to –

1. All Administrative Departments.
2. All Heads of Department.

By Order etc.,

Sd/-

(Smti L. Diengdoh),
Secretary to the Govt. of Meghalaya,
Personnel & Admv. Reforms (B) Department.

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CHAPTER 2

Suspension – A Digest

1. Meaning and Purpose

1. Suspension" according to the Oxford Dictionary means:
   "the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time, from a function or privilege, temporary deprivation of one's office or position".
2. Suspension is an executive action whereby a Government servant is kept out of duty temporarily pending final action being taken against him for acts of indiscipline, delinquency, misdemeanour, etc. When allegations of serious nature are received against a Government servant and it is decided to initiate enquiries into such allegations, disciplinary proceedings must be considered to have been started against him and pending such an enquiry the officer concerned can be suspended as a first step even before any charges are framed against him.
3. Suspension pending departmental enquiry is a safeguard against the Government servant interfering with and hampering the preliminary investigation and tampering with material evidence — oral and documentary. In case of involvement in criminal proceedings, such charges usually involve moral turpitude. It would not be proper to allow the person concerned to work as a public servant, unless there are exceptional reasons for not resorting to suspension. Suspension is also ordered as a deterrent to exhibit the firm determination of the Government to root out corruption or other grave misconduct.
4. Incidentally, suspension provides the Government servant with enough time to prepare himself adequately for the enquiry and to clear himself of the charges levelled, against him.

2. Effect

1. An order of suspension of a Government servant does not put an end to his service under the Government. The law is settled on the point that suspension pending departmental enquiry against a Government servant is not a punishment and does not amount to 'reduced in rank' in the sense the term is used in Article 311 (2) of the Constitution.
2. Though suspension is, in itself, not a form of penalty, it definitely constitutes a great hardship for the affected Government servant, in that, apart from not being allowed to perform legitimate duties and earn his salary, he is paid reduced rates during the period and thus affects him injuriously.
3. Suspension may also cause a lasting damage to the Government servant's reputation and its stigma is not easily washed away, even if he is ultimately exonerated or awarded only a minor penalty and reinstated.
4. During the period of suspension, the relationship of master and servant does not cease and it is not correct to state that because of the order of suspension, the Government servant concerned ceases to be a member of the service. He continues to be the subject of the same discipline and penalties and the Conduct Rules continue to apply to him. He cannot supplement his subsistence allowance, which is only a portion of his emoluments, by engaging himself in any other employment, business, profession or vocation.
5. He continues to remain bound to follow the lawful directions of his superiors during the period of suspension just in the same manner as he was bound to do before suspension.
6. The suspended Government servant retains a lien on the permanent post held by him substantively at the time of suspension. He continues to be in the grade held by him immediately before suspension. He does not suffer a reduction in rank.

3. Legal position

1. Article 311 of the Constitution is not applicable to an order of suspension; nor any rule provides that opportunity need be afforded to a Government servant to explain the circumstances on the basis of which he is sought to be suspended.
2. The rule expressly provides for suspension of a Government servant for the purpose of disciplinary action. Nobody can seriously doubt the importance and necessity of proper disciplinary action being taken against Government servants for inefficiency, dishonesty and other suitable reasons. It has been held that though such action is certainly against the interest of the Government servant concerned, it is absolutely necessary in the interests of the general public for serving whose interests the Government machinery exists and functions.
3. Ordinarily, when serious imputations are made against the conduct of an officer, the disciplinary authority cannot immediately draw up the charges, as the allegations have to be gone into thoroughly. It has been held that if the disciplinary authority while taking note of serious allegations of misconduct, etc., against a Government servant, is of the opinion, after some preliminary enquiries, that the circumstances of the case justify further investigation to be made before definite charges can be framed and, in the meanwhile, it would not be proper to allow the officer concerned to function in the ordinary way, it would not be improper to remove the Government servant concerned from the sphere of his activity by resorting to immediate suspension.
4. It is, however, imperative that the utmost caution and circumspection is to be exercised in passing an order of suspension resulting in grave consequences to the Government servant concerned. It is also necessary to remember that the power of suspension is to be sparingly exercised and only for valid reasons and not for extraneous considerations.

4. When suspension resorted to

1. A Government servant may be placed under suspension under Rule 6 of the Meghalaya Civil Services (Discipline & Appeal) Rules, in the following circumstances: -
   (a) when a disciplinary proceeding against him is contemplated or is pending; or
   (b) when a case against him in respect of any criminal offence is under investigation, inquiry or trial; or
   (c) when, in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the State.
2. Suspension can be ordered when, following a preliminary enquiry, the competent authority is satisfied that a prima facie case has been made out for departmental proceedings. Framing of definite charges and communication thereof to the officer concerned is not a condition precedent.
3. A Government servant against whom proceedings have been initiated on a criminal charge, but who is not actually detained in custody (e.g., a person released on bail) may also be placed under suspension under Clause (c) of Rule 6 (1). If the charge is connected with the official position of the Government servant or involves any moral turpitude on his part, suspension is to be ordered under this Rule unless there are exceptional reasons for not adopting this course.
4. Even in cases where any criminal offence is under investigation by the Police or under inquiry, the Government servant concerned may be placed under suspension. The Government servant, however, stands charged with any offence only when after completing such investigations, the Police files a charge-sheet against him before a Criminal Court and the Criminal Court takes cognizance of that offence.
5. A Government servant may also be suspended in cases in which the appellate or reviewing authority, while setting aside the order imposing the penalty or dismissal, removal or compulsory retirement, directs that a *de novo* enquiry should be held or that steps from a particular stage in the proceedings should be taken again and considers that he should be placed under suspension even if he was not suspended previously. This may be done even if the appellate or reviewing authority had not given any direction that the Government servant should be suspended.

5. When suspension should not be resorted to

1. Item 6 below broadly indicates the circumstances under which suspension can be resorted to. An order of suspension should not be made in a perfunctory or in a routine and casual manner without proper regard to the guiding principles and where no public interest is likely to be served. It is needless to emphasize that the power in this regard is exercised sparingly with care and caution and only when it is absolutely essential. Suspension should not be resorted to for petty offences unrelated to morality or the official duties of the Government servant.

2. Whenever a Government servant continues to remain absent from duty or overstays on leave without permission and his movements are not known, he should not be placed under suspension, as this would entail payment of subsistence allowance, as against treating the period of absence as *dies non*. But when an official who is under suspension disappears and cannot be contacted at his last known address, the suspension order should be lifted and proceedings initiated for his removal *in absentia*.

6. Guiding principles

1. While public interest is to be the guiding factor in deciding to place a Government servant under suspension, the competent authority should take all factors into account and exercise his discretion with due care while taking such action even when the matter is under investigation and before a prima facie case is established. The following circumstances may be considered appropriate to place a Government servant under suspension: -

   (i) where his continuance in office will prejudice investigation, trial or any enquiry (e.g., apprehended tampering with witnesses or documents);

   (ii) where his continuance in office is likely to seriously subvert discipline in the office in which he is working;

   (iii) where his continuance in office will be against the wider public interest, e.g., if there is a public scandal and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal with officers involved in .such scandals, particularly corruption;

   (iv) where a preliminary enquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service; and

   (v) where he is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

2. Certain types of misdemeanour where suspension may be desirable in the circumstances mentioned above are indicated below:

   (i) an offence or conduct involving moral turpitude;

   (ii) corruption, embezzlement or misappropriation of Government money, possession of disproportionate assets, misuse of official powers for personal gain;

   (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;

   (iv) desertion of duty; and

   (v) refusal or deliberate failure to carry out written orders of superior officers.

In case of types (iii), (iv) and (v), discretion should be exercised with care. As suspension may cause lasting damage to the Government servant's reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct, the discretion vested in the competent authority in this regard should be exercised with care and caution after taking all factors into account.

3. While placing an official under suspension the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigations, if any, in progress. If the official would like to have leave that might be due to him and if the competent authority thinks that such a step would

not be inappropriate, there should be no objection to leave being granted instead of suspending him.

7. Deemed suspension

(a) While in service.—

1. Under Rule 6 (2) Meghalaya Civil Services (Discipline & Appeal) Rules a Government servant shall be deemed to have been placed under suspension by an order of appointing authority in the following circumstances:—

   (a) If he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours.

   Cases of detention in custody under any law providing for preventive detention or as a result of proceedings for arrest for debt will also fall in this category.

   (b) If in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours.

2. If a Government servant who has been detained for a period exceeding forty-eight hours is later on released on bail, such release will not affect the deemed suspension which will continue to be in force until revoked by the competent authority.

3. The period of forty-eight hours referred to in Para. 1 category (b) above will be computed from the commencement of imprisonment after the conviction and intermittent periods of imprisonment, if any, will be taken into account as provided in Explanation under Rule 7 (2).

4. A duty has been cast on the Government servant who is arrested for any reason to intimate promptly the fact of his arrest and the circumstances connected therewith to his official superior even though he might have been released on bail subsequently. Failure to do so will be regarded as suppression of material information rendering him liable to disciplinary action on this ground alone, apart from the action that may be called for on the outcome of the Police case against him.

5. Cases of suspension during pendency of criminal proceedings, or proceeding for arrest for debt, or during detention under a law providing for preventive detention, will be dealt with in the following manner: -

(a)	A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on criminal charge or for his arrest for debt—if the period of detention exceeds forty-eight hours.	To be deemed to be under suspension under Rule 6 (2)
(b)	A Government servant who is undergoing a sentence of imprisonment—pending decision on the disciplinary action to be taken against him.	To be deemed to be under suspension under Rule 6 (2)
(c)	A Government servant against whom a proceeding has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) — if the charge is connected with the official position of the Government servant or involved moral turpitude on his part.	To be placed under suspension under Clause *(c)* of Rule 6 (1), unless there are exceptional reasons for not adopting this course.
(d)	A Government servant against whom a proceeding has been taken for arrest for debt but who is not actually detained in custody.	To be placed under suspension under Clause *(a)* of Rule 6 (1), only if a disciplinary proceeding against him is contemplated.

(b) While not in service.—

6. Under Rule 6 (3) where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on revision and the case is remitted by the appellate or revising authority for further enquiry or action or with any other direction, the order of suspension will be deemed to have been continued in force on and from the date of original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

7. Similarly, where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law, recourse can be had to Rule 6 (4). It has been clarified that the further enquiry contemplated in this Rule should not be ordered except in a case where the penalty of dismissal, removal or compulsory retirement has been set aside by a Court of Law on technical grounds without going into the merits of the case or when fresh material has come to light which was not before the Court. A further enquiry into the charges which have not been examined by the Court can, however, be ordered by the departmental authorities under this Rule, depending on the facts and circumstances of each case.

8. It may be noted that according to the wording of Sub-rules (3) and (4) of Rule 6, while in the case falling under the earlier Sub-rule, the Government servant should have been under suspension before dismissal, etc., no such condition has been prescribed for a case falling under the latter Sub-rule.

9. Under the said Rule, in such a case the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and continue to remain under suspension until further orders.

10. Though in all the above types of cases, suspension is deemed to have continued automatically, issue of formal order of suspension is necessary, indicating the specific Rule under which the order is issued, after satisfying that the conditions stipulated therein are fulfilled.

11. The Supreme Court has held that the order in terms of Rule 6 (2) is not restricted in its point of duration or efficacy to the actual period of detention only. It continues to be operative unless modified or revoked under Sub-rule (5) (c) as provided in Sub-rule 5 (a) of Rule 6.

8. Continued suspension

Under Rule 6 (5) (b) where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the competent authority may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

9. Orders of suspension

1. A Government servant can be placed under suspension only by a specific order made in writing by the competent authority. He should not be placed under suspension by an oral order. The standard form of order of suspension to be issued under Rule 6 (1) of the Meghalaya Civil Services (Discipline & Appeal) Rules.

2. Before passing an order of suspension, the authority proposing to make the order should verify whether it is competent to do so. Otherwise, the suspension order is liable to be declared illegal and in that event, the Government servant may have a claim to the grant of full pay and allowances for the period of suspension.

3. In case of deemed suspension under Rule 6 (2), (3) or (4), suspension takes effect automatically even without a formal order. Though the validity of the suspension is not affected by the non-issue

of a specific order of suspension, but all the same it is desirable for purposes of administrative record to make a formal order.

4. It is not the intention that each word of the forms should be strictly adhered to in all circumstances. It has been clarified that if the forms are not found to fully meet with the requirements of any case, then the competent authority should amplify/modify the same suitably to meet the requirements of the case.

10. Date of effect of suspension

1. Except in cases in which an employee is deemed to have been placed under suspension, an order of suspension can normally take effect only from the date on which it is made or subsequently and not retrospectively. The Government servant who is placed under suspension should be simultaneously communicated of the order. A retrospective order will be both meaningless and improper.

2. It has been held that once an order is issued and is sent out to the concerned Government servant, it must normally be held to have been communicated to him. Where, however, a Government servant has performed his prescribed hours of duty on any particular day, suspension can be effective from the subsequent day. Similar is the case in which a Government servant is stationed at a place other than where the order is passed, or is on tour, or is holding charge of stores/cash, etc. In such cases, the suspension has to be effected from a suitable date taking the circumstances of each case into consideration.

3. In the case of deemed suspension, the suspension order can be effective from—

   (i) the date of detention, in the case of detention for a period exceeding forty-eight hours;

   (ii) the date of conviction, in the event of conviction for an offence and sentence to a term of imprisonment exceeding forty-eight hours; and

   (iii) the date of original order of dismissal/removal/compulsory retirement, in the case of such penalty having been set aside by appellate/revising authority/decision of a Court of Law.

4. In the case where the Government servant is already on leave or absent without prior permission and hence not performing any official duties, the order of suspension, if any, should normally be given effect to only from the date the said Government servant returns from leave or desires to resume duty, as otherwise the Government servant becomes automatically entitled to payment of subsistence allowance for the period of non-duty. The competent authority should take the circumstances of each case into consideration and may direct that the order of suspension will take effect from the date of its communication to the Government servant.

11. Duration/End of suspension

1. Under Rule 6 (5) (a) an order of suspension made or deemed to have been made shall continue to remain in force until it is revoked by the competent authority. An order of suspension ceases to exist automatically from the date from which the Government servant is dismissed, removed or compulsorily retired, as a result of departmental and/or Court proceedings or when the criminal proceedings against him terminate by acquittal/discharge. Though in the latter types of cases, suspension automatically comes to an end, an express order will be necessary from the competent authority to allow the employee concerned to resume his duties.

2. Suspension should not be continued beyond the minimum period for which it is essentially required. Prolonging the continuance of suspension when enquiry is unduly delayed would smack of mala fide.

12. Follow-up action

1. As suspension constitutes a great hardship, in fairness to the Government servant, its period should be reduced to the barest minimum. If suspension is unduly prolonged, it also entails infructuous

expenditure to Government by way of payment of subsistence allowance, often at the enhanced rate, without in any way utilizing his services.

2. The rules of natural justice require that when a Government servant is placed under suspension, charges against him should be framed within a reasonable period of time and a final decision taken expeditiously and terminate suspension.

   To have such cases disposed of quickly, it has been laid down that —

   (i) in cases involving criminal proceedings against the Government servant, every effort should be made to complete the investigations and file the charge-sheet in a Court of Law within three months of the date of suspension, and

   (ii) in cases other than those pending in Courts, the total period of suspension, viz., both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to these time-limits, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay.

3. The Government have issued instructions from time to time impressing on all the concerned authorities that they should scrupulously observe the time-limits laid down above and review the cases of suspension to see whether continued suspension in all cases is really necessary. The authorities superior to the disciplinary authorities are to exercise a strict check on cases in which delay has occurred and give appropriate directions to the disciplinary authorities. Serious notice of the lapses of such authorities in this regard would be taken, as also considering making adverse entries in their annual confidential reports.

4. In Court cases, it is incumbent on the disciplinary authority to make arrangements for getting the result very promptly and take action thereafter without delay or revoke the suspension if it is not decided to continue the same with a view to taking further departmental action.

13. Review of suspension

Rule 6 has been amended providing that an order of suspension shall be reviewed by the competent authority on the recommendations of the Review Committee constituted for this purpose. Further, an order of suspension shall not be valid after 90 days unless it is extended after review before the expiry of 90 days.

The composition of Review Committee(s) may be as follows: -

(i) The disciplinary authority, the appellate authority and another officer of the level of disciplinary/appellate authority from the same office or from another State Government office (in case another officer of same level is not available in the same office), in a case where the Governor is not the disciplinary authority or the appellate authority.

(ii) The disciplinary authority and two officers who are equivalent or higher in rank than the disciplinary authority from the same office or from another State Government office (in case another officer of same level is not available in the same office), in a case where the appellate authority is the Governor.

(iii) Three officers who are higher in rank than the suspended official from the same Department/Office or from another State Government Department/Office (in case another officer of same level is not available in the same office), in a case where the disciplinary authority is the Governor.

The administrative Department concerned may constitute the Review Committees as indicated above on a permanent basis or ad hoc basis.

The Review Committee(s) may take a view regarding revocation/ continuation of the suspension keeping in view the facts and circumstances of the case and also taking into account that unduly long suspension, while putting the employee concerned to undue hardship, involve payment of subsistence allowance without the employee performing any useful service to the Government. Without prejudice

to the foregoing, if the officer has been under suspension for one year without any charges being filed in a court of law, or no charge-memo has been issued in a departmental enquiry, he shall ordinarily be reinstated in service without prejudice to the case against him. However, in case the officer is in Police/judicial custody, or is accused of a serious crime, or a matter involving national security, the Review Committee may recommend the continuation of the suspension of the official concerned.

Review not necessary in case of continuous detention.— No review of suspension shall be necessary in the case of deemed suspension under Sub-rule (2), if the Government servant continues to be under detention at the time of completion of ninety days' of suspension and the ninety days' period for review in such cases will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his Appointing Authority, whichever is later.

14. Revoking of suspension

1. Under Rule 6 (5) (c), an order of suspension made or deemed to have been made may, at any time, be revoked by the competent authority. This is done in the following circumstances:—

   (a) Departmental Proceedings: -

   (i) If it is decided that no formal proceedings need be drawn up with a view to impose a penalty of dismissal, removal or compulsory retirement, or reduction in rank.

   (ii) Where the final order passed is other than dismissal, removal or compulsory retirement.

   (iii) Where the Government servant is exonerated of the charges against him

   (iv) In appeal, or revision, the order is modified into one other than dismissal, removal or compulsory retirement and no further enquiry is ordered to be held.

   (b) Criminal Offence.—

   (i) In arrest and detention cases, it is decided not to proceed further against the Government servant by filing a charge-sheet in the Court.

   (ii) If appeal / revision against acquittal in higher Court fails.

   (iii) If acquitted in trial Court or if an appeal / revision in higher Court against the conviction succeeds and he is ultimately acquitted and when it is not proposed to continue him under suspension, even though departmental proceedings may be initiated against him.

2. An order of revocation of suspension will take effect from the date of issue. However, where it is not practicable to reinstate with immediate effect, the order of revocation should be expressed as taking effect from a date to be specified.

3. An order of revocation should be made in the form prescribed.

15. Competent authority

1. Under Rule 6 (1), only the following are the authorities competent to place a Government servant under suspension: -

   (a) The "Appointing Authority" as defined in Rule 2 *(a)*;

   (b) Any authority to which the Appointing Authority is subordinate;

   (c) The "Disciplinary Authority" as defined in Rule 2 *(g)*; and

   (d) Any other authority empowered in that behalf by the Governor by general or special order.

2. It is imperative that before passing an order of suspension, the authority proposing to make the order should satisfy himself that he is competent to pass such an order. An order made without jurisdiction *ab initio* is void, giving cause of action for—

   (a) setting aside of the order of suspension; and

(b) claiming full pay and allowances for the period the Government servant remained away from duty due to the order of suspension.

3. In the case of a Government servant whose services are lent by one Department to another or borrowed from or lent to a State Government or an authority subordinate thereto or to a local or other authority, the borrowing authority exercising the powers of the appointing authority, can place him under suspension under Rule 16 (1), simultaneously informing the lending authority of the circumstances leading to the order as provided under Proviso to Rule 16 (1).

4. Under Rule 6 (5) *(c)*, the authority which made or is deemed to have made the order of suspension or any authority to which it is subordinate, can revoke the order.

16. Headquarters during suspension

1. An officer under suspension is regarded as subject to all other conditions of service applicable to Government servants and cannot, therefore, leave his headquarters without prior permission. The station of posting immediately before his suspension will be the headquarters of the suspended officer. The form of order of suspension provides for prescribing the headquarters of a Government servant during suspension.

2. The competent authority can change the headquarters of a Government servant under suspension if it is in public interest.

3. When an individual under suspension requests for a change of head-quarters, there is no objection to the competent authority changing it, if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance, etc., or other complications like creating difficulty in investigation or in processing the disciplinary proceedings.

4. The fixing of headquarters during suspension of a Government servant enlarged on bail will be subject to any restriction the Court may impose on his movement while granting the bail.

17. Appeal against suspension

1. Though suspension in itself is not a punishment, as it constitutes a great hardship for a Government servant, relief is available to him by way of appeal. Rule 19 (i) provides for a Government servant preferring an appeal against an order of suspension made or deemed to have been made under Rule 6.

2. It is implied that a Government servant placed under suspension should generally know the reasons leading to his suspension so that he may be able to appeal against it, if he so desires. Normally, the order placing him under suspension would itself contain a mention about disciplinary proceedings against him pending, or a case against him in respect of criminal offence under investigation, inquiry or trial. Where, however, suspension is on the ground of "contemplated" disciplinary proceedings, the reasons for suspension should be communicated to the Government servant immediately on the expiry of the time-limit prescribed for the issue of a charge-sheet, viz., three months from the date of suspension, so that he may be in a position to effectively exercise the right of appeal available to him. The time-limit of forty-five days for submission of appeal in such cases will count from the date on which the reasons for suspension are communicated.

3. Under Rule 23 (1), the appellate authority should consider whether in the light of the provisions of Rule 6 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly. Such revoking is also covered under Rule 6(5)*(c)*.

18. Resignation during suspension

1. If a Government servant under suspension submits a resignation, the competent authority should examine, with reference to the merits of the disciplinary case pending against him, whether it would be in the public interest to accept the same. Normally suspension is resorted to only in cases of grave delinquency and it would not be correct to accept the resignation. However, where the

alleged offences do not involve moral turpitude, or where the quantum of evidence against him is not strong enough to justify the assumption that if departmental proceedings were continued he would be dismissed or removed from service, or where the departmental proceedings are likely to be so protracted that it would be cheaper to the public exchequer to accept the resignation, the resignation may be accepted.

2. In these cases, the resignation may be accepted with the prior approval of the Head of the Department in respect of holders of Group 'C' and Group 'D' posts and that of the Minister in charge in respect of holders of Group 'A' and Group 'B' posts.
3. The resignation tendered by an official under suspension should not be accepted until all his accounts are adjusted.
4. A resignation becomes effective not merely when it is accepted by the authority concerned, but only when the officer is actually relieved of his duties. If an officer submits application for the withdrawal of the resignation before it has become effective, it is open to the authority which accepted it to permit the withdrawal or refuse the request. Where the resignation has become effective, the appointing authority may permit the withdrawal of the resignation, if the period from the date the resignation became effective and the date of resumption of duty does not exceed ninety days, otherwise sanction of the Government is necessary.

19. Grant of leave during suspension

Subsidiary Rule 44 prohibits the grant of leave to a Government servant under suspension.

20. Retirement while under suspension

1. Under Clause (b) of Fundamental Rule 57, it is open to a Government servant to retire from service on his own accord on attaining the age of fifty years or has completed 25 years of service, whichever is earlier, by giving to the appropriate authority a notice of not less than three months in writing. Under Rule 30 (2) of Meghalaya Civil Service (Pension) Rules, 1983, a Government servant who has completed ten years of qualifying service, may at any time retire from service voluntarily by giving a notice in writing to the appointing authority at least three months before the date on which he wishes to retire. In the case of a Government servant under suspension, the right to retire voluntarily under the provisions of these Rules is always subject to the prior approval of the appropriate authority, viz., the authority which has the power to make substantive appointments to the post or service from which the Government servant wants to retire. The right conferred on the appropriate authority can be exercised even if a Government servant is placed under suspension after giving the notice for retirement.
2. If a Government servant under suspension attains the age of superannuation before the termination of Departmental or Court proceedings, he should be provisionally pensioned off. He will cease to draw subsistence allowance, but will be paid only provisional pension. The provisional pension payable will not exceed the maximum pension which would have been admissible on the basis of his qualifying service up to the date immediately preceding the date on which he was placed under suspension. No gratuity will, however, be paid to him until the conclusion of the proceedings and the issue of final orders thereon.

21. Counting of periods of suspension

Time passed by a Government servant under suspension, pending inquiry into his conduct, will count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified. In other cases, the competent authority should, at the appropriate time, declare whether and to what extent the period of suspension will count as qualifying service for pension.

Specific entries in this regard are to be made in the Service Book to be taken note of at the time of reckoning qualifying service.

22. Effect on pension

1. If a Government servant immediately before his retirement, or death while in service, having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn, had he not been suspended, shall be the emoluments for the purpose of Rule 28 Note 1 of the Meghalaya Civil Service (Pension) Rules, 1983, and the same shall be taken into account for determining the average emoluments under Rule 29 ibid. This is without regard to the order passed by the competent disciplinary authority fixing the quantum of pay and allowance to be paid to the Government servant for the period of suspension. Even though the competent authority may allow reduced quantum of pay and allowances for the period of suspension, the full amount of pay which the Government servant would have got, had he not been under suspension, will count as emolument.

2. The difference between the subsistence allowance and the emoluments which would have been drawn, had he not been suspended, is not treated as increase in pay, which does not form part of his emoluments, referred so in proviso to Note 1 below Rule 29 ibid.

23. Effect on leave encashment

In the case of a Government servant who, while under suspension, is retired from service on attaining the age of superannuation, before the termination of departmental or Court proceedings, the competent authority to grant leave may withhold whole or part of cash equivalent of earned leave, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings. On conclusion of the proceedings, the Government servant will become eligible to the amount withheld, after adjustment of Government dues, if any.

24. Death while under suspension

When a Government servant, under suspension, dies before the disciplinary or Court proceedings instituted against him are concluded, such proceedings would terminate and abate by reason of death. The period between the date of suspension and the date of death will be treated as duty for all purposes as provided in Fundamental Rules 56 (2). His family will be paid the full pay and allowances for the period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid, with eligibility for family pension, death gratuity, encashment of leave, etc., as admissible.

25. Promotion/Confirmation

1. As suspension is only a temporary phase, orders exist to safeguard the interests in the matter of promotion and confirmation of Government servants under suspension. As an officer's suitability for promotion should be assessed at the relevant time, in case of an officer against whom departmental disciplinary proceedings, or any case in a Court is pending, the fact is to be brought to the notice of the Departmental Promotion Committee. For the purpose of assessment for promotion, however, the Committee should not take into consideration the fact of the pending case against the official.

2. The Committee will assess the suitability of the officer under suspension along with the other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending against him. The assessment of the DPC including "Unfit for promotion", and the grading awarded by it will be kept in a sealed cover. The same procedure will be followed by the subsequent DPCs concerned till the disciplinary case/criminal prosecution pending, or contemplated, against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers will be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed coyer/covers and with reference to the date of promotion of his next junior on the basis of such position. He will be promoted, if necessary, by reverting the juniormost officiating person. His promotion will be notional with reference to the date of promotion of his junior, but entitlement to

any arrears of pay for the period preceding the date of actual promotion will be decided by the appointing authority taking into consideration all the facts and circumstances of the case. Where arrears in full, or part, is denied, the authority will record reasons for doing so.

4. If any penalty is imposed on the officer as a result of the disciplinary proceedings, or if he is found guilty in the Court proceedings against him, the findings in the sealed cover(s) will not be acted upon. His case for promotion has to be considered in the usual course by the next Departmental Promotion Committee, after the conclusion of the disciplinary/Court proceedings, having regard to the penalty imposed on him.

5. Where, for promotion to the next higher grade, a minimum period of service is prescribed but which the Government servant under suspension could not put in on account of his suspension, which was ultimately found to be wholly unjustified, the period during which any officer junior to him was promoted to the higher grade will be reckoned towards the minimum period of service referred to above for the purpose of determining his eligibility for promotion to the higher grade.

6. The procedure laid down in the preceding paragraphs is also to be followed in considering claims for confirmation of an officer under suspension, or an officer whose conduct is under investigation. In such a case, a permanent vacancy should be reserved till a final decision is reached on the proceedings against the officer, or where such an officer is reduced in rank for a specified period, till he is actually restored to his original post.

26. Permission to appear in departmental examination

An official may be allowed to take an examination for departmental candidates, even though he is under suspension, provided he satisfies all the other conditions prescribed for admission to such examination. The official can, however, be promoted only after the disciplinary proceedings are over and he is completely exonerated. If any punishment is imposed and, after consideration of the merits of the case, it is decided to promote him, he should be promoted only after the expiry of penalty (other than censure), his seniority in the higher grade, however, being reckoned on the basis of the rank obtained in the examination.

27. Reversion to lower post

A Government servant placed under suspension while officiating in a higher post can be reverted to the lower post otherwise than as punishment even during his suspension.

28. Forwarding of applications

Applications of Government servants who are under suspension, or against whom departmental proceedings are pending, should not be forwarded nor should they be released, for any assignment, scholarship, fellowship, training, etc., under an international agency/organization or a foreign Government. Such Government servants should also not be sent or allowed to go on deputation or foreign service in posts under an authority in India.

29. Payment of subsistence allowance

1. *Initial grant.*— Under Fundamental Rule 51 (1) (ii), a Government servant under suspension is entitled, up to the first three months of the period of suspension, to subsistence allowance at an amount equal to the leave salary which he would have drawn if he had been on leave on half pay.

   The fixation of the quantum of subsistence allowance for the initial period of first three months is automatic and no specific order of the competent authority is necessary in this regard. However, as the standard form of suspension order provides for issue of an order, this may be done.

2. *First review.*— The competent authority may vary the amount of subsistence allowance for any period exceeding the first three months as follows: -

(i) increase by a suitable amount not exceeding 50% of the initial subsistence allowance, if in the opinion of that authority the period of suspension has been prolonged for reasons, to be recorded in writing, not directly attributable to the Government servant; or

(ii) decrease by a suitable amount not exceeding 50% of the initial subsistence allowance, if in the opinion of that authority the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant.

As this review is mandatory, with a view to avoiding serious hardship to the official concerned or unnecessary expenditure to the Government, the competent authority should initiate the review, take a decision and pass necessary orders as required, in sufficient time before the expiry of the first three months of suspension so that the requisite order can take effect from the date of completion of the three months period.

3. *Retrospective revision.*— It is not advisable that any orders revising the subsistence allowance should be given retrospective effect. In case, however, an order for variation of subsistence allowance is passed by the competent authority after quite some time from the expiry of the requisite three months and that authority is satisfied that the variation has got to be given retrospective effect, for reasons to be recorded in writing and orders accordingly, the same would be valid and binding on all concerned.

4. *No revision on review.*— The competent authority may also decide, after the review, not to vary the quantum of subsistence allowance after the first three months, i.e., neither to increase nor decrease, and place on record the circumstances under which the decision has been taken.

5. *Further reviews.*— It is open to the competent authority to make a further review, or reviews, at any time during the suspension period and, as a result, to reduce the amount of subsistence allowance increased on the basis of an earlier review if the period of suspension is subsequently found to have been prolonged for reasons directly attributable to the Government servant. Similarly, the subsistence allowance can be increased on the subsequent review if the period of suspension is found to have been prolonged for reasons not directly attributable to the Government servant. In any case, such subsequent increase or decrease in the amount will be subject to the overall limit of 50% of the subsistence allowance initially granted.

6. *Provision for appeal.*— Sub-rule (v), Clauses (d), (e) and (f) of Rule 19 of the MCS (D&A) Rules, 1965, provides for a Government servant if he is not satisfied with the increase/decrease in the subsistence allowance allowed by the competent authority, preferring an appeal against an order determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof. Under Sub-rule (3) of Rule 23 ibid, the appellate authority should consider all the circumstances of the case and make such orders as it may deem just and equitable. The appellate authority may increase or decrease the rate of subsistence allowance not exceeding 50% of the initial rate.

7. *Deemed suspension after dismissal.*— In the case of a Government servant, dismissed, removed or compulsorily retired from service, who is deemed to have been placed or continue to be under suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce a certificate of non-employment, he shall be entitled to subsistence allowance from the date of order of dismissal/removal/compulsory retirement equal to the amount by which his earnings, if any, during such period fall short of the amount of subsistence allowance that would otherwise be admissible to him. If his earnings are equal to or more than the subsistence allowance, he will not be paid anything.

   In cases where payment is to be made, this will be done with retrospective effect from the date of order of dismissal/removal/compulsory retirement and the law of limitation will not be invoked.

30. Payment of dearness allowance

A Government servant, under suspension, is entitled to draw dearness allowance on the basis of the subsistence allowance paid to him from time to time.

31. Payment of interim relief

A Government servant under suspension is entitled to draw interim relief on the basis of the subsistence allowance paid to him from time to time.

32. Payment of compensatory allowances

The drawal of Compensatory Allowances and House Rent Allowances to a Government servant under suspension shall be regulated with reference to SR 16 - 18 and SR 19 (f) on the basis of pay which he was in receipt on the date of suspension, subject to his furnishing either or both of certificates prescribed for drawal of allowances for periods beyond four months/120 days from the date of suspension. If the headquarters of a Government servant under suspension are changed in the public interest, he will be entitled to allowances as' admissible at the new station, provided he furnishes the requisite certificates with reference to the new station.

33. Non-employment certificate

A Government servant under suspension continues to be governed by the provisions of Meghalaya Civil Service (Conduct) Rules, 2019. He cannot, therefore, for supplementing his subsistence allowance, engage himself in any employment business, profession or vocation, without the prior permission of the competent authority. Further, under FR 51 (2), the payment of subsistence allowance to the Government servant under suspension is subject to furnishing a certificate in the prescribed form every month to the effect that he was not engaged in any other employment, business, profession or vocation. The certificate does not require the countersignature of any authority.

34. Denial of subsistence allowance

1. The payment of subsistence allowance cannot be denied on any grounds except when the Government servant under suspension is unable to/does not furnish the certificate referred to above. By its very nature, subsistence allowance is meant for the subsistence of a suspended Government servant and his family during the period he is not allowed to perform any duty and thereby earn a salary. It has been observed that where a Government servant under suspension pleaded his inability to attend the enquiry on account of financial stringency caused by the non-payment of subsistence allowance to him, the proceedings conducted against him ex parte would be in violation of the provisions of Article 311 (2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself.
2. It is enjoined that all concerned authorities should take prompt steps to ensure that after a Government servant is placed under suspension, he receives subsistence allowance regularly without delay.

35. Effecting of recoveries

1. The following compulsory deletions should be enforced from the subsistence allowance: -
   - (i) Income tax (provided the employee's yearly income calculated with reference to the subsistence allowance, is taxable);
   - (ii) House rent and allied charges, i.e., electricity, water, furniture, etc.;
   - (iii) Repayment of loans and advances taken from Government at such rates as may be fixed, if necessary, by the competent authority;
2. The following deductions are optional and should not be made, except with the written consent of the Government servant: -
   - (i) Refund of advances taken from General Provident Fund.

3. The following deductions should not be made from the subsistence allowance: -
   (i) Subscription to General Provident Fund;
   (ii) Amount due on Court attachments;
   (iii) Recovery of loss to Government for which a Government servant is responsible.
4. As regards the recovery of overpayment, there is no bar in effecting it from the subsistence allowance. However, while doing so, the competent authority should exercise discretion and decide whether the recovery should be held wholly in abeyance or it should be effected at a rate not exceeding one-third of the subsistence allowance only, excluding dearness allowance and other compensatory allowances.

36. Licence fee-free concession

1. A Government servant under suspension will not be required to vacate licence fee-free accommodation, unless the accommodation is specially attached to any particular post. However, licence fee-free concession will cease from the date of suspension and rent will be recovered from him, as if he was not in occupation of licence fee-free accommodation. For purposes of recovery of rent, his emoluments will be taken as laid in FR 45 (v).
2. If, subsequently, the Government servant is allowed, for the period of suspension, frill pay and allowances, the concession of licence fee-free accommodation will stand restored and the rent, if any, recovered for the period of suspension, will be refunded to him. If the period of suspension is treated as one spent on leave, the refund will be restricted for the first month only. For the period beyond the first month rent recovery will be as prescribed.
3. If such a Government servant is made to vacate the licence fee-free accommodation, either because it is specifically attached to a particular post or for any other reason, he will not be allowed to draw house rent allowance prescribed in lieu of licence fee-free accommodation. But if his headquarters at the time of suspension is at a place which is a classified city or a hill station at which house rent allowance is admissible, then he will be allowed the same, subject to the usual conditions. The house rent allowance will be calculated with reference to pay that he was drawing at the time of suspension.

37. Substitute arrangement

In an establishment where provision for leave reserve exists, any vacancy caused on account of suspension of a Government servant should be filled by a reservist and where a reservist is not available, the post should be filled by an officiating appointment. It is not necessary to create an extra post.

38. Revision of scale of pay

1. When the scale of pay of a post held by a Government servant under suspension is revised, with effect from a date prior to the date of suspension, he should be allowed to exercise the option under FR 25 even if the date by which he is to exercise the option falls within the period of suspension. He is entitled to the benefit of increase in pay, if any, in respect of the period before suspension and also in the subsistence allowance consequent on this.
2. If the revision of the scale of pay takes effect from a date falling during the period of suspension—
   (i) A Government servant who retains a lien, or a suspended lien, on his substantive post, should be allowed to exercise his option under FR 25 even while under suspension. The benefit of option will, however, accrue to him in respect of the period of suspension only after reinstatement depending upon the fact whether the period of suspension is treated as duty or not.
   (ii) A Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under FR 25. However, if he is reinstated in the post and the

period of suspension is treated as duty, he may be allowed to exercise the option after reinstatement. In such a case, if there is a time-limit prescribed for exercising the option and if such limit had already expired before his reinstatement, a relaxation may be made in each individual case extending the period for exercising the option.

46. Leave Travel Concession

A Government servant under suspension is not himself eligible to avail of leave travel concession. His family, however, can avail of leave travel concession independently of him. LTC advance for this purpose may also be granted subject to fulfilment of all other conditions in this regard.

47. Writing of confidential reports by officers under suspension

No officer under suspension should be allowed to write /review the Annual Confidential Reports of his subordinates, if, during major part of writing / reviewing, he is under suspension as he might not have full opportunity to supervise the work of his subordinates.

However, if he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after reinstatement. In such a case, if there is a time-limit prescribed for exercising the option and if such limit had already expired before his reinstatement, a relaxation may be made in each individual case extending the period for exercising the option.

CHAPTER 3

Reinstatement – A Digest

1. General

1. Reinstatement can generally arise if a person is dismissed or re-moved from service or his service has been otherwise terminated and he is brought back to service. Since a person who is merely suspended still continues to be in service, the word reinstatement with reference to him, has been held to be used only loosely, having no legal significance.

2. Reinstatement is resumption of office by a person who has been dismissed/removed/whose service has been terminated/under suspension. Reinstatement in service of a Government servant is possible in the following types of cases: -

   (i) If he had been placed under suspension pending criminal proceedings against him and is acquitted by the Court of Law and it is decided that no Departmental Proceedings need be initiated on the basis of the facts disclosed during investigation, or on the basis of facts which led to the launching of prosecution in a Court of Law.

   (ii) If the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a Court of Law/Administrative Tribunal.

   (iii) If he had been placed under suspension pending Departmental Proceedings against him and if the Departmental Proceedings instituted against him are withdrawn for any reason, or if he is exonerated, or is awarded a penalty other than that of compulsory retirement, removal or dismissal from service.

   (iv) If the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by the appellate/revising authority.

2. Nature of orders to be passed

1. When a Government servant is reinstated in service, the authority competent to order the reinstatement has to make a specific order –

   (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, viz., period of unemployment and suspension, if any, and

   (b) whether or not the said period shall be treated as a period spent on duty.

2. The decision of the competent authority in this regard is in respect of two separate and independent matters, viz., (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty. It is not necessary that the decision on (a) above should depend on the decision on (b) above. The competent authority has the discretion to pay the amount (not being the whole) of pay and allowances and at the same time treat the period as duty for any specified purpose(s), or only to pay the amount (not being the whole) of pay and allowances and treat the period as non-duty for all purposes. It has, however, no discretion to pay full pay and allowances when the period is treated as 'non-duty'.

3. Reinstatement as a result of departmental appeal/revision/review

These fall under the following two categories:

1. *Reinstatement as a result of full exoneration – (a)* If an order of suspension or the penalty of dismissal/removal/compulsory retirement imposed on a Government servant in a

Departmental Proceeding is set aside by the appellate/revising authority on grounds other than non-compliance of procedure prescribed under Article 311 of the Constitution, i.e., on grounds of equity, and if the competent authority is of the opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, normally full pay and allowances are to be allowed for the entire period of suspension and/or dismissal, removal or compulsory retirement, as the case may be, treating the interruption as duty. However, if the competent authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, he may restrict the payment to such proportion of such pay and allowances for such period of delay. This can be done only after giving the Government servant a show- cause notice indicating the quantum of pay and allowances proposed to be allowed to him after considering the representation, if any, submitted by him in this regard. The proportion of pay and allowances determined should not, however, be less than the subsistence allowance and other allowances payable.

(b) The entire period of absence has to be treated as duty for all purposes, even though full pay and allowances might have been allowed only for a portion and for the remaining, only proportionate payment has been allowed.

2. *Other cases – (a)* In cases other than those falling under Category 1 above, including cases where the earlier order is set aside only on the ground of non-compliance with the requirements of Article 311 (2) of the Constitution and no further inquiry is proposed to be held, only such amount (not being the whole) of the pay and allowances are to be allowed for the interrupted period, after observing, of course, the procedure of issuing show-cause notice as provided in Category 1 above.

(b) In these types of cases the period of absence should not be treated as duty for any specified purpose, unless the competent authority specifically directs that it should be so treated.

(c) Under the proviso to FR 53 (5) and FR 56 (7), if the Government servant so desires, the period of absence from duty may be allowed by the competent authority to be converted into leave of any kind, due and admissible to him, and the order passed in this regard is absolute and no further sanction is necessary for any kind of leave in excess of the limits prescribed.

In both types of cases, viz., Categories 1 and 2, payment of allowances will be subject to other conditions under which such allowances are admissible and any amount earned by the Government servant, through employment elsewhere during the period of absence, has to be adjusted from the payment to be made to him and no payment would be due to him if such earnings are equal to or more than the amount determined and payable to him.

4. Reinstatement as a result of Court order

Two categories of cases are dealt with here:

1. *Setting aside on merits* – When the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law/Administrative Tribunal on the merits of the case, without any reservation, full pay and allowances are to be allowed to the Government servant on reinstatement for the entire period of absence including the period of suspension and the entire period has to be treated as duty for all purposes.

2. *Other cases – (a)* Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law/Administrative Tribunal on the ground of non-compliance with the requirements of Article 311 (2) of the Constitution and where he is not exonerated on merits and he is reinstated without any further inquiry, only

proportionate pay and allowances (i.e., the amount not being the whole of pay and allowances) are to be allowed for the interrupted period, after observing, of course, the procedure of issuing show-cause notice as provided earlier.

(b) In these types of cases the period of absence should not be treated as duty for any specified purpose, unless the competent authority specifically directs that it should be so treated.

(c) The Government servant also has the option to get the period of absence converted into leave admissible and the order passed in this regard is absolute and no further sanction is necessary for any kind of leave in excess of the limits prescribed.

In both types of cases, viz., Categories 1 and 2 above, payment of allowances will be subject to other conditions under which such allowances are admissible and any amount earned by the Government servant through employment elsewhere during the period of absence has to be adjusted from the payment to be made to him and no payment would be due to him if such earnings are equal to or more than the amount determined and payable.

5. Termination and treatment of suspension

1. *Death while under suspension* – Where a Government servant under suspension dies before the Disciplinary or Court Proceedings instituted against him are concluded, the period of suspension should be treated as duty for all purposes and his family paid, for that period, full pay and allowances to which he would have been entitled had he not been suspended, adjusting the subsistence allowance already paid.
2. *Suspension considered wholly unjustified* – *(a)* Where the Authority ordering reinstatement is of the opinion that the suspension of the Government servant was wholly unjustified, he should be paid the full pay and allowances to which he would have been entitled, had he not been suspended, the period being treated as duty for all purposes. However for any period of delay in the termination of the proceedings that may be directly attributable to the Government servant himself, the reinstating authority has powers to direct that the Government servant shall be paid, for the period of such delay, such amount (not being the whole) of such pay and allowances as he may determine. The competent authority shall determine the amount only after giving a notice to the Government servant proposing the quantum of the amount to be paid and after considering the representation, if any, submitted by the Government servant. The pay and allowances so determined should not be less than the subsistence allowance already paid. The period of absence, however, has to be treated as a period spent on duty for all purposes.

(b) The above also applies to cases of erroneous detention or detention without basis. In the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.

3. *When minor penalty is imposed* – When the departmental proceedings against a suspended employee for the imposition of a major penalty finally ends with the imposition of a minor penalty, the suspension can be said to be wholly unjustified and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension.
4. *Other cases* – (i) *(a)* In cases other than those coming under categories 1 to 3 above only proportionate pay and allowances, not less than the subsistence allowance already paid, is to be allowed after observing the procedure of issuing show-cause notice and

consideration of representation submitted by the Government servant. In these cases, the period of suspension should not be treated as duty unless the competent authority specifically directs that it should be treated so, for any specified purpose.

(b) The Government servant has the option to get the period of absence converted into leave admissible. The order passed in this regard is absolute and no further sanction is necessary for any kind of leave in excess of the limits prescribed.

(ii) When a Government servant who is detained in custody, under any law providing for preventive detention and who is deemed to be under suspension on that account, is subsequently reinstated without taking disciplinary action against him, regularization of his pay and allowances will be under FR 56, i.e., if the detention is held by the competent authority to be unjustified, the same may be dealt with under FR 56 (3); otherwise, it should be dealt with under proviso to FR 56.

(iii) Similarly, in the case of a Government servant against whom proceedings had been taken for his arrest for debt, but who was not actually detained in custody and who is placed under suspension on that account, but ultimately it is proved that the liability arose from circumstances beyond his control, the case may be dealt with under FR 56; otherwise under proviso to FR 56.

In types of cases coming under Categories 2 and 4 above, the payment of allowances will be subject to other conditions under which such allowances are admissible.

5. *Revoking of suspension during pendency of proceedings* – When suspension is revoked pending finalization of Disciplinary or Court Proceedings, orders, if any, passed regulating pay and allowances for the period of suspension and treatment of the period, are subject to automatic review and revision after the conclusion of the proceedings according to the category under which the case may fall.

Summing up the above, the position in regard to payment of pay and allowances and treatment of the period of absence from duty is as follows: -

(a) Full Pay and Allowances when admissible:

(1) Reinstatement as a result of full exoneration in Departmental Proceedings, when the Government servant is not held to be responsible for any delay in the termination of the proceedings instituted against him.

(2) Reinstatement where a Government servant is acquitted on merits of the case in Court proceedings and no further Departmental enquiry is held.

(3) Reinstatement when suspension is held to be wholly unjustified and when the Government servant is not held to be responsible for any delay in the termination of the proceedings instituted against him.

(4) When minor penalty is awarded.

(5) If the detention under any law providing for preventive detention is held by the competent authority to be unjustified.

(6) In cases of erroneous detention or detention without basis and thereafter released without any prosecution.

(7) In cases of arrest for debt, if it is ultimately proved that the liability arose from circumstances beyond the Government servant's control.

(8) Death of Government servant while under suspension.

(b) Proportionate (not being the whole) Pay and Allowances when to be paid:

(1) Even in cases of full exoneration in Departmental Proceedings, when it is held that the termination of the proceedings instituted against a Government servant had been delayed due to reasons directly attributable to him, for such period of suspension and/or dismissal, etc., as may be directed by the reinstating authority.

(2) In Departmental Proceedings other than full exoneration, including cases where the earlier order is set aside solely on the ground of non-compliance with the requirements of Article 311.

(3) In Court cases where the order is set aside solely on the ground of non-compliance with the requirement of Article 311, or when exoneration is not on merits.

(4) Even in cases where the suspension is held to be wholly unjustified, when it is held that the termination of the proceedings instituted against a Government servant had been delayed due to reasons directly attributable to him, for such period of suspension as may be directed by the reinstating authority.

(5) In cases of detention under any law providing for preventive detention, when it is held that the detention is unjustified and in cases of arrest for debt, where it is ultimately proved that the liability arose from circumstances beyond control of the Government servant, for such period as may be directed by the reinstating authority.

(6) In cases where the suspension is not held to be wholly unjustified.

Important – In all these cases, it should be noted that the proportionate pay and allowances payable should be determined only after giving an opportunity/notice to the Government servant to make his representation against the proposal and after considering the representation, if any, submitted by him. Further, the amount so determined should not be less than what was paid as subsistence allowance.

(c) Treated as duty:

(1) Reinstatement as a result of full exoneration in Departmental Proceedings.

(2) to (8) As in (a) above.

(d) Treated as non-duty (unless otherwise decided for any specified purpose):

(1) In Departmental Proceedings other than full exoneration including cases where the earlier order is set aside solely on the ground of non-compliance with the requirements of Article 311.

(2) In Court cases under similar circumstances.

(3) In cases where suspension is not considered to be wholly unjustified.

Note: In all the three types of cases falling under (d), the Government servant, if he so desires, can get such period of absence converted into leave of any kind, due and admissible, by an order from the competent authority which shall be absolute.

6. *Suspension treated as dies non* – Suspension treated as dies non is not to be reckoned as service.

6. Exoneration on Merits

It has been observed that the criminal Courts are not concerned to find the innocence of the accused. The concept of 'honourable acquittal' and 'full exoneration' are unknown to criminal

law. Courts are only concerned to find whether the prosecution has succeeded in proving, beyond reasonable doubt, the guilt of the accused. As in Court judgments, the use of expression "exoneration on merits" and the like may not be found, it is left to the authority ordering reinstatement to determine from the circumstances of each case whether the acquittal by a Court of Law should be taken to mean exoneration on merits or not. In cases where the Court, after due consideration of the entire available evidence placed before it, came to the conclusion that the Government servant concerned was not proved to be guilty of the charge made against him, he should ordinarily be deemed to have been acquitted of blame and fully exonerated. On the other hand, if the order of acquittal of the Government servant is recorded on grounds of technical flaw in the prosecution, or if the available evidence could not be produced before the Court for assessment and for that reason the guilt of the Government servant could not be brought home, the acquittal cannot be regarded as honourable and the Government servant cannot be said to have been exonerated on merits.

7. Applicability of Law of Limitation

1. As FR 54 and FR 56 arc absolute, the law of limitation need not be invoked at the time of paying arrears.
2. A Government servant in whose case the order of suspension is deemed to have been continued in force, or who is deemed to have been placed under suspension from the date of original order of dismissal/removal/compulsory retirement from service under the relevant Rule, is to be paid subsistence and other allowances under FR 51 with retrospective effect from the date of such dismissal/removal/compulsory retirement. It has been clarified that it is not necessary to invoke the Law of Limitation while paying the arrears in such cases.
3. Provisions to FR 53 (4) and 54 (2) had earlier provided for invoking the Law of Limitation, i.e., restricting the payment of arrears of pay and allowances to a period of three years prior to the reinstatement, or the date on which the judgment of the Court was passed, or the date of retirement on superannuation, as the case may be, while paying arrears in cases where the dismissal/removal/compulsory retirement is set aside for non-compliance with the requirements of Article 311 or when exoneration is not on merit. The said Provisos have since been deleted, with the result that the payment of arrears of pay and allowances has to be made for the whole period of absence from duty, including suspension, if any, without restricting the same to three years.

8. Deductions of Earnings

The amount earned by a Government servant, if any, through an employment during any period between the date of dismissal/removal/compulsory retirement and the date of reinstatement, should be recovered from the arrears of pay and allowances payable to him. In cases where such earnings are equal to or more than the arrears of pay and allowances, for the period of absence from duty payable to the Government servant on reinstatement, nothing is payable to him.

9. Appeal

1. Rule 19 (v) (e) provides for a Government servant preferring an appeal against an order determining pay and allowances (i) for the period of suspension, and/or (ii) for the period from the date of dismissal/removal/ compulsory, retirement, etc., to the date of reinstatement, etc. and determination of the said periods as periods spent on duty for any purpose.

2. Under Rule 23 (3), the appellate authority should consider all the circumstances of the case and make such order as it may deem just and equitable.

10. Regularization as Leave

Only in types of cases where the dismissal/removal/compulsory retirement is set aside for non-compliance with the requirements of Article 311 (2), or when exoneration is not on merits, or when suspension was not wholly unjustified, and the Government servant desires that the period of absence from duty be converted into leave of any kind due and admissible to him, there is no objection to the competent authority directing the period of absence being covered as such. Sanction of the higher authorities will not be necessary for regularizing the period of absence in such cases, viz., for the grant of extraordinary leave in excess of three months, in so far as temporary Government servants are concerned, or for the grant of leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servants. The conversion of the period of absence from duty in such cases into leave with, or without allowances, will have the effect of vacating the order of suspension and it will be deemed not to have been passed at all. Therefore, if it is found that the total amount of subsistence and other allowances that an official received during the period of suspension exceeds the amount of leave salary and allowances, the excess will have to be refunded.

CHAPTER 4

Disciplinary Proceedings — A Digest

The procedure to be followed in disciplinary cases against Government servants is laid down in detail in the Meghalaya Civil Services (Discipline and Appeal) Rules, 2019. These Rules have been framed in conformity with the provisions of Article 311 of the Constitution. These Rules, along with the Article referred to, have necessarily to be studied carefully and thoroughly by all authorities who have been vested with disciplinary powers. These Rules and instructions and clarifications issued by various authorities from time to time in regard to the application of these Rules, find a place in this Compilation. It is absolutely necessary that the procedure as laid down in these Rules and the various instructions issued thereunder are required to be followed rigidly. Any failure to observe the proper procedure, either wilfully or through gross negligence, is liable to vitiate the entire proceedings, rendering them null and void.

We have endeavoured here to give a brief outline of the implications of the various Rules and instructions for the guidance of all officers handling disciplinary cases.

1. PRELIMINARY ENQUIRY

1. Whenever intimation is received about the commission of an offence by an employee, a preliminary enquiry is conducted, not necessarily by the appropriate disciplinary authority. This is held for the purpose of collection of facts in regard to the conduct and work of the Government servant concerned in which he may or he may not be associated. Such a preliminary enquiry may even be held *ex parte*, for it is merely for the satisfaction of the concerned authority. At this enquiry, all available evidences and relevant documents should be collected and, in important cases, evidences of witnesses be reduced to writing and got signed by them, if possible, in the presence of the employee concerned. During the course of such an enquiry, for the sake of fairness, the Government servant complained against should normally be given an opportunity to say what he may have to say about the allegations against him, to find out if he is in a position to give any satisfactory information or explanation which may render any further investigation unnecessary.
2. The preliminary enquiry is in the nature of a 'fact-finding enquiry' where there can be *ex parte* examination or investigation and *ex parte* reports. The investigation report, along with the preliminary evidences, collected is then examined by the appropriate authority to come to a decision whether a prima facie case exists for initiation of formal Disciplinary Proceedings. The Officer responsible for the decision should take care not to express, as far as possible, any definite opinion on the merits of the final outcome of the case.
3. The question to be decided at this stage is not whether a Government servant is guilty or not of an allegation. It is to be seen whether a prima tacie case exists of a certain offence/misconduct/misbehaviotir/dereliction of duty. It is just to find out whether an offence has taken place and, if so, whether the Government servant is prima facie involved in it. If there is prima facie evidence of commission of a criminal offence beyond reasonable doubt, initiation of criminal proceedings is to be considered. If, on the other hand, prima facie evidence is based only on preponderance of probability, then Departmental Proceedings may be appropriate.
4. A doubt has been expressed whether departmental action can be taken only when any particular Rule of the Conduct Rules has been violated. It is not so. It is not necessary that every misconduct should be covered by breach of a Rule. Proceedings can be initiated not

only for misconduct but also misbehaviour which is not included in the book of Rules. It is open to take action in respect of misconduct which falls outside the Government servant's official functions if it reflects on his reputation for good faith, honesty, integrity and devotion to duty.

5. The argument that as there is no loss to Government there is no misconduct, is not correct. Loss of public funds is not an essential element of misconduct. The essential element is perverse conduct or absence of good conduct. Even if the act is known to cause no loss to public funds, misconduct or attempt to commit can exist. Both attempt and abetment of misconduct has to be viewed with the same seriousness. Mala fide is not a necessary element for proving misconduct. It might be that mala fides are not always evident, but they can be inferred. Repeated incidents also point to motive.

6. Past good or bad conduct of a Government servant should in no way influence action, if a clear misconduct is made out prima facie.

2. INITIATION OF PROCEEDINGS

1. Decision to charge-sheet an officer should be taken only when full facts have been gathered and evaluated and there is controvertible inference that a misconduct has been committed. Once a decision has been taken that formal disciplinary proceedings should be instituted against the Government servant under the Rules, the disciplinary authority will need to decide whether proceedings should be taken under Rule 10 or Rule 12, i.e., for imposing a major or minor penalty. It has to be borne in mind that the nature of disciplinary action and the quantum of punishment are to be commensurate with the gravity of the offence alleged to have been committed. At this stage, the seriousness of the misconduct and the character of the charged official come into consideration. Major penalty proceedings may be appropriate in cases such as involving gross irregularity or negligence, misuse of official position, disclosure of secret or confidential information, false claims, i.e., where there is distinct lack of character. Cases which involve moral turpitude or failure to maintain integrity would always justify initiation of major penalty proceedings.

3. SUSPENSION

1. At this stage itself, the competent authority has to examine whether pending disciplinary proceedings the official is to be placed under suspension and issue orders accordingly in the Form prescribed.

   See Chapter 2 for detailed Digest on Suspension.

4. APPROPRIATE DISCIPLINARY AUTHORITY IN MAJOR PENALTY PROCEEDINGS

1. None of the major penalties can be imposed on any person by an authority subordinate to that by which he was appointed. Under no circumstances, the appointing authority can delegate its power to a subordinate authority. The underlying idea is that a Government servant is entitled to the judgment of the authority by whom he had been appointed or of an authority superior to that authority and that he should not be awarded any major penalty by a lower authority in whose judgment he may not have the same faith. The provisions will apply to dismissal or removal, whether in a disciplinary case, or on account of conviction of a Government servant in a Court of Law, or on any other ground.

2. It is, therefore, necessary that before any action is initiated under Rule 10 with a view to imposing any of the major penalties on an official, it should first be verified by the present disciplinary authority whether or not he is lower in rank than the officer who actually

appointed the official. In case the appointing authority is of higher rank than the present disciplinary authority the fact should be reported to the Department concerned for issue of Governor's Orders nominating another officer to act as the disciplinary authority in that particular case.

3. If, in a particular case, a Government servant was appointed by a higher authority than the one which was competent to make appointment to the post of that Government servant, but subsequently the power to make appointment to that post or grade was delegated to a lower authority, it is only that higher authority, which actually appointed the Government servant in question to the post from which he is sought to be removed or dismissed, that can exercise the power of imposing any of the major penalties. In the case of appointments made on the basis of selection, that authority which makes the actual appointment, and not that which made or approved the selection, will be the competent one. If a Government servant is appointed by one authority in a temporary capacity and is confirmed by a higher authority, the competent authority will be the higher authority which confirmed the Government servant and not the authority which initially appointed him.

4. An order imposing a major penalty passed by an authority subordinate to the appointing authority contravenes the provisions of the Rules and, in the case of punishment of dismissal/removal, the provisions of Article 311 (1) and hence is defective and any subsequent confirmation of such an order by the competent authority will not validate it. In such a case, it is necessary for the competent authority to start fresh proceedings, if the circumstances of the case so warrant.

5. Disciplinary authority in respect of an official is to be determined with reference to his posting at the relevant stage of the disciplinary case and not with reference to his posting and status at the time of commission of the offence.

6. There is no bar for the authority, who conducted the preliminary enquiry to function as disciplinary authority if he happens to be so. In case the charged official makes allegation against the disciplinary authority, he is obviously likely to be prejudiced in the case and cannot be reasonably expected to take independent decision free from bias, and hence the punishing authority should refrain from dealing with the case himself and should refer it to the next higher authority to determine whether an independent enquiry officer should be appointed to enquire and report on the allegations made against the officer or the case may be dealt with by the punishing authority himself. If the report on the allegations against the disciplinary authority, made by the charged official, is found to be baseless, the disciplinary authority may be asked to continue the proceedings and if some substance is found in the allegations, the next higher authority should deal with the case himself.

5. PROCEDURE FOR IMPOSING MINOR PENALTIES

1. On receipt of all the relevant papers connected with the preliminary enquiry, the competent authority should take a decision whether the proceedings should be initiated for a major or a minor penalty. In cases in which the authority decides that proceedings should be initiated for imposing a minor penalty, the authority will inform the Government servant concerned, in writing, of the proposal to take action against him in the form prescribed, accompanied by a statement of imputations of misconduct or misbehaviour for which action is proposed to be taken, giving him such time as may be considered reasonable, ordinarily not exceeding ten days, for making such representation as the Government servant may wish to make against the proposal. The memorandum should be signed only by the disciplinary authority, except when this power has been delegated to others constitutionally or legally.

2. The grounds on which it is proposed to take action should be reduced to the form of a definite charge or charges. The charges should be clear, specific and precise. A separate charge should be framed in respect of each separate offence. It is desirable that the charges should not be of a petty nature or unnecessarily numerous. They should not, except where the charge is one of inefficiency or incompetence, relate to matters which have already been the subject of previous official enquiry and decision. Care should be taken that no expression of opinion as to the guilt of the accused official is contained in the wording of the charge. A charge may be framed only when there is some act in violation of the Rules in different service manuals, MCS (Conduct) Rules, different circulars or general letters issued.

   It is, therefore, of greater importance to invariably quote that Rule or order in support of the charge, the breach of which has constituted the charge.

3. The statement of allegations on which these charges are based should contain a dispassionate and objective enumeration of the order of events, or succession of facts, or any other corroborative material on which it is proposed to rely for bringing home the charges. Care should be taken that no opinion, or anything that can be construed as an opinion, as to the guilt of the official should appear therein.

4. Rule 12 does not provide for the accused Government servant being given the facility of inspecting records for preparing his written statement of defence. There may, however, be cases in which documentary evidence provides the main grounds for the action proposed to be taken. The denial of access to records in such cases may handicap the Government servant in preparing his representation. Requests for inspection of records in such cases has to be considered by the disciplinary authority on merits.

5. After taking into consideration the representation of the Government servant or without it, if no such representation is received from him by the date specified, the disciplinary authority will proceed, after taking into account such evidence as it may think fit, to record its findings on each imputation of misconduct or misbehaviour. If, as a result of its examination of the case and after taking the representation made by the Government servant into account, the disciplinary authority is satisfied that the allegations have not been proved, the Government servant may be exonerated. An intimation of such exoneration has to be sent to the Government servant in writing. In case the disciplinary authority is of the opinion that the allegations against the Government servant stand substantiated, it may proceed to impose upon him any of the minor penalties specified in Rule 7 which it is competent to impose.

6. Under Rule 12 (1) (b) the disciplinary authority may, if it thinks fit, in the circumstances of any particular case, decide that an enquiry should be held in the manner laid down in sub-Rules (3) to (23) of Rule 10, all the formalities beginning with framing of articles of charge, statement of imputation, etc., will have to be gone through. For example, in a case in which the Government servant desires to be heard in person or has requested for access to records, or where the disciplinary authority considers it necessary to have the evidence of a number of witnesses for substantiating the allegations, the disciplinary authority may consider holding such an enquiry. In such cases, the procedure to be followed will be the same as prescribed for an enquiry into a case in which a major penalty is proposed to be imposed.

7. Under Rule 12 (2) if in a case after considering the representation made by the Government servant it is proposed to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant, or to withhold increments of pay for a period exceeding three years, or to withhold increments of pay with cumulative effect for any period, the enquiry has to be held before making any order

imposing on the Government servant any such penalty. Separate form has been prescribed for initiation of further proceedings.

8. When the intention is to issue a fresh charge-sheet later, the order cancelling the original one, or dropping the proceedings, should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges.

6. PROCEDURE FOR IMPOSING MAJOR PENALTIES

1. Under Clause (2) of Article 311 no person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

2. As soon as a decision has been taken by the competent authority to start disciplinary proceedings for a major penalty, that authority will draw up, on the basis of the material gathered during the preliminary investigation, the charge-sheet in the form prescribed, duly accompanied by a statement of articles of charge, statement of imputations of misconduct or misbehaviour in support of the articles of charge, list of documents with which the articles of charge framed are proposed to be sustained and list of witnesses by whom the articles of charge framed are proposed to be sustained. The memorandum should be signed by the disciplinary authority, except when this power has been delegated constitutionally or legally.

3. A charge may be described as the essence of an allegation setting out the nature of the accusation in general terms, such as negligence in the performance of official duties, inefficiency, breach of conduct Rule, etc. The articles of charge should be framed with great care. Each charge should be expressed in clear and precise terms and should not be vague.

4. The following guidelines will be helpful in framing a charge-sheet:—

   (a) A separate charge should be framed in respect of each separate transaction/event or a series of related transactions/events amounting to misconduct/misbehaviour.

   (b) If the transaction/event amounts to more than one type of misconduct then all the misconducts should be mentioned.

   (c) If a transaction/event shows that the Government servant must be guilty of one, or the other, of misconducts depending on one or the other set of circumstances, then the charge can be in the alternative.

   (d) Multiplication or splitting up of charges on the basis of the same allegation is to be avoided.

   (e) The articles of charge should first give plain facts and then mention the nature of misconduct/misbehaviour.

   (f) The wording of the charge should not appear to be an expression of opinion as to the guilt of the accused. Any statement which smacks of expression of opinion and draws some positive conclusions against the Government servant should be strictly avoided.

   (g) A charge should not relate to a matter which had already been the subject-matter of an inquiry resulting in conviction/punishment/acquittal/exoneration, unless it is based on benefit of doubt or on technical consideration.

   (h) A charge should not refer to the report on preliminary investigation.

   (i) There is no bar to include all charges of violation of departmental Rules as well as criminal offences which can be taken up departmentally, e.g., misappropriation of

Government money, defalcation and theft of departmental materials, etc. In the case of departmental proceedings, reference to various clauses of the Indian Penal Code should be avoided. The proceedings should be based on the failure to observe departmental Rules and regulations. For instance, in the case of theft of a registered or insured article, the charge against an employee may not be theft of that article but failure to account for the article entrusted to him.

(j) All the data, figures, dates, etc., included in the imputation should be carefully checked before the issue of the charge-sheet as a lot of difficulties crop up when some clerical error in these figures or dates later on comes to notice.

5. Rule 3A(3)(1) of the Meghalaya Civil Services (Conduct) Rules, 2019, provides that a Government servant shall at all times maintain absolute integrity and devotion to duty and do nothing unbecoming of a Government servant. This Rule serves the specific purpose of converting acts of misconduct not covered by other specific provisions of the Rules. It is therefore, necessary to satisfy, in the first instance, whether the alleged acts of misconduct do not attract the provisions of any specific Rule before taking recourse to 3A(3)(1) ibid. Where action is taken under 3A(3)(1) particularly on grounds of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature and to ensure that disciplinary proceedings under 3A(3)(1) are not initiated on grounds which are unjustified.

6. The statement of imputation should give a full and precise recitation of the specific and relevant acts of commission or omission on the part of the Government servant in support of each charge, including any admission or confession made by the Government servant, and any other circumstances which it is proposed to take into consideration. In particular, in cases of misconduct/misbehaviour, it should mention the conduct/behaviour expected or the Rule violated. It should be precise and factual. In particular, it would be improper to call an Investigating Officer's report a statement of imputations. While drafting the statement of imputations it would not be proper to mention the defence given at the preliminary investigation and enter into a discussion of the merits of the case. Wording of the imputations should, however, be clear enough to justify the imputations in spite of the likely version of the delinquent. It should be drafted in the third person and in the past tense.

7. The list of witnesses should contain the names of those witnesses who will be able to give positive evidence to substantiate the allegations. All material particulars given in the allegations, such as dates, names, figures, totals of amounts, etc., should be carefully checked, with reference to the original documents and records, before such documents are included in the list of documents. In case, there are no documents or witnesses, NIL statements should be appended as Annexures-III and IV to the charge-sheet.

8. When disciplinary proceedings are initiated on the complaint of a private party, there should not normally be any necessity to indicate the name of the complainant unless he is a material witness in the case. When, however, proceedings are initiated on the basis of the evidence collected after making investigations into the complaint, there should not be any necessity to indicate the name of the complainant or the fact that the investigations were started as a result of the particular complaint.

9. The charge-sheet, together with its enclosures, should be served in person, if he is on duty, and his acknowledgement taken, or sent by registered post, acknowledgement due. If the Government servant evades acceptance of the charge-sheet and/or refuses to accept the registered cover containing the same, the charge-sheet will be deemed to have been duly delivered on him as refusal of a registered letter normally tantamounts to proper service of its contents. If it is not possible to trace the Government servant and serve the charges on him,

the disciplinary authority may take recourse to Rule 15 (ii) and finalize the proceedings after dispensing with the inquiry on the ground that it is not reasonably practicable to hold one.

10. Rule 10 (4) is not intended for submission of any elaborate statement of defence but only to give an opportunity to the Government servant to admit or deny his guilt. For admitting or denying the charges, no inspection of documents is necessary. Hence the Rules do not provide for inspection of documents by the accused official for the submission of his written statement at this stage. As a measure to cut down delay in the disposal of disciplinary case, copies of statements of witnesses cited be supplied to the Government servant along with the charge-sheet, wherever possible.

11. If the delinquent in reply to the charge-sheet tenders an unconditional, unqualified and unreserved apology and thus owns his guilt, it implies that he is admitting the charges and is begging to be excused. Such an unconditional apology can be easily distinguishable from one in which the delinquent, while politely denying the charges, begs for pardon. The admission should, however, be expressed in writing. It is not sufficient to say that it is implied in his statement. It has been held that while one may not adopt the concept of confession as construed under the Criminal Law for purposes of departmental enquiry, the statement to be utilized as confession must, at any rate, admit the material facts on the basis of which an inference about the guilt of the person making the statement could be drawn in unambiguous terms.

12. If, in the written statement of defence, all the charges are admitted by the Government servant, the disciplinary authority may take such evidence as it may think fit, record its findings on each charge and take further action on the findings in the manner prescribed in Rule 11.

13. If the disciplinary authority finds that any or all of the charges have not been admitted by the Government servant in his written defence, or if no written statement of defence is received by him by the specified date, the disciplinary authority may itself inquire into such charges as are not admitted, or appoint an Inquiry Officer to inquire into the truth of the charges. Unless unavoidable, under special circumstances, the Disciplinary Authority should refrain from being the Inquiry Officer.

14. While appointing a separate Inquiry Officer, the following points are to be borne in mind. In making a selection, the disciplinary authority should pay due regard to the seriousness of the alleged offence and also to the status of the accused officer. Mere knowledge in a general way about an incident does not debar a person from functioning as an Inquiry Officer, as such prior knowledge cannot be presumed to bias him. But, if an officer who detects the misconduct holds the enquiry, he may be said to have prejudged the issue. Similarly, where the official is the complainant himself, and also the principal witness, he can be said to be biased. In fairness to the accused officer, as well as to the Inquiry Officer, the enquiry should not be entrusted to an officer who held the preliminary enquiry and expressed a definite opinion on the allegations, especially, where such opinion is adverse to the accused, or to an officer directly subordinate to him. It has been held desirable that only disinterested officers are appointed as Inquiry Officers. There is no bar to the immediate superior officer holding an inquiry but, as a rule, the person who undertakes this task should not be suspected of any prejudice or bias in such cases. The inquiry should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into, as inquiry by a junior officer cannot command confidence which it deserves.

15. According to the existing instructions, an application can be moved by a Government servant against the appointment of a particular Inquiry Officer on grounds of bias. This should obviously be done at the earliest stage, i.e., soon after the appointment of the Inquiry Officer

and not after the proceedings have commenced and reached an advanced stage, unless there are compelling grounds. If any application is moved, the proceedings should be stayed and the application referred, along with the relevant material, to the appropriate reviewing authority for consideration, on merits, on the facts and circumstances brought out alleging bias on the part of the Inquiry Officer and passing appropriate orders thereon.

16. If an Inquiry Officer is changed in the middle of a case or if a case, is transferred to another Inquiry Officer, then it is within the discretion of the Inquiry Officer to hear the case *de novo*, or from the stage which it had reached, keeping in mind the fact that the charged officer must receive fair and just treatment consistent with avoidable waste of time.

17. Inquiry proceedings should not be stayed, except under orders of a Court of competent jurisdiction, or under the written orders of the disciplinary authority, or when an application is made, as referred to in Paragraph 15 above.

18. The disciplinary authority, at this stage, may also nominate a Presenting Officer who would present, on its behalf, the case in support of the articles of charge. Ordinarily, a Government servant belonging to the departmental set up who is conversant with the case will be appointed as the Presenting Officer. In cases involving complicated points of law, where it may be considered desirable, a legal practitioner may be appointed to present the case on behalf of the disciplinary authority. In cases in which the initiation of disciplinary action is the result of investigation made by the Special Police Establishment, there is no objection to an official of that Establishment being nominated as the Presenting Officer.

19. Under the Rules, the accused officer has also the right to take the assistance of another Government servant, or one under suspension, or a retired Government servant, to present the case on his behalf. The term "another Government servant" has to be interpreted liberally to include all Government servants as defined in Rule 2 (f) of the MCS (D&A) Rules. The retired Government servant should have retired from service under the State Government. The restrictions placed in this regard in respect of employees in service and retired employees are–

    (i) The assisting Government servant should be from the headquarters station of the Government servant, or at the place where the inquiry is held. If the Inquiry Officer so permits, having regard to the circumstances of the case, the assisting Government servant may be from any other station.

    (ii) The assisting Government servant should not have three cases on hand in which he has to give assistance, while the retired Government servant, five cases.

    For this purpose, the accused officer is not required to take prior permission of the disciplinary authority. He need send only an intimation to this effect to the disciplinary authority. It is, however, necessary for the Government servant nominated to assist the accused officer to obtain the permission of the former's controlling authority to absent himself from office in order to assist the accused Government servant during the enquiry. If, for any compelling reasons, it is not practicable for the controlling authority of the assisting Government servant to relieve him without undue delay, or without serious detriment to the public interest, to present the case of the delinquent official, he should inform the Inquiry Officer about it with reasons for being communicated to the accused official well in time, so that the accused official could choose any other Government servant to assist him. In other words, the Rules do not vest any discretion in the disciplinary authority in regard to the nomination of a Government servant to present the case of the delinquent official.

20. The following points should be kept in view by the Disciplinary Authority while considering the request of the charged official to nominate a serving/retired Government servant to assist him: -

(i) The Government servant should be permitted to have the assistance of a legal practitioner if the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or a Public Prosecutor or Prosecuting Officer of the CBI or a- Government Law Officer (such as Legal Adviser).

The above condition would apply if the retired Government servant is also a legal practitioner.

(ii) Although no guidelines exist for permitting nomination of a legal practitioner by the charged official, in a case where the Presenting Officer appointed by the Disciplinary Authority is not a legal practitioner, the discretion should be used in favour of the delinquent official and he should be allowed to engage lawyers as a part of reasonable opportunity, if the facts and the mass of evidence are very complicated and a layman will be at sea to understand the implications thereof and prepare a proper defence.

The decision to allow the assistance of a legal practitioner to the accused official has to be taken on the merit of the case in an impartial manner.

It should be ensured that any order refusing to allow the engagement of a legal practitioner should specifically state that the circumstances of the case do not warrant such an appointment.

7. RULE 14 INQUIRY

1. To enable the Inquiry Officer to hold the enquiry, the Disciplinary Authority is required to send copies of the documents as indicated in Sub-rule (6) of Rule 10, to him. The original documents should normally be available with the Presenting Officer and only if there is no Presenting Officer should these be sent to the Inquiry Officer.
2. On receipt of the documents, the Inquiry Officer will send a notice to the charged officer asking him –

   (a) to present himself for a preliminary hearing at the appointed place on a date and time, within ten days; and

   (b) to intimate the name of his defence assistant.
3. Normally, the venue of the enquiry should be where documents and witnesses are readily available; but the Inquiry Authority is free to fix any other venue according to the requirements of the case and convenience of the parties, from time to time.
4. At the preliminary hearing, the charged officer will be required to state categorically whether he pleads guilty to any of the articles of charge and if he has any defence to make. If he pleads unequivocally guilty, the Inquiry Officer will proceed to record his findings. If the charged officer re-fuses or omits to plead or pleads not guilty, the Inquiry Officer will start the formal enquiry. If the charged officer fails to appear at the preliminary hearing, the Inquiry Officer may fix the dates and the place for regular hearing and send intimation under, acknowledgement due, to reach him in good time.
5. The Inquiry Officer will also record an order that the charged officer may for the purpose of preparing his defence (a) inspect, within five days, documents, a list of which was sent to him with the charges; (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 to the presentation of his case. If the charged officer fails to indicate and convince the Inquiry Officer about the issues to which the deposition of his witnesses and the production of

additional documents are relevant, the Inquiry Officer may reject the request for examining the witnesses or requisitioning the documents. If, however, he finds that the witnesses are relevant, they will be examined.

6. There are two types of documents to which a Government servant, involved in departmental enquiries, may have a right of access in defending himself. In the first category are included the documents on which the disciplinary authority relies and intended to prove the charges, viz., those in Annexure-III to the charge-sheet. In the second category fall the documents which, even though not relied upon by the disciplinary authority, are nevertheless required by the Government servant for preparing his defence and defending himself. While the right of access to the first category of documents is complete, it is not unlimited in the case of the latter category. If the documents are relevant, the Inquiry Officer will arrange to have them requisitioned to be shown to the charged officer. If not relevant, he may in writing refuse to requisition such documents. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way, be relevant, though the relevance is not clear to the disciplinary authority at the time the request is made, the request for access should not be rejected. Even when the Inquiry Officer has decided to call for documents for making them available to the charged officer, the authority having the custody of possession of the documents may, if it is satisfied, for reasons to be recorded, that the production of such documents would be against public interest or security of the State, inform the Inquiry Officer accordingly. Though it is open to the Government to deny access, if in its opinion such records are not relevant to the case, or it is not desirable in the public interest to allow such access, the power to refuse access to official records should be very sparingly exercised. In every case, where it is decided to refuse access to any official document, the reasons for refusal should be cogent and substantial and should invariably be recorded in writing. The guiding principle is that the power to access to any document must be exercised in such a way which does not prevent the delinquent from defending himself adequately and does not cause him any prejudice.

7. It has been held that under the existing framework of the Rules, no authority other than the Head of the Department can be said to have the custody or the possession of documents of the Department, though such custody or possession may be 'constructive'. In the circumstances, a subordinate authority is not competent to claim privilege in respect of the requisitioned documents. The authority concerned should transmit the requi¬sition to the Head of the Department for his decision and communicate the same to the Inquiring Authority as soon as possible. Privilege for not producing documents can be claimed only by the Head of the Department. Hence, whenever it is felt that a document is confidential and it is considered tha it will be prejudicial in the interest of the State to produce the same in a departmenta proceedings, the case should be referred to the Department concerned.

8. The following documents should not be summoned: -

   (a) Report of preliminary inquiry/investigation.

   (b) File dealing with the disciplinary case against the Government servant.

9. It is not ordinarily necessary to supply copies of the various documents and it would b sufficient if the Government servant is given such access as is permitted under the Rules an instructions. Supply of copies of previous statements of witnesses is, however, necessary i view of the provision in Note below Rule 14 (11). Copies of the previous statements of al witnesses who are to be examined during the enquiry are to be made available to the charge officer well in time, where asked for, i.e., three clear days before the examination of th witnesses, if not supplied along with the charge-sheet.

10. On the date and at the time fixed for the inspection of documents, the charged officer will be given facilities to see them. The inspection will be in the presence of an officer deputed for the purpose and it should be ensured that the documents are not tampered with during the course of inspection. The charged officer may keep notes or extracts, but will not be allowed to take photostat copies. The Inquiry Officer may, however, arrange to supply photostat copy, in case he decides that authenticity of any documents is in doubt.

11. During the enquiry, the Presenting Officer will produce all documentary evidence and also have his witnesses examined. Normally, the Presenting Officer should himself ensure that his witnesses are present. He may, in appropriate cases, have summons issued by the Inquiry Officer through registered post, acknowledgement due. If any person is summoned in his official capacity, the notice should be served through the controlling authority. Notice to private witnesses may be sent direct to them or through the Presenting Officer or the charged officer, as the case may be. A Government servant cannot refuse to be a witness in an enquiry against another Government servant. Non-compliance to summons can be treated as conduct unbecoming of the public servant, rendering himself liable for disciplinary action.

12. Examination of witnesses, departmental as well as defence, and recording of evidence, is the important stage in the inquiry proceedings. Personal hearing enables the Inquiry Officer to watch the demeanour of the witnesses. Examination of witness will be in three parts—examination-in-chief, cross-examination and re-examination. The cross-examination of witnesses produced in support of charges against a Government servant is the most powerful weapon in his hands and is also a very valuable right. It has been held that this right is a safeguard implicit in Article 311 (2) of the Constitution.

13. Although the Rules of evidence contained in the Evidence Act are not applicable to departmental proceedings, in the absence of any explanation given to the term "cross-examination" in the departmental Rules and instructions, it has been held that it should ordinarily bear the same meaning as it has in the Evidence Act, "unless any part of such meaning can be shown to be artificial and not warranted by the Rules of natural justice". Though leading questions (i.e., any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question) are permissible in cross-examination, they cannot be put in examination-in-chief or in re-examination. Further, the scope of cross-examination is unlimited and need not be confined to the testimony of the witness in the chief examination. They may cover the entire field of defence. They must, however, be relevant to the facts of the case or relate to the credibility of the witness or the evidence given by him.

14. On the contrary, the re-examination which comes after cross- examination should be confirmed only to the matters arising out of the cross-examination. The witness cannot be examined on any new fact, except with the permission of the Inquiry Officer and when such a permission is granted, the delinquent will automatically have a right of further cross-examination on the points newly brought out. At the end of examination of each witness, the Inquiry Officer may also put such questions as he thinks fit.

15. Admitted documents and facts can be taken note of straightaway. Earlier written statement, if any, given by a witness may be read out to him and he may be specifically questioned whether he admits the same or not. If he does so, the statement may be marked as an exhibit and the charged officer asked to proceed with cross-examination. If the witness does not admit the statement in full, then his statement has to be recorded from the very beginning. The Presenting Officer should produce documents, which are disputed, through witnesses. The witnesses should be examined in such a way as to bring out the case in a logical and understandable manner. He will examine the witnesses without putting leading questions.

16. After the examination is over, the witnesses may be cross- examined by the charged officer or his defence assistant. This cross-examination is generally utilized to bring out facts which have not come out in the examination, to remove any discrepancies or to prove the reliability or otherwise of the witnesses. It is the duty of the Inquiry Officer to see that witnesses understand the question properly before answering it and to protect them against unfair treatment. He should disallow questions if considered irrelevant, oppressive or verbose.

    General reputation or conduct of a witness should not be allowed to be the subject-matter of examination or cross-examination; but certified copies of conviction to the credit of a witness may be entertained which reflect on the veracity of the witness.

17. After the cross-examination, the Presenting Officer can re-examine his witnesses on any points on which he has been cross-examined, but not on any new matter, unless specifically allowed by the Inquiry Officer. In such a case, the charged officer will have the right to further cross-examine the witness.

18. At the discretion of the Inquiry Officer, and before the close of the case on behalf of the Disciplinary Authority, the Presenting Officer may produce new evidence not included in the original lists supplied to the accused officer, only when there is an inherent lacuna or defect in the evidence which has been produced originally. New evidence shall not be permitted, or called for, or any witnesses shall not be recalled to fill up any gap in the evidence. Similarly, the Inquiry Officer may himself call for new evidence or recall and re-examine any witnesses.

19. After the witnesses on behalf of the Disciplinary Authority have been examined, the accused officer will be required to state his defence orally or in writing. He is entitled to produce evidence in support of his defence by examining himself, if need be and any witness to be produced by him. The charged officer or his defence assistant will proceed to examine his witnesses, who will then be cross-examined by the Presenting Officer and, if necessary, re-examined again. Though the charged officer cannot be forced to give evidence, if he offers himself as his own witness, he can be examined by the defence assistant and cross-examined by the Presenting Officer.

20. On conclusion of the Government servant's case the Inquiry Officer may 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 in the evidence against him. Thereafter, the Presenting Officer, as well as the accused officer, have the opportunity to state their respective cases orally or to file written briefs, if they so desire. Normally the Inquiry Officer has to hear the arguments that may be advanced by the parties after their evidence has been closed. He can, however, on his own or on the desire of the parties, take written briefs. If he does so, he should first take the brief from the Presenting Officer, supply a copy of the same to the Government servant and take the reply brief of the latter.

21. The entire proceedings conducted by the Inquiry Officer should be reduced to writing. The record should include the names of all those present on each hearing. The Inquiry Officer should invariably record a note on the very day stating the gist of the request or representation made by the Presenting Officer or the Government servant and the orders passed thereon. Such notes should form part of the record of the inquiry. The depositions of each witness is to be taken down on a separate sheet of paper at the head of which will be entered the number of the case, the name of the witness and information as to his age, parentage and calling, etc., to identify him. The depositions will generally be recorded as narration, but on certain points it may be necessary to record the questions and answers verbatim. As evidence of each witness is completed, the Inquiry Officer will read the depositions, as typed or written, to the witness in the presence of the Government servant. Verbal mistakes or mistakes committed in typing

in the depositions, if any, will be corrected in their presence. However, if the witness denies the correctness of any part of the record, the Inquiry Officer may, instead of correcting the evidence, record the objection of the witness. The depositions of the witnesses are to be countersigned at every page by the witnesses concerned, the Government servant and the Inquiry Officer so that the validity of the proceedings are not questioned by any one at a later date. The Inquiry Officer will record and sign the following certificate at the end of deposition of each witness: -

"Read over to the witness in the presence of the Government servant and admitted as correct/objection of witness recorded."

If any witness refuses to sign the deposition, the Inquiry Officer will record this fact and append his signature. If a witness deposes in a language other than English, but the deposition is recorded in English, a translation in the language in which the witness deposed should be read to him by the Inquiry Officer, who will record a certificate that the deposition was translated and explained to the witness in the language in which it was deposed.

22. Copies of statements of witnesses recorded from day-to-day should be furnished to the Government servant and to the Presenting Officer each day at the close of the day's proceedings and acquittance obtained.

23. The Inquiry Officer will maintain a daily order-sheet to record in brief the business transacted on each day of hearing. Requests and representations made by their party should also be recorded and disposed of in the sheet. In particular the following points should find mention in the order-sheet: -

    (a) The additional documents and the witnesses asked for by the charged officer in his defence.

    (b) The additional documents and defence witnesses permitted.

    (c) Reasons for disallowing the remaining documents and witnesses.

    (d) Whether the additional documents permitted as relevant were made available for inspection and were inspected by the charged officer.

    (e) If the authority having custody of any such document does not consent to its production, the fact of such refusal.

24. Though the provisions of the Indian Evidence Act and the Criminal Procedure Code are not applicable to departmental inquiries, yet as these provisions are based on principles of natural justice, they should be followed in the conduct of the departmental proceedings, though not as meticulously as in the Courts of Law. The Inquiry Officer will afford reasonable opportunity to both sides to present their respective cases to their satisfaction.

8. *EX PARTE* INQUIRY

1. If the charged officer does not submit his written defence within the time specified, or does not appear before the Inquiry Officer, or otherwise fails or refuses to comply with the provision of the Rules, the Inquiry Officer may hold the inquiry *ex parte*, recording reasons for doing so. For conduct of *ex parte* proceedings see instructions contained in Instruction (6) under Rule 10.

2. *Ex parte* proceedings, however, do not mean that findings should be given without investigation. Inquiry is still necessary, although it would be in the absence of the charged officer. It has to be borne in mind that the Inquiry Officer's job is not at all affected by the absence of the charged officer. He is charged with the scrutiny of the evidence, both verbal

and recorded, and then come to a finding respecting each article of charge. The only difference is that the employee has denied himself the opportunity of cross-examining the prosecution witnesses and producing and examining his own witnesses. The absence of the charged officer does make it a little complicated for the Inquiry Officer to come to a conclusion in the absence of the explanation of the charged officer. The Inquiry Officer has to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. If the Inquiry Officer has done all this, the charged officer cannot later on plead that he was not given reasonable opportunity. Even in *ex parte* enquiry, the Inquiry Officer has to fix a date of hearing and intimate the same to the defendant. If he absents himself from the inquiry at one stage, it does not take away his right to attend the inquiry at any other subsequent stage. The charged officer should be allowed to participate in the inquiry at any stage he likes. However, if he does, the ground already covered will not be repeated. All that the Inquiry Officer has to ensure is that he comes to a finding solely on the basis of evidence, both oral and documentary, produced before him.

9. REPORT OF THE INQUIRY OFFICER

1. An oral inquiry is held to ascertain the truth or otherwise of the allegations and is intended to serve as the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Government servant is called for. The findings of the Inquiry Officer must be based on evidence adduced during the enquiry. The assessment of documentary evidence may not present much difficulty. As regards evaluation of oral testimony, the evidence has to be taken and weighed together, including not only what was said and who said it, but also when and in what circumstances it was said, and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour. The Inquiry Officer who actually records the oral testimony is in the best position to observe the demeanour of a witness and to form a judgment as to his credibility. Where necessary, he should record the demeanour of the witness and discuss the same in his report. Taking into consideration all the circumstances and facts, the Inquiry Officer, as a rational and prudent man, has to draw inferences and to record his reasoned conclusion as to whether the charges are proved or not.

2. After the conclusion of the inquiry, the Inquiry Officer should draw up a report as provided in Rule 10 (23) (i) and forward the same, where it is not the disciplinary authority, to the disciplinary authority, together with the records of inquiry constituting the documents prescribed in Rule 10 (23) (ii).

   The report of the Inquiry Officer should contain –

   (i) An introductory para, indicating appointment of Inquiry Officer and the dates of hearing.

   (ii) Charges that were framed.

   (iii) Charges that were admitted or dropped or not pressed.

   (iv) Charges actually inquired into.

   (v) Brief statement of the case of disciplinary authority in respect of the charges enquired into.

   (vi) Brief statement of facts and documents admitted.

   (vii) Points for determination or issues to be decided.

(viii) Brief statement of the case of the Government servant.

(ix) Assessment of evidence in respect of each point.

(x) Finding on each charge.

Along with the report, the Inquiry Officer should send a folder containing the following: -

(a) List of exhibits produced by the Presenting Officer.

(b) List of exhibits produced by the Government servant.

(c) List of prosecution witnesses.

(d) List of defence witnesses.

(e) A folder containing deposition of witnesses in the order in which they were examined.

(f) A folder containing daily order-sheets.

(g) A folder containing written statement of defence.

(h) Written briefs of both sides.

(i) Applications, if any, filed during the course of inquiry and orders passed thereon, as also orders passed on oral requests made during the inquiry.

3. The Inquiry Officer should take particular care while giving his findings on the charges to see that no part of the evidence, which the accused Government servant was not given an opportunity to refute, examine or rebut, has been relied on against him. No material from personal knowledge of the Inquiry Officer bearing on the facts of the case, which has not appeared either in the articles of charge or the statement of allegations or in the evidence adduced at the enquiry and against which the accused Government servant has had an opportunity to defend himself, should be imported into the case.

4. The Inquiry Officer should give definite findings on the articles of charge individually. Where a particular charge, as such is not established, but part of the allegation referred to in the statement of imputations, is established the Inquiry Officer should specifically bring this point out. If, in the opinion of the Inquiry Officer, the proceedings of the inquiry establish an article of charge different from original articles of charge, he may not record his findings on such article of charge unless the Government servant has either admitted the facts on which such article of charge is based, or has had a reasonable opportunity, during the course of the enquiry of defending himself against such article of charge.

5. The standard of proof required in a departmental enquiry differs materially from the standard of proof required in a criminal trial. 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.

6. An Inquiry Officer should not start assuming the correctness of the imputations/charges or the defence version. His first duty is to study and understand the Department's case and the defence version thoroughly. He should endeavour to reconstruct the conduct expected of the charged officer. He must ascertain all the details of the event or transaction and relevant circumstances attending on them. He must probe into what has happened, where and when. He must know who has done what and what he ought to have done. He should ascertain what was the role assigned to the charged officer, specifically in relation to the charge, what was expected of him and what he actually did or omitted to do. He should conclude whether and which of the imputations/charges are proved.

7. He should then judge whether the charged officer, within his knowledge and experience, behaved with due care and attention, reasonably and honestly, whether he violated the law, Rules and procedures he was expected to follow, whether he knew or ought to have known the propriety and results of his acts. In other words, whether he behaved as a prudent man would have expected to do. He should not be allowed to plead that he violated the procedure in the interest of service. Rules and procedures are laid down in the interest of the public by the persons whose responsibility it is to do so. The charged officer is supposed to follow them. If he has any ideas about better Rules and procedures, it is open to him to propose amendments and not to break them until then.

8. The word *mala fides* should be used with great caution. *Mala fides* is irrelevant in proving a misconduct as it is not a necessary element of it; however, its presence aggravates the seriousness of the misconduct. Every act of a public servant is expected to be honest, bona fide and reasonable and it is for him to dispel any doubt. An act is not honest when it is not just and fair or when it causes wrongful gain or wrongful loss. It is not bona fide when it is committed without due care and attention. It is not reasonable when a fair and prudent person would not do it.

9. *Mala fides* need not be proved, if the act itself speaks. In other cases, *mala fides* will have to be judged from the circumstances of each transaction, or event, powers and responsibility vested in each officer and finally what a prudent and rational person would do in those circumstances and with those powers and responsibilities.

10. It is sometimes argued that even if a clear misconduct is made out *prima facie*, no action should be taken against the public servant because he had an unblemished record till the commission of the offence. This is not correct. It is to be borne in mind that past good or bad conduct should not influence the decision about the present misconduct. This may be left out to be taken into consideration, if necessary, while awarding penalty.

10. FINDINGS OF THE DISCIPLINARY AUTHORITY

1. The report of the Inquiring Authority is only an enabling document which helps the Disciplinary Authority in formulating his opinion and is intended to assist the Disciplinary Authority in coming to a conclusion about the guilt of the Government servant. Its findings are not binding on the Disciplinary Authority, who can disagree with them and come to its own conclusions on the basis of its own assessment of the evidence forming part of the record of the enquiry.

2. The Disciplinary Authority should examine carefully and dispassionately the Inquiring Authority's report and the record of the enquiry and, after satisfying itself that the Government servant has been given a reasonable opportunity to defend himself, will record its findings in respect of each article of charge saying whether, in its opinion, it stands proved or not. If the Disciplinary Authority disagrees with the findings of the Inquiring Authority on any article of charge, while recording its own findings, it should also record reasons for its disagreement, but not so when he agrees.

3. In the light of recent judicial pronouncements, it has been decided that in all cases where an inquiry has been held, the Disciplinary Authority, if it is different from the Inquiry Authority, before taking a suitable decision and making the final order, forward a copy of the inquiry report to the Government servant together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge so as to enable him to make any representation/submission in writing within fifteen days.

4. Having regard to its own findings on the articles of charge, and on consideration of the written submission of the Government servant, if the Disciplinary Authority is of the opinion that the articles of charge have not been proved and that the Government servant should be exonerated, it will make an order to that effect and communicate it to the Government servant together with a copy of the report of the Inquiring Authority, its own findings on it and brief reasons for its disagreement, if any, with the findings of the Inquiring Authority.

11. PASSING OF FINAL ORDER

1. If the Disciplinary Authority is of the opinion that any of the minor penalties should be imposed on the Government servant, orders can be passed straightaway. The higher Disciplinary Authority himself who instituted the disciplinary proceedings should pass the order, without passing on the matter to the lower Disciplinary Authority who may be competent to impose a minor penalty. In the case of a Government servant whose services have been borrowed by one Department from another Department or from a State Government or an authority subordinate thereto or a local or other authority, the Disciplinary Authority will make an order imposing a minor penalty after consultation with the lending authority. In the event of a difference of opinion between the borrowing and lending authorities, the services of the Government servant should be replaced at the disposal of the lending authority.
2. If the Disciplinary Authority is of the opinion that any of the major penalties should be imposed on the Government servant, it is not necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed. An order imposing such penalty can be passed straightaway. However, consultation of the Commission is required to be obtained, wherever such consultation is prescribed.
3. Warning, admonition, reprimand, caution, displeasure and premature retirement under FR 57 (b) are not formal punishments under MCS (D&A) Rules and hence should not be administered/awarded.
4. Where it is considered, after the conclusion of disciplinary proceedings that the officer concerned should be punished, the Disciplinary Authority should award the penalty of "censure" at least. If the intention of the Disciplinary Authority is not to award a penalty of "censure", then no recordable warning should be awarded.
5. Past good or bad conduct of a Government servant can be taken into consideration while awarding penalty. It should, however, be noted that if the previous bad record, punishment, etc., is proposed to be taken into account in determining the quantum of penalty to be imposed, it should be made a specific charge in the charge-sheet itself. Any mention of the past bad record in the order of penalty, unwittingly, or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings and so should be scrupulously avoided.
6. It has been held that disciplinary proceedings are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the Competent Authorities who have been specified as Disciplinary Authorities under the Rules and the orders issued by such authorities should have the attributes of a judicial order. As such, recording of reasons in support of the decision is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. Reasons are the links between the materials on which conclusion is based and the actual conclusion. They reveal a rational nexus between the fact considered and the conclusion reached. Final orders made without mention of reasons for the conclusions reached will be of little assistance to authorities who have powers to decide appeal or exercise revisionary or

review powers. Further, the order to be issued should be a self-contained and reasoned order conforming to the legal requirements as aforesaid. It is also essential that a decision is taken by the appropriate authority and that the same is also communicated by that authority or by his successor without modification or alteration in any manner and not delegated to any subordinate authority.

7. When a decision is recorded by a Disciplinary Authority at the conclusion of departmental proceedings, the decision is final and cannot be varied by that authority itself or by its successor-in-office, before it is formally communicated to the Government servant concerned. The decision taken by the Disciplinary Authority is a judicial decision and once it is arrived at, it is final.

12. SPECIAL PROCEDURE IN CERTAIN CASES

1. Clause (i) of Rule 15 of MCS (D&A) Rules envisaged that in a case where a Government servant has been convicted in a Court of Law, the Disciplinary Authority may, if it comes to the conclusion that an order with a view of imposing a penalty on him, on the ground of conduct which had led to his conviction on a criminal charge should be issued, pass such an order without following the prescribed detailed procedure under Rules 10, 11 and 12 of the said Rules.
2. The first proviso to Rule 15 provides for giving the Government servant an opportunity of making representation on the penalty proposed to be imposed, before any order is made in case under Clause (i). According to this, the Disciplinary Authority should itself, in the first instance, hold an enquiry, in which the Government servant concerned should be given a chance to explain and defend the case. No charge-sheet is required to be served as the charges have already been established in the Court. A copy of the skeleton enquiry report held should be furnished, along with the show-cause notice referring only to the extenuating circumstances, if any, brought forward by the convicted official and the gravity of the criminal charge, for provisionally deciding the quantum of penalty, which may be finalized after taking into consideration the reply submitted by him in response to the show-cause notice served.
3. Rule 15 (ii) [Clause (b) of the second proviso to Article 311 (2)] provides, in the peculiar circumstances of a case, for the Disciplinary Authority to make such orders as it deems fit without holding an inquiry, in case it is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold an inquiry in the manner laid down in the Rules. It should be clearly noted that the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly, or arbitrarily, or out of ulterior motives, or merely in order to avoid the holding of an inquiry or because the Department's case against servant is weak and is, therefore, bound to fail. Further, it is a constitutional obligation that the Disciplinary Authority should record in writing the reasons for its satisfaction that it was not reasonably practicable to hold the inquiry and preferably in the order of penalty itself. The reasons given, though may be brief, should not be vague or should not be just a repetition of the language of the relevant Rules.

13. APPEAL

1. A Government servant, including a person who has ceased to be in Government service, may prefer an appeal to the Appellate Authority specified in this behalf in the Schedule to the MCS (D&A) Rules, against the order of the Disciplinary Authority, in case he is not satisfied with the decision of that authority.

2. Where no such authority is specified, the appeal of a Group 'A' or Group 'B' officer shall lie to the Appointing Authority, where the order appealed against is made by an authority subordinate to it; and to the Governor where such order is made by any other authority. An appeal from a Group 'C' or Group 'D' Government servant will lie to the authority, to which the authority making the order appealed against, is immediately subordinate.

3. In the case of all those belonging to Group 'A', the Governor is the Appointing Authority and also the Disciplinary Authority. This means that once the Disciplinary Authority, that is the Governor, has exercised his powers, no appeal can lie to any authority, because there is none superior to the Governor. But memorials and mercy petitions can, no doubt, be submitted, praying for remission of penalty or pardon.

4. An appeal should be preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the Government servant. It should be complete in all respects and contain all material statements and arguments on which reliance is placed. It should not contain any disrespectful or improper language. The Appellate Authority is empowered to entertain appeals preferred after the expiry of the said period, if it is satisfied that the Government servant had sufficient cause for not preferring the same in time. There is no provision in the Rules for withholding of an appeal on any ground.

5. The Appellate Authority, to whom the appeal is addressed direct, on receipt of the relevant documents of the disciplinary proceedings complete in all respects, should consider the same to see –

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

   (ii) whether the findings of the Discipline Authority are warranted by the evidence on the record of the case, and

   (iii)whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

6. The Rules thus cast a duty on the Appellate Authority to consider the relevant factors set forth above. It is not the requirement of Article 311 (2) or of the Rules of natural justice that in every case the Appellate Authority should, in its order, state its own reasons, except where it disagrees with the findings of the Disciplinary Authority. It is, however, necessary that all the points raised by the appellant are summarized in the order and are also logically discussed to show how they are tenable/acceptable or otherwise. The appellate order should discuss thoroughly the following points: -

   (i) the procedural aspects as well as the justness of the findings of the Disciplinary Authority with reference to the admissible evidences;

   (ii) a proper discussion of the points raised in the appeal; and

   (iii) any objective assessment of the lapse on the part of punished official with a view to coming to a decision that the charge(s) had been established and that the penalty is appropriate/ adequate and does not require to be either toned down or enhanced.

7. The principle of right of personal hearing applicable to a judicial trial or proceedings, even at the appellate stage, is not applicable to departmental enquiries, in which a decision of the Appellate Authority can generally be taken on the basis of the records before it. However, where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the Appellate Authority may, after considering all the

relevant circumstances of the case, allow the appellant, at its discretion, the personal hearing taking the assistance of Defence Assistant.

8. In the light of its findings, the Appellate Authority has to pass an order –
   (i) confirming, enhancing, reducing or setting aside the penalty, or
   (ii) remitting the case to that authority which imposed or enhanced the penalty or to any authority with such direction as it may deem fit in the circumstances of the case.
9. No order imposing an enhanced penalty can be made in a case unless the Government servant has been given a reasonable opportunity of making a representation against such enhanced penalty. When the Appellate Authority proposes to impose one of the major penalties and if no enquiry as laid down in the Rules had been held already, it should itself hold such an enquiry or direct such enquiry to be held and pass orders thereafter on a consideration of the proceedings of such enquiry.

14. REVISION

1. After the Appellate Authority has passed its judgment and if the Government servant is not satisfied with it, he has an opportunity to seek the indulgence of an authority higher than the Appellate Authority—the Revising Authority. The power of revision is vested with the Governor, the Head of a Department, the relevant Appellate Authority or any other authority specified in this behalf.
2. No time-limit has been prescribed for the revision, except in the case of the Appellate Authority, where the revised order has to be passed within six months of the date of the order proposed to be revised. This power can be invoked, irrespective of the fact whether an appeal/revision petition has been submitted to such authority.
3. No proceeding for revision should be commenced until after the expiry of the period of limitation of appeal or, the disposal of the appeal, where any such appeal has been preferred. An application for revision should be dealt with in the same manner as if it were an appeal under the Rules.

15. REVIEW

The Governor has power to review any order passed earlier, including an order passed in revision, when any new fact or material which has the effect of changing the nature of the case, comes to his notice.

16. APPLICATION BEFORE TRIBUNAL

1. There is, however, yet another opportunity available to all Government servants – both Gazetted and non-Gazetted. He can prefer an application before the appropriate Bench of the Central Administrative Tribunal, against the final decision in any disciplinary proceeding.
2. The Tribunal cannot go into the basic decision, that is, the nature and quantum of penalty imposed. It can only interfere in a case just to see whether –
   (i) statutory provision or Rules prescribing the mode of enquiry were disregarded.
   (ii) rules of natural justice were violated.
   (iii) there was no evidence, that is, punishment has been imposed in the absence of supporting evidence.

If there are some legal evidence on which the findings can be based, the Tribunal cannot go into the adequacy or reliability of that evidence, even if it be of the view that on the same evidence, its conclusion may have been different.

(iv) consideration, extraneous to the evidence or the merits of the case, taken into account.

(v) the conclusion was so wholly arbitrary and capricious that no reasonable person could easily arrive at the conclusion.

3. The decision of the authority in a disciplinary proceeding has been made justiciable to the above extent in the various judgments of the Supreme Court. It is, therefore, important for the concerned authorities to exercise their powers with the greatest care, concern and scrupulous regard for the Rules and procedures and without any personal bias and prejudice, fear or favour and with independence and impartiality