

\*[*Explanation 3*.-The words "Basic Pay Scale", wherever occurring in column 2 of the table means appointment to the post in that Basic Pay Scales].

[*Authority*.- Estt. Division Notification No. S.R.O. 615(1)/79, dated 5-7-1979].

*Sl. No. 80*

A reference is invited to Government Notification forwarded to all Ministries/Divisions etc. *vide* Establishment Division endorsement of even number dated 7-11-1973 wherein Authority/Authorized Officers in respect of Government servants in the Federal Secretariat have been designated under sub-rules (2) and (3) of rule 2 of Government Servants (Efficiency and Discipline) Rules, 1973. It may be stated that similar action is required to be taken in respect of Government Servants in various Attached Departments and Subordinate Offices of the Federal Government.

2. It is, therefore, requested that Ministries/Divisions may kindly take action for designation of Authority and Authorized Officer for Government Servants in the Attached Departments and Subordinate Offices under them. The Establishment Division may be consulted before formal notification is issued.

[*Authority*.- Estt. Division O.M.No.7/1/73-D.I., dated 17-11-1973].

*Sl. No. 81*

According to the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, [ ] the appointing authority for Government servants in Grade 16, is now Secretary of the Ministry or Division concerned or the Head of Department \*\* [or an officer notified by Head of the Department or Head of Subordinate Office].

\*Added *vide* Estt. Division Notification No. S.R.O. 1227(1)/91, dated 2-12-1991.

\*\*Subs *vide* Estt. Division Notification No. S.R.O. 34(1)/99, dated 18-1-1999.

2. It is requested that the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 quoted above

may please be kept in view by the Ministries/Divisions while formulating their proposals for designation of Authority and Authorised Officer in respect of Government Servants in Attached and Subordinate Offices under them.

3. In some cases, "Authority" and "Authorised Officer" have been notified by the Ministries/Divisions in respect of Government servants in the Attached/Subordinate Offices, under them. It is requested that position in this regard may kindly be reviewed, especially with respect to Government servants in Grade 16.

*[Authority.- Estt. Division O.M.No.7/1/73-D.I, dated 2-4-1974].*

*Sl. No. 82*

A doubt is being felt by some Ministries/Divisions whether the Establishment Division's Notification No. S.R.O. 615 (I)/79, dated the 5th July, 1979 (Sl.No. 79), notifying authority and authorised officer in respect of Government servants employed in the Federal Secretariat or serving in a post, or belonging to a service or cadre administratively controlled by a Ministry or Division is also applicable to Government servants serving in the Attached Departments and Subordinate Offices. Explanation-2 below the aforementioned Notification covers a Government servant serving outside the Federal Secretariat whether in a Provincial Government or in an autonomous body, who is serving in a post, or belongs to a service or cadre administratively controlled by a Ministry or Division e.g. officers of Police Group administratively controlled by the Establishment Division or of Military Land and Cantonment Group similarly controlled by the Ministry of Defence. In that case officers of controlling Ministry/Division designated as authority and authorised officer vide Notification No. S.R.O. 615(I)79, dated the 5th July, 1979 will be the authority and authorised officer. But in so far as Government servants belonging to Attached Departments and subordinate offices are concerned, they are not covered by the Establishment Division aforementioned Notification. In their case, Ministries/Divisions concerned are required to notify authority and authorised officer separately in accordance with the Government Servants (Efficiency and Discipline) Rules, 1973, as already

envisaged in the Establishment Division O.M. No. 7/1/73-D I, dated the 17th November, 1973 (Sl. No. 80).

[Authority.- Estt. Division O.M.No.3/3/80-D.1, dated 1-1-1981].

**Designation of `Authority'  
and `Authorised Officer'  
under Rule 2 of the  
Efficiency and Discipline  
Rules in respect of  
employees of an attached  
department or a  
sub-ordinate office of  
the Federal Government**

*Sl. No. 83*

In exercise of the powers conferred by clauses (2) and (3) of rule 2 of Government servants (Efficiency and Discipline) Rules, 1973, the President is pleased to designate the officers specified in column (3) of the table below to be the authority and the officers specified in column (4) of that table to be the authorised officers in respect of the government servants, specified in column (2) thereof, employed in an attached department or a sub-ordinate office of the Federal Government.

| S.No. | Government Servants  | Authority       | Authorized Officer                 |
|-------|--|-----------------|------------------------------------|
|       | 3.   | 4.              |                                    |
| 1.    | Government servants holding posts in Basic Pay Scale 21 or equivalent and above. | *Prime Minister | To be designated by Prime Minister |

\*Note.- In the existing rules, for the allocation and transaction of the business of the Federal Government, wherever the words "Prime Minister" occur the same shall be deemed substituted by the word "Chief Executive" vide Order No.7 of 1999, dated 30-10-1999.

| 1.  | 2.   | 3.   | 4.   |
|---|--|--|--|
|   | Government servants holding posts in Basic Pay Scale 17 to 20 or equivalent. | Prime Minister   | Secretary of the or Acting Secretary or Senior Joint Secretary / Joint Secretary of the Division |
|   | Incharge concerned.  |  |  |
|   | Government servants holding posts in Basic Pay Scale 3 to 16 or equivalent.  | Head of the attached department or Head of the subordinate office, *[or an officer not below the appointing authority designated by the Head of the Department or Head of subordinate office]. | An officer, *[ ] designated by the authority specified in column (3).                            |
|   | Government servants holding posts in Basic Pay Scale 1 to 2 or equivalent.   | An officer, **[not below the appointing authority] designated by the Head of the attached department or head of the subordinate office.  | An officer, *[ ] to be designed by the authority specified in column                             |
| (3).  |  |  |  |
| @[5.  | Government servants holding posts in BPS 19-20.                              | Prime Minister.  | Chairman, Pakistan Ordnance Factories Board.   |
| 6.  | Government servants holding posts in BPS 17-18.                              | Chairman, Pakistan Ordnance Factories Board.   | To be designated by the Authority in column 3].  |
| (In the Chief Ehtesab Commissioner's Secretariat) |  |  |  |
| @@[7.   | Government servants holding posts in Basic Pay Scale 20 and above.           | Prime Minister   | Establishment  |
| 8.  | Government servants holding  | Prime Minister   | Secretary Ehtesab  |

|     |   |                                      |   |
|-----|---|--------------------------------------|---|
|     | posts in Basic Pay Scale 17 to 19.                            |                                      | Commission.                                       |
| 9.  | Government servants holding posts in Basic Pay Scale 3 to 16. | Secretary Ehtesab Commission.        | To be designated by the Authority in column (3).  |
| 10. | Government servants holding posts in Basic Pay Scale 1 and 2. | Director (BS-19), Ehtesab Commission | To be designated by the Authority in column (3)]. |

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\*Omitted *vide* Estt. Division Notification NO. S.R.O.35(I)/99, dated 18-1-1999.

\*\*Added *ibid*.

\*\*\*Subs *ibid*.

@Added *vide* Estt. Division Notification No. S.R.O. No.128(I)/99, dated 1-3-1999.

@@Added *vide* Estt. Division Notification No. S.R.O. No.1178(I)/99, dated 4-10-1999.

|    |    |    |    |
|----|----|----|----|
| 1. | 2. | 3. | 4. |
|----|----|----|----|

(In the Secretariat Training Institute, Islamabad)

|     |   |                |                 |
|-----|---|----------------|-----------------|
| 11. | Government servants holding Secretary] posts in Basic Pay Scale 17 to 20. | Prime Minister | *[Establishment |
|-----|---|----------------|-----------------|

|        |                           |                |
|--------|---------------------------|----------------|
| **[12. | Basic Pay Scale 17 to 18. | Prime Minister |
|--------|---------------------------|----------------|

|     |   |  |
|-----|---|--|
| 13. | Basic Pay Scale 1 to 16. Director, Secretariat Training Institute]. |  |
|-----|---|--|

(In the Office of the Auditor General of Pakistan and Subordinate Offices of the Pakistan Audit Department)

|         |  |                |                                    |
|---------|--|----------------|------------------------------------|
| ***[14. | Government servants who are the members of the Accounts Group holding posts in Basic Pay Scale 21 and above. | Prime Minister | To be designated by Prime Minister |
|---------|--|----------------|------------------------------------|

|     |   |                |                 |
|-----|---|----------------|-----------------|
| 15. | Government servants holding posts in Basic Pay Scale 17 to 20 borne on the Inter- | Prime Minister | Auditor General |
|-----|---|----------------|-----------------|

Departmental Cadre in the  
Accounts Group.

- |     |   |                |                   |
|-----|---|----------------|-------------------|
| 16. | Government servants holding posts in Basic Pay Scale 17 borne on the Departmental Cadre in the Pakistan Audit Department.   | Prime Minister | Auditor General   |
| 17. | Government servants holding posts in Basic Pay Scale 17 to 20 in the Pakistan Audit Department excluding Government servants holding cadre posts in the Inter-Departmental Cadre or Departmental Cadre. | Prime Minister | Auditor General]. |

2. For the purpose of the entry in column (4) against serial No.3 and the entries in column (3) and (4) against Sl. No.4 more than one officers may be designated as authority and authorized officers.

\* Added *vide* Estt. Division Notification No. S.R.O. No.174(I)/96, dated 29-2-1996.

\*\* Added *vide* Estt. Division Notification No. S.R.O. No.1121(I)/95, dated 7-11-1995.

\*\*\* Added *vide* Estt. Division Notification No. S.R.O. No.1013(I)/98, dated 3-10-1998.

3. Notwithstanding anything to be contrary hereinbefore contained, all notifications or orders issued by any Ministry or Division specifying `authorities' and `authorised officers' in respect of the Government servants to whom this notification shall apply and in force before the issuance of this notification shall continue and remain in force till finalization on of disciplinary proceedings initiated against any such Government servant.

[Authority.- Estt. Division Notification No. S.R.O.No. 429(1)98, dated 30-4-1998].

**Procedure for obtaining orders  
of the President or Prime  
Minister in disciplinary cases**

*Sl. No. 84*

It has been decided that in future, all the summaries for the President in disciplinary cases should invariably be accompanied by the information desired in the enclosed proforma. The cases/ summaries received without this information will be returned back to their respective Ministries and Divisions.

[Authority.- Estt. Division d.o.letter No.3/4/83-D-2, dated 24-3-1983].

**BIO-DATA**

(TO BE USED IN DISCIPLINARY & OTHER CASES)

1. Name of the Officer\_\_\_\_\_
  - a. Grade
  - b. Date of Birth & Age on  
( Years Months Days)
  - c. Date of Joining & Length of Service.  
( Years Months Days)
  - d. Date of Absence from duty. (if applicable)
  
  - e. Total ACRs V.Good Good Average Below  
Average  
(Years to be shown against Average & Below  
Average ACRs).
  
  - Note:*
    - (1) Any missing ACRs with reasons.
    - (2) Photo of the Officer is affixed in the C.R.dossier or  
not and reasons if missing.
  
  - f. Adverse Remarks.
  - g. Service (Showing Appointments held).

**Powers of the "Authorized**

**Officer" to suspend a  
Government servant  
or to send him on leave**

*Sl. No. 85*

Rule 5(1) of the Government Servants (E&D) Rules, 1973 provides that in case where a Government servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of "authority", suspend him, provided that any continuation of such leave or suspension shall require approval of the "authority" after every 3 months. Rule 5(4) of above rule further provides that if on receipt of the report of inquiry officer or inquiry committee, or, where no such officer or committee is appointed, on receipt of the explanation of the accused, the "authorized officer" proposes to impose a minor penalty, he shall pass orders accordingly. Following questions have accordingly arisen in the context of above rules:-

(a) Whether specific approval of the "authority" will be required for reinstatement of the Government servant concerned if the "authorized officer" imposes upon him a minor penalty before expiry of the current period of suspension or whether an order for the reinstatement of Government servant can be passed by the "authorized officer" himself?

(b) Whether the order of suspension or forced leave under Rule 5(4) of above rules will automatically abate if the approval of "authority" to the continuation of such forced leave or suspension of a Government servant is not obtained after every 3 months?

2. The matter has been recently examined in the Establishment Division in consultation with the Law Division. The conclusion reached is given below *ad-seriatim*:-

(a) Since under rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, the 'authorized officer' can only suspend a Government servant after obtaining the approval of the "authority", on the basis of the principle embodied in section 25 of the General Clauses Act, 1897 the "Authorized Officer" would be competent to reinstate the Government servant only

with the approval of the "authority".

(b) Since continuation of forced leave or suspension beyond a period of three months again requires the approval of the "authority" it would appear that on expiry of the said period of three months the Government servant who has been placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before the expiry of the said period the approval of the "authority" to the Government servant continuing to

be under suspension or on leave has been obtained.

*[Authority.- Estt. Division O.M. No.7/2/75-DI. dated 22-2-1975].*

*Sl. No. 86*

A reference is invited to the Establishment Division Office Memorandum of even number, dated the 22nd February, 1975, wherein the legal position with regard to suspension, extension of suspension period and reinstatement of the civil servants was explained.

2. It has come to the notice of the Establishment Division that on the basis of the above instructions, civil servants under suspension are being re-instated on the ground that approval of the authority for their continued suspension was not obtained before the expiry of three months of their suspension or the extended period of suspension.

3. It may be clarified that the intention of the Establishment Division in circulating the legal position contained in the O.M. referred to above was to impress upon the Ministries/Divisions the importance of obtaining the approval of the authority for the continued suspension of a civil servant well in time. As has been stated in para 2 (b) of O. M. referred to above, it is necessary to obtain orders of the authority for the reinstatement of a civil servant who is under suspension.

4. Ministries/Divisions are requested to take necessary steps to obtain the approval of the authority for suspension of a civil

servant after every three months well in time before the expiry of the period of suspension. In no case should a Government servant under suspension be re-instated without the approval of the authority.

[Authority.- Estt. Division O.M.No.7/2/75-DI, dated 16-3-1976].

**Authority competent to  
suspend officers of  
Grade-17 and above**

*Sl. No. 87*

It has been brought to the notice of the Prime Minister that some officers of the rank of Grade-17 and above have been suspended by the Ministers as a measure of disciplinary action. While it is not the intention that action should not be taken against a Government servant guilty of misconduct, corruption or for inefficiency, it is a matter of some importance that the correct procedure should be followed in each case. Observance of correct procedure is essential not only in the interest of justice but also to ensure that Government Servants (Efficiency and Discipline) Rules, 1973 are complied with. The position is further clarified in the following paragraphs:-

2. Under rule 3 of the above rules action against a Government servant can be taken if he -

- (a) is inefficient or has ceased to be efficient; or
- (b) is guilty of misconduct; or
- (c) is corrupt or may reasonably be considered corrupt

because -

(i) he is or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of

pecuniary resources or of property disproportionate to his known sources of income; or

(ii) he has assumed a style of living beyond his ostensible means; or

(iii) he has a persistent reputation of being corrupt; or

(d) is engaged, or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and retention in service is therefore prejudicial to national security.

3. In case where a Government servant of Grade-17 to 20 is accused of subversion, corruption or misconduct, the competent authority may require him to proceed on leave or with the approval of the authority (*i.e.* Prime Minister) suspend him, provided that any continuation of such leave or suspension shall require approval of *the authority after every three months*. A Government servant against whom action is proposed to be taken under the rules for inefficiency he cannot be sent on leave or placed under suspension. The following factors should be considered in deciding whether or not to suspend the accused:-

(a) There must be a strong *prima facie* case against the delinquent.

(b) If the offence is such a serious nature that dismissal will be the probable punishment, or such that it is inadvisable that the offender should be allowed to continue to perform the duties of his office pending decision on the case, suspension is justifiable.

(c) Unless there is some very strong reason why the offender should not be allowed to continue to work until the case has been decided suspension should not be resorted to.

\*4. Under sub-rule (2) of rule 2 of the rules, the authority for the officers of Grade 17 to 20 is the Prime Minister as notified in the Establishment Division Notification No. S.R.O.1562(I)/73, dated the 7th November, 1973. If it is desired to suspend an officer of Grade 17 to 20 the approval of the Prime Minister for his suspension will have to be obtained.

5. It should be decided whether in the light of facts of the case or the interests of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. The orders of the Minister may be obtained before a decision is taken. If it is decided that it is not necessary to have an inquiry conducted, the accused should be informed of the action proposed to be taken in regard to him and the grounds of the action and give him a reasonable opportunity of showing cause against that action. However, no such opportunity may be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

6. If it is decided to hold an inquiry against an accused officer through an Inquiry Officer or Inquiry Committee the following action should be taken:

(1) Charge sheet be framed and communicated to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.

(2) The accused be required within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.

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<sup>\*</sup>Please see note under rule 3, *ibid.*

(3) The Inquiry Officer or the Committee, as the case may be, shall enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.

(4) The Inquiry Officer or the Committee, as the case may be, shall within ten days of the conclusion of the proceedings or such longer period as may be allowed by the authorized officer, submit his or its findings and the grounds thereof to the Secretary/ Additional Secretary.

7. On receipt of the report of the Inquiry Officer or Inquiry Committee or, where no such officer or committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer should determine whether the charge has been proved. If it is proposed to *impose a minor penalty he should pass orders accordingly*. If it is proposed to impose a major penalty, he should submit the case to the Prime Minister *along with the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed*.

8. As stated above, the authority for officers of Grade 17 to 20 is the Prime Minister. If it is intended to suspend an officer in those Grades approval of the Prime Minister is necessary. It is requested that approval of the Prime Minister may kindly be obtained through the Establishment Division in such cases. The rules do not provide for obtaining of ex-post facto sanction for suspension.

*[Authority.- Estt. Secretary's D.O. letter No.F.4/21/74-DI, dated 19-11-1974].*

**Appointment of an  
Inquiry Officer under  
the Government Servants  
(Efficiency & Discipline)  
Rules, 1973**

*Sl. No. 88*

Under rule 5 (1) (ii) of the Government Servants (Efficiency and Discipline) Rules, 1973, the "Authorised Officer" has the powers

to order holding of inquiry against an accused government servant through an Inquiry Officer or Inquiry Committee. It has been noticed that sometimes the Ministries/ Divisions/Departments appoint Inquiry Officers who are junior to the accused government servant.

2. It is clarified that it is not appropriate to appoint an "Inquiry Officer" junior to the officer being proceeded against under the aforementioned Rules as that could lead to administrative and legal complications at a later stage. All Ministries/Divisions are, therefore, advised to keep this aspect in view while appointing inquiry officers in cases involving disciplinary cases under the E&D Rules.

*[Authority.- Estt. Division O.M. No. 16/61/94-R.2, dated 24-1-1995].*

**Grant of personal hearing  
to the accused Government  
Servant under Rule 5 (1)  
(iii) of the Government  
Servants (Efficiency &  
Discipline) Rules, 1973**

*Sl. No. 89*

Rule 5 (1) (iii) of the Government Servant (Efficiency and Discipline) Rules, 1973, provides that if the authorised officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall -

- (a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of action, and
- (b) given him a reasonable opportunity of showing cause against that action.

2. A question has arisen as to whether a reasonable opportunity of showing cause against the proposed action includes grant of personal hearing to the accused. The matter has been considered in consultation with the Law and Justice Division and it has been decided that in order to safeguard against the possibility of the disciplinary proceedings, being vitiated at later stage, the show cause notice should contain a reference asking the accused if he wishes to be heard in person.

3. All Ministries/Divisions are accordingly advised that, henceforth, every show cause notice to be issued in terms of rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules 1973, must contain a specific reference asking the accused to state whether he wishes to be heard in person.

4. The above decision is circulated for the information of Ministries/Divisions with the request to also bring it to the notice of the Attached Department/Subordinate Offices, etc, under the administrative control for necessary action.

*[Authority.- Estt. Division O.M.No.16/29/96-R.2, dated 17-6-1996].*

**Authority and Authorised Officer  
under the Government Servants  
(Efficiency and Discipline)  
Rules, 1973 for the Officers  
who are drawing pay in a  
higher Pay Scale by virtue of  
Move-over or Selection Grade**

*Sl. No. 90*

A question has arisen as to who should be the Authorised Officer or Authority, under the Government Servants (E&D) Rules, 1973 in respect of an employee who is drawing pay in a pay scale

higher than the pay scale of his substantive appointment by virtue of move-over or grant of selection grade.

2. The issue has been examined in the Establishment Division. According to the instructions issued by the Finance Division, the following condition is, inter alia, laid down for grant of move-over:

"The move-over shall not be construed to be a promotion to be post of higher Basic Pay Scale, but the higher pay scale will be treated to be an extension of the existing Basic Pay Scale of the post held by the employees. Therefore, the incidence of move-over shall not be notified."

Similarly, an officer who is placed in the selection grade of a particular post continue to perform the duties of the same post. He cannot, therefore, be treated to have been promoted to a higher post. Moreover, the name of an employee who is allowed to move-over to the next higher pay scale or is granted selection grade in a particular cadre, continues to be placed in the seniority list of employees belonging to the same cadres.

3. In view of the position stated above, it is clarified that the substantive post of a government servant and not his pay scale on account of move-over or selection grade should be taken into account for the purpose of disciplinary proceedings against him. By stepping into a higher pay scale, by virtue of move-over, or selection grade, the Authority, and Authorised Officer will not change but will remain the same as in previous scale. For example, the Authority and Authorised Officer in respect of a Superintendent, a BS-16 post, would remain respectively the Secretary and Additional Secretary even if the incumbent has been placed in BS-17, by move-over or selection grade.

4. The position as explained above may be brought to the notice of all concerned.

*[Authority.- Estt. Division O.M.No.16/24/94-R.2, dated 22-6-1995].*

**Continuance of suspension  
period beyond 3 months -  
Procedure for submission  
of summaries to the  
\*President**

*Sl. No. 91*

Rule 5 (1) of the Government Servants (Efficiency and Discipline) Rules, 1973 provides that in a case where a Government Servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of the authority, suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every 3 months.

2. It has been observed that the Secretaries of the Ministries/Divisions concerned do not submit summaries for the \*President for the continuation of the period of suspension of Government Servants where the \*President is the authority, after every three months well in time. At times they do not at all move the proposal for further continuation of the period of suspension after a Government Servant has been initially suspended for a period of three months.

3. As it is mandatory under the rules to obtain the approval of the authority to the continuation of the period of suspension after three months, it is imperative that in cases where the \*President is the authority the proposals for extension of suspension period should reach the Establishment Division in the form of "Summary for the \*President" addressed to COS to the \*President at least a fortnight before the expiry of initial/extended period of suspension.

4. It is therefore, requested that action should be initiated in good time to avoid complications later on.

*[Authority.- Estt. Division D.O.letter No.10/6/79-C.II(B), dated 30-10-1979].*

**Extension in period**

**of suspension***Sl. No. 92*

It has been observed that while making a request for extension in the suspension period of a civil servant under suspension, on expiry of the current sanction after three months, the Ministries/Divisions do not mention the stage of disciplinary proceedings/inquiry etc. against the accused.

2. It has, therefore, been decided that whenever such a request is made by the Ministries/Divisions, the present position of the disciplinary case including the stage of inquiry, if it is in progress, may invariably be stated in the proposals for extension in the period of suspension of the accused officer.

[Authority.- Estt. Division O.M. No. 2/26/86-D.I., dated 30-8-1987].

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\*After the word "President" the words "or Prime Minister" stands added *vide* Estt. Division Notification No. S.R.O. 43(1)/86, dated 7-1-1986.

**Stoppage of Increment  
under Government Servants  
Efficiency and Discipline  
Rules, 1973**

*Sl. No. 93*

Instances have come to the notice of the Establishment Division where the penalty of stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on government servants, who have reached the maximum of the pay scale thus making the penalty ineffective. It is therefore necessary that the stage of the pay scale at which a government servant is drawing pay is kept in view by the competent authority before imposing the penalty of stoppage of increment under the above Rules.

[Authority.- Estt. Division O.M.No.31/46/86-R-3, dated 7-12-1986].

**Imposition of major penalties  
under Rules 4 (1) (b) (i) of  
the Government Servants  
(Efficiency and Discipline)  
Rules, 1973**

*Sl. No. 94*

Reference Rule 4 of the Government Servants (Efficiency & Discipline) Rules, 1973 provides for minor and major penalties. The minor penalties include with holding of promotion or increments and stoppage (at an efficiency bar) in the time scale. These penalties have to be for a specific period. On the other hand, major penalties, *inter alia*, include reduction to a lower post or time scale or to a lower stage in a time scale. It is clear that, in the case of minor penalties *i.e.* of with holding of promotion or increments or stoppage in time scale the same have to be imposed for a specific period. In case of major penalties, however, the promotion earned, increment or stage in the time scale already in force is reversed. In view of this, there is no mention of period in respect of major penalties in contradistinction to minor penalties. Hence no period is required to be specified while imposing major penalties as laid down in rule 4 (1) (b) (i) of the rules.

*[Authority.- Estt. Division O.M. No. 1/1/89-R.3, dated 5-8-1991].*

**Competency of the punishing  
authority to re-try cases or  
to revise punishments already  
imposed**

*Sl. No. 95*

The following questions have arisen:-

(a) Where an original punishing authority can, on his own accord, re-try a case in which he has already passed orders on the grounds that some flaws in the statutory procedure have been detected by him after the issue of orders but before any appeal has been preferred to the appellate authority against

these orders; and

(b) Where a punishing authority can, merely on reconsideration, modify and revise the penalties already imposed by him in a case in which there has been no flaw in the statutory procedure.

2. The reply to both questions is in the negative. An original punishing authority cannot revise its own punishing orders whether merely on reconsideration or on discovery of some flaw in the statutory procedure after the original orders are passed but before any appeal has been preferred against these orders. In either case, if no appeal has been preferred, only the Governor General-in-Council in exercise of his revisional powers can order a re-trial of the case or a modification of the original orders.

3. In this connection it may be added that the intention of the orders contained in para 2(b) of this office letter No.ESB, III-I/36, dated the 29th May, 1936, is that the appellate authority can order retrial of a case on the ground of flaw in procedure only on receipt of an appeal from the appellant. If no appeal has been preferred or if an appellate authority has already passed his order on an appeal the only authority competent to order retrial in a case on the grounds of flaw in procedure is the Governor General-in-Council.

[Late D.G.P.&T. New Dehli letter No. E.III- 18/41, dated the 30 January, 1941 to all Heads of Circles]

*Note.*- The clarification given by the late D.G.P.&T. in his above letter is valid in the present context.

[*Authority.*- Estt. Division U.O.Note No.1012/66-DI, dated 21-2-1967].

**Powers of the Authority  
under rule 6-A of the  
Efficiency and Discipline  
Rules**

***Sl. No. 96***

Under the provisions of Rule 6-A of the Government

Servants (Efficiency and Discipline) Rules, 1973, the authority may call for the record of any case pending before or disposed of by the authorized officer and pass such order in relation thereto as it may deem fit.

2. To enable the `Authority' to perform its function more effectively under the provision of said rule, it has been decided that in future, whenever the disciplinary proceedings are completed against a Civil Servant of the Federal Government in BPS 17 and above copies of the record of the proceedings viz: charge sheet alongwith statement of allegations; show cause notice, if issued instead of charge sheet; report of the Inquiry Officer and the final orders, be endorsed to Establishment Division, Joint Secretary (Discipline).

3. The above decision may also be brought to the notice of all Attached Departments/Subordinate Offices; for strict compliance in future.

*[Authority.- Estt. Division O. M. No. 2/83/80-C. II(B), dated 17-11-1980].*

**Initiation of proceedings  
against officers screened  
and cleared in the past**

*Sl. No. 97*

The President has been pleased to direct that his prior approval must invariably be obtained before any proceedings are initiated against an officer on the same facts on which he was screened and cleared wholly or partially in the past.

*[Authority.- Estt. Secretary D.O. No. 4/14/60-SR, dated 18-11-1960].*

**Disciplinary procedure  
to be followed in cases  
where no Inquiry Officer/  
Committee is appointed**

*Sl. No. 98*

Rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules, 1973 provides that if the authorized officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall:-

(a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of action, and

(b) give him a reasonable opportunity of showing cause against that action.

2. Both the provisions mentioned at (a) and (b) in the preceding paragraph are mandatory. On an appeal filed by a Government servant against the order of his compulsory retirement, the Service Tribunal has recently set aside the order of his compulsory retirement on the grounds that neither the action to be taken was specifically mentioned in the Show Cause Notice nor was he given a reasonable opportunity of showing cause against the proposed action. It has been pointed out by the Service Tribunal that there are decisions of the superior courts on the point that whenever any discretion is given to an authority, it has to be exercised not arbitrarily but honestly, justly, and fairly in the spirit of rules, and on judicial grounds and for substantial, reasons. For this purpose, the nature of allegations against the accused has to be considered. In a case where it is clear to the authorized officer that the accused can be given reasonable opportunity of showing cause against the action proposed to be taken e.g. where the allegations could be decided by reference to record in a summary manner, the procedure under sub-rule (iii) of Rule 5(1) may be adopted. Otherwise the ends of justice would be served by ordering an inquiry through an Inquiry Officer or Inquiry Committee.

3. In a Show Cause Notice the proposed action is required to be specified, and no general mention is to be made by reference to all the minor or major penalties in the rules.

4. Further, serving of a Show Cause Notice and mere reply thereto in denial of allegations or mere questions and answers do not amount to affording the accused reasonable opportunity of showing cause as required by clause (b) of Rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules, 1973. The requirement of reasonable opportunity of showing cause against proposed action will only be satisfied if particulars of the charge or charges, substance of evidence in support of the charges and specific punishment which would be called for after the charge or charges are established are communicated to the civil servant who is given reasonable time and opportunity to show cause.

[Authority.- Estt. Division O.M. No. 6/8/79-D.I., dated 10-7-1979].

**Specification of penalty in the  
charge-sheet/show cause notice  
under the Government Servants  
(Efficiency & Discipline)  
Rules 1973.-**

*Sl. No. 99*

Under rule 5 of the Government Servants (Efficiency and Discipline) Rules 1973 in case a Government Servant is accused of subversion, corruption and misconduct, the authorized officer shall, *inter alia*, decide whether in the light of facts of the case or interest of justice an inquiry should be conducted through an Inquiry Officer or inquiry Committee. If he so decides, the procedure indicated in rule 6 thereof shall apply. The charge-sheet accompanied by the statement of allegations, shall accordingly be framed by the authorized officer and got served on the accused. If, however, the authorized officer decides that it is not necessary to have an inquiry conducted he shall serve on him a show cause notice in terms of rule 5 (1) (iii) of the said rules specifying therein the penalty proposed to be imposed upon the accused.

2. A reference to rule 6 of the Government Servants

(Efficiency & Discipline) Rules, 1973 will show that in a charge sheet, the penalty or penalties which may be imposed if the charge or charges are established are not required to be specified. The proposed penalty or penalties are specified in the:

(i) Show cause notice issued in terms of rule 5 (1) (iii) of the Government Servants (Efficiency & Discipline) Rules, 1973, or

(ii) Show cause notice issued in terms of rule 5 (i) (iv) of the Government Servants (Efficiency and Discipline) Rules, 1973, after the authorized officer has considered the inquiry report and arrived at a provisional conclusion as the penalty to be imposed as required *vide* para 3 of the Establishment Division O.M. No. 4/20/82-R.I. dated 20th July, 1982 (SI.No.107) in pursuance of Supreme Court's judgement in the case of the Mir Muhammad V/s NWFP (All Pakistan Legal Decisions SC-179).

4. The above instructions may also be brought to the notice of attached departments/subordinate offices for compliance in future.

[Authority.- Estt. Division O.M. No. 2/1/82-D-2, dated 11-1-1982 as modified *vide* Estt. Division O.M. of even number dated 3-7-1985].

**Requirement to issue a fresh show cause notice if the penalty imposed under Government Servants (Efficiency and Discipline) Rules, 1973, or proposed to be imposed is greater than that specified in the show cause notice, or is proposed to be enhanced by the appellate authority**

*Sl. No. 100*

As a result of disciplinary action taken against a Government servant the appellate authority considered the penalty imposed by the authorized officer to be inadequate and enhanced the penalty. The government servant filed an appeal against enhancement of penalty before the Service Tribunal (Appeal No. 2(K) of 1980). The Service

Tribunal while accepting the appeal observed that the penalty was enhanced without giving the appellant an opportunity of being heard which was against natural justice and further observed that "we are of the firm opinion that even if the rules are silent on the subject, any time an appellant's punishment is enhanced, he will be given a show cause and a hearing. This requirement of natural justice shall always be read into the rules." The Division concerned referred the observation of the Service Tribunal to the Ministry of Law who confirmed that while it was open to the appellate authority to revise the sentence upward, it would be appropriate for the appellate authority to give a show cause notice to the appellant and hear him before passing the order. They advised that the order of the Tribunal should, therefore, be obeyed.

2. The observations of the Service Tribunal and the advice of the Justice Division mentioned in para 1 is brought to the notice of all Ministries/Divisions and Departments for guidance and compliance.

3. The cases in which a penalty is enhanced may be as follows:-

(i) Where the authority decides to enhance the penalty proposed by the authorized officer and which is greater than the maximum penalty shown in the show cause notice issued by the authorized officer in terms of rule 5 (1) (iii) of the Government Servant (Efficiency & Discipline) Rules, 1973, or in the show cause notice issued by the authorized officer in terms of rule 5(1) (iv), after considering the inquiry report, as the case may be; or

(ii) Where the authority in exercise of its revisionary powers under rule 6-A of the rules, decides to enhance a penalty already imposed in a case already disposed of or which, in a pending case, is greater than the penalty shown in the show cause notice; or

(iii) Where the appellate authority, in exercise of its appellate jurisdiction, decides to enhance the penalty already imposed on the appellant.

The Ministries, Divisions and Departments are advised to ensure that in all such cases as are mentioned above, before the penalty is enhanced a show cause notice is invariably issued and the accused/appellant is given an opportunity of being heard in person.

[Authority.- Estt. Division O.M. No. 4/42/83-D.2, dated 29-7-1985].

**Specification of Major Penalty  
in the Show Cause Notice issued  
under Government Servants  
(Efficiency and Discipline)  
Rules, 1973**

*Sl. No. 101*

Attention is invited to para 3 of Establishment Division O.M.No.2/1/82-D.2, dated 11-1-1982 as corrected vide para 1 of O.M. of even No. dated 3rd July 1985, (Sl.No.99) wherein advice was conveyed that while issuing a show cause notice to an accused Government official under the Government Servants (Efficiency and Discipline) Rules, mention of Imposition of the penalty of "dismissal from service" should, invariably, be made. Once an accused official has been served with a show cause notice for the highest penalty of "dismissal from service" under the said rules, there can be no legal objection to the imposition of a lesser penalty/penalties on him, if subsequently so warranted on finalisation of the disciplinary proceedings.

2. Attention is also invited to this Division O.M. No.4/42/83-D.2, dated 29-7-1985, wherein it was laid down that if a penalty is enhanced in the following cases, a show cause notice should invariably be issued, and the accused/appellant be provided an opportunity of being heard in person:

(i) Where the `Authority' decides to enhance the penalty proposed by the `authorised officer' and which is greater than the maximum penalty shown in the show cause notice issued by the `authorised officer' in terms of rule 5

(1) (iii) (b) of Government servants (Efficiency and Discipline) Rules, 1973, or in the show cause notice issued by the authorised officer in terms of rule 5 (1) (iv), after considering the inquiry report, as the case may be; or

(ii) Where the authority in exercise of its revisionary powers under rule 6-A of the rules, decides to enhance a penalty already imposed in a case already disposed of or which, in a pending case, is greater than the penalty shown in the show cause notice, or

(iii) Where the Appellate authority, in exercise of its appellate jurisdiction, decides to enhance the penalty already imposed on the appellant.

3. It has been observed that in some cases due regard was not paid to the above instructions. All Ministries and Division are requested to ensure that the above instructions are strictly observed in all cases to preclude legal/procedural objections.

*[Authority.- Estt.Division O.M.No.16/8/98-R.2, dated 19-3-1998].*

### **Publication of Notices in the Newspapers**

*Sl. No. 102*

It has come to the notice of the Government that the procedure of publication of notices in the press in the cases of unauthorized absence/abscondment from duty is being frequently resorted to without taking into consideration the provisions of rule 8(b) of the Government Servants (Efficiency and Discipline) Rules, 1973, which provides for the dispensation of adopting even formal procedure in such cases. This not only results in undue delay in finalization of these disciplinary cases but also undue wastage of Government money on publication of such notices.

2. The matter has, therefore, been considered in the Establishment Division in consultation with Law Division. It is clarified that under the Government Servants (Efficiency and Discipline) Rules, 1973, there is no provision making it obligatory or

mandatory for the authority/authorized officer to publish a notice in the newspaper in the cases of unauthorized absence/ abscondment from duty. The requirement of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, is that the accused may be informed of the action proposed to be taken in regard to him and the grounds of such action and that he may be given a reasonable opportunity of showing cause against the action. This information can be conveyed to him by different means, i.e. by registered post at his last known address or by affixation of a notice at that address, etc. Same is the position under rule 6(2) in respect of service of a charge-sheet. According to rule 8 of the said rules nothing in rule 5 shall apply if the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that, for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause, for instance, if it is reported that the accused has left his place of abode without leaving an address or he has gone out of the country and his whereabouts are not known. If the authority mentioned in rule 8(b) is satisfied about the genuineness of the report it may invoke the provision contained in the said rule. The publication of a notice in newspapers may not be resorted to.

3. The publication of notice in the newspapers, in such cases should however, be resorted to in very rare cases where the competent authority is not in a position to record reasons for its satisfaction as to the practicability of affording the accused an opportunity of showing cause. There a lack of response to such a notice may induce that authority to be so satisfied.

4. The above instructions may please be brought to the notice of all concerned for strict compliance in future.

*[Authority.- Estt.Division O.M.No.4/18/83-D-2, dated 15-2-1984].*

*Sl. No. 103*

A case has come to notice where long leave granted to a

postal clerk was cancelled and he was asked to resume duty immediately. When he failed to do so, a notice was published in the newspaper directing him to resume duty within seven days otherwise ex-parte proceedings under the Government Servants (Efficiency and Discipline) Rules, could be taken against him which might result in his removal from service. He failed to resume duty. He was accordingly dismissed from service. His departmental appeal was rejected. Thereafter he filed an appeal in the Service Tribunal (Appeal 2(P) of 1984). The Service Tribunal accepted the appeal and set aside the order holding as follows:

"It is manifestly evident that the impugned order was passed without taking any proceeding under the Efficiency & Discipline Rules though in the notice published in the newspaper it was categorically stated that in case of failure of the appellant to resume duties, *ex-parte* proceedings under the E& D Rules would be taken against him. In any case, the punishment of dismissal from service could be awarded only after taking proceedings under the E&D Rules which was not done and the-impugned order was passed in an arbitrary and unlawful manner. The position being so clear, the impugned order cannot be sustained and we have no option but to set it aside."

2. The observations of the Service Tribunal are brought to the notice of all Ministries, Divisions, and Departments who should ensure that due care is taken in observing the requirements of Government Servants (Efficiency and Discipline) Rules, 1973 in taking disciplinary action against civil servants. In this case, what was published was merely a notice or a warning that if the clerk did not resume duty, action under Government Servants (Efficiency and Discipline) Rules would be taken. However, on his failure to resume duty as directed, order to dismissal was straightway passed without initiating disciplinary action on the ground of misconduct.

3. In this connection a reference is also invited to the Establishment Division O.M. No. 4/18/83-D.2, dated 15th February, 1984 bringing out the requirement of rule 8, clause (b) and the circumstances in which that rule can be involved. According to rule 8(b) nothing in rule 5 (containing inquiry procedure) will apply to a case where the competent authority is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to give the

accused an opportunity or showing cause. If all efforts to communicate with the accused through normal channels (like sending him the notice or charge sheet by registered post to his known addresses) fail, that may induce the authority to be so satisfied. For this purpose, publication of charge sheet or show cause notice, as the case may be, in the national press is certainly not required. However, if in rare case, the competent authority is unable to satisfy itself that it is not reasonably practicable to communicate with the accused, the competent authority may publish the notice *i.e.* show cause notice in terms of rule 5 (1) (iii) of the Government Servants (E&D) Rules, 1973 or rule 5 (1) (iv) or charge sheet in term of rule 6 (as the case may be) in the newspaper and any lack of response to it may satisfy the competent authority that it is not responsibly practicable to give the accused an opportunity of showing cause.

[Authority.- Estt. Division O.M.No.4/18/83-D.2, dated 9-7-1985].

**Disciplinary action -  
need to observe strictly  
the rules and procedure  
relating to check list**

*Sl. No. 104*

It has been observed that in dealing with disciplinary cases, care is not generally taken to observe the procedure laid down in the Government Servants (Efficiency and Discipline) Rules, 1973. Such omissions vitiate the case and if the Government servant concerned goes in appeal to the Service Tribunal, the appeal is sometime accepted on this account. It is, therefore, necessary that extreme care is taken to ensure that the cases are dealt with according to the prescribed rules and procedure.

2. The Establishment Division has been issuing instructions from time to time drawing attention of all concerned to specific requirements of rules and procedure or to omissions generally noted in disciplinary action. In this connection a reference is invited to the Establishment Division O.M. No. 7/2/79-D-I, dated 18th November, 1979 with which a check list for guidance of authority, authorized

officer and inquiry officer was circulated to ensure that all procedural requirements are met. This was followed by a circular d.o. letter No. D-553/80-JS (Rev & D) dated 22nd October, 1980 (Sl. No. 106) from Establishment Secretary to all Secretaries, drawing attention to some irregularities noticed in the disciplinary cases submitted to the Establishment Division. In Establishment Division O.M. No. 4/20/82-R.I, dated 20th July, 1982 (Sl. No.107) it was further laid down that in future, after the authorized officer has considered the inquiry report and arrived at a provisional conclusion as to the penalty to be imposed on the accused, the accused should be supplied with a copy of the inquiry report and asked to show cause within a specified time as to why the particular penalty should not be imposed on him and any representation submitted by the accused in his behalf should be taken into consideration before final orders are passed.

3. It is requested that the instructions issued from time to time and particularly the instructions in the office Memoranda quoted in para 2 may strictly be followed in future by the Ministries/Divisions and by departments and offices under their administrative control. For facility of reference, the instructions contained in the three office memoranda quoted in para 2 have been consolidated in a fresh check list, which is attached to this letter as Annexure. It should always be consulted while processing disciplinary cases.

*[Authority.- Estt. Secretary's d.o. letter No.3/1/85-D.2, dated 26-3-1985].*

## ANNEXURE

### CHECK-LIST OF REQUIREMENTS TO BE NOTED WHILE TAKING ACTION UNDER GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 1973

*Authority.* - To ensure that:-

The President has been pleased to designate the officer or authority to exercise his powers as Authority under rule 2(2).

*Authorized Officer.* - To ensure that:-

1. The officer exercising the powers of Authorized Officer has been authorized by the Authority to act as such in terms of Rule 2(3).

2. The Authorized Officer while exercising his discretionary powers of suspension under rule 5(1) (i) has obtained prior approval of the Authority in writing before issuing orders suspending the accused officer. The summaries for authority seeking its approval for suspension or extension of suspension period are signed by the authorized officer and not by any other officer. Further, an officer can be suspended only if he is accused of subversion, corruption or misconduct Rule 5 (1) (i).

3. Formal approval of the Authority is available for continuation of the suspension period after every three months Rule 5 (1) (i).

4. Formal approval of the authority is available for extending the period of forced leave after every three months Rule 5 (1) (i).

5. No officer other than the Authorized Officer has decided that in the light of the facts of the case or in the interest of justice an inquiry should be conducted through an Inquiry office or Inquiry Committee, Rule 5(1)(ii).

6. Considering the nature of charges and other facts, the decision not to hold an inquiry has been taken judiciously and not arbitrarily. Before taking such a decision, the authorised officer has taken into consideration the nature of charges and other facts and has satisfied himself that the allegations against the accused could be decided without holding an enquiry.[Rule 5(1)(iii)]. (Though it is not a requirement of the rule that the reasons for not holding an inquiry be recorded, yet the check-point is necessary to ensure that the decision is in the interest of justice as required by rule and that there is no violation of the law of natural justice).

7. The procedure prescribed in rule 6 is followed in case the Authorized Officer in exercise of his discretionary power under Rule 5 (1) (ii) has decided to hold an inquiry through an Inquiry Officer or Inquiry Committee.

8. Formal order regarding appointment of Inquiry

Officer or Inquiry Committee, as the case may be, has been issued by the Authorized Officer and not by any other officer. [Rule 6 read with rule 5 (1) (ii)].

9. A formal charge-sheet together with a statement of allegations has been framed and communicated to the accused officer by the Authorized Officer under his signature. (The statement of allegations should also be authenticated by the authorized officer). [Rule 6 (1)].

10. The charge sheet requires the accused:

(i) to put in written defence within a reasonable time which is not less than 7 days or more than 14 days from the day the charge has been communicated;

(ii) to state whether he desires to be heard in person,  
[Rule 6 (2)].

11. The procedure laid down in Rule 5 (1) (iii) is followed in case the Authorized Officer in exercise of his discretion has decided to dispense with holding an inquiry through an Inquiry Officer or Inquiry Committee.

12. In the show cause notice issued under Rule 5 (1) (iii) the proposed action and the grounds of the action including particular or particulars of charges and substance of evidence in support of the charges has been specified; the grounds for penalty in terms of rule 3 have been specifically mentioned; the penalty or penalties which would be called for if the charges are established have been specified and no general mention has been made by reference to all minor or major penalties. The description of penalties should conform to the description given in the rules. The show cause notice must be signed by the authorized officer.

13. On receipt of the report of the Inquiry Officer or Inquiry Committee or on receipt of explanation of the accused officer under Rule 5 (1) (iii) the Authorized Officer has determined whether the charge or charges against the accused officer has been proved or not [Rule 5 (1) (iv)].

14. After the authorised officer has considered the inquiry report and arrived at a provisional conclusion as to the penalty to be imposed, the accused shall be supplied with a copy of the inquiry report and asked to show cause within a specified time, which should not be less than 7 days and more than 14 days

for the date of receipt of inquiry report, against the particular penalty to be imposed and any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed.

15. In case the Authorized Officer has proposed imposition of a major penalty on the accused officer he has referred the case to the Authority with his recommendation and with all the documents mentioned in the rule [Rule 5 (1) (iv)].

16. When the accused has desired to be heard in person, the authorized officer has duly heard him in person before deciding to impose a minor penalty or make recommendations to the authority for a major penalty. [Rule 6 (2)].

17. In case the authorized officer in respect of civil servants holding posts in basic pay scales 17 and above decides to forward a disciplinary case to the President, where he is the authority, he should invariably submit his proposal to the Establishment Division in the form of a "summary for the President" marked to the "COS to the President through Establishment Secretary" alongwith complete CR dossier. The summary should also contain the following information:-

- (i) date of the birth of the accused;
- (ii) date of his entry into service; and
- (iii) the length of qualifying service for pension as on the date on which summary is forwarded.

*Inquiry Officer/Committee.*- To ensure that:-

1. The procedure laid down in Rule 6(3) to (6) is strictly adhered to during the inquiry proceedings.

2. The inquiry proceedings being of judicial nature in terms of rule 7, the Inquiry Officer has recorded the statement of witnesses on oath. [Rule 7 (a)].

3. The accused officer is allowed to cross-examine the witnesses produced against him during the proceedings. [Rule 6 (3)].

4. The accused officer is afforded reasonable opportunity to produce his defence. [Rule 6 (3)].

5. The case is heard from day to day and no adjournment is given except for reasons to be recorded in writing which should be reported to the authorized officer. No. adjournment should exceed a week. [Rule 6 (4)].

6. The findings are recorded after due analysis and appreciation of evidence on record.

**Approval for placing  
a Government Servant  
under Suspension**

*Sl. No. 105*

A detail check-list stands circulated to all the Ministries/Divisions vide Establishment Secretary's D.O. letter No. 3/1/85-D.2, dated 26-3-1985 (Sl.No.104) which is required to be strictly followed while taking action under the Government Servants (Efficiency and Discipline) Rules, 1973. This check-list has been carefully prepared and provides detailed guidance to the concerned authorities regarding the various stages/aspects of the E&D proceedings, including preparation of charge-sheet, statement of allegations, etc, to avoid what may otherwise lead to such proceedings being declared totally or partially irregular at a later stage by the competent authority/forum.

2. Despite these detailed instructions, however, instances are not lacking where due to serious lapses on the part of the concerned authorities, the accused civil servants have escaped punishment or where such proceedings had to be re-initiated. All this is avoidable if the detailed instructions on the subject are strictly followed.

3. One of the major failures which has been noted is in

respect of suspension of the defaulting civil servants. Not infrequently, references seeking approval of the competent authority for placing a civil servant under suspension or for extension in the period of his suspension are forwarded under the signatures of some one other than the "Authorised Officer". Since the Efficiency & Discipline proceedings have a legal connotation and all orders, including suspension, are liable to judicial scrutiny upto the Supreme Court's level, it is vital that all such proposals are signed by the competent authority himself as these powers cannot be delegated to anyone else.

4. The instructions on the subject may be strictly adhered to which would not only safeguard the State's interests but would also save the concerned Ministries/Divisions from avoidable loss of time and energy.

[Authority:- Estt. Division O.M.No.2/52/94-D-I, dated 26-12-1994].

*Sl. No. 106*

The following irregularities have come to the notice of Establishment Division, in dealing with the disciplinary cases submitted by the Ministries and Divisions in respect of the Civil Servants of Basic Pay Scale 17 and above.

(i) Under rule 5 (1) of the Government Servants (Efficiency and Discipline) Rules, 1973. It is the "authorized officer" [designated as such under sub-rule (3) of rule of the said rules] who can obtain the approval of "authority" [designated as such under sub-rule (2) of rule 2 of the said rules] to the suspension of a Civil Servant. *The summaries proposing the suspension of the Civil Servants in grades 17-20 are some time received under the signatures of an officer other than 'authorized officer'.*

(ii) Rule 5 (1) (ii) makes it incumbent upon the "authorized officer" to decide that in the light of the facts of the case or in the interest of justice an inquiry should be conducted through an Inquiry Officer/Inquiry

Committee or a "Show Cause Notice" should be served on the accused official in terms of sub-rule 5 (1) (iii), *it has been noticed that in some cases that either this decision has been taken by a person other than 'authorized officer' or the "authorized officer" has not shown to have applied his independent judgment.*

(iii) In case the Authorized Officer has decided to serve a "Show Cause Notice" to the accused official, under rule 5(iii), *sometimes it is not served under his signatures. Similarly in a large number of cases it has been noticed that the action proposed to be taken against the accused and grounds thereof are not incorporated in the show cause notice.* Instead of that a general reference is invited to one of the major penalties, which is not correct.

(iv) In case the "Authorized Officer" decides to hold an inquiry through an Inquiry Officer/Inquiry Committee, *formal orders regarding the appointment of Inquiry Officer/Inquiry Committee have to be issued by the "Authorized Officer " and not by any other officer.*

(v) In terms of rule 6, it is the "Authorized Officer" who has to frame a charge-sheet together with a statement of allegations and then communicate these to the accused official. *It has been observed in some of the cases that (a) charge sheet has been signed by an officer other than "authorized officer" (b) the charge-sheet is not accompanied by the statement of allegations, elaborating the charge; (c) the statement of allegations has not been authenticated by the "authorized officer".*

(vi) In terms of rule 6 (4), the Inquiry Officer or the Inquiry Committee, as the case may be, shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing. However, every adjournment with reasons shall be reported forthwith to the 'authorized officer'. No adjournment shall be for more than a week. In spite of clear provisions of the rules, it has been generally noticed that (a) the inquiry proceedings are not conducted by the Inquiry Officers from day to day; (b) the reasons of adjournments, if any, are not regularly reported to the "authorized officer" (c) the period of adjournment go beyond a week. *These delays must be avoided, particularly in cases where the accused officer is under suspension.*

(vii) Under rule 6 (2), *the authorized officer has to afford*

*the opportunity of personal hearing to the accused officer, if such opportunity is claimed, before deciding to impose a minor penalty or recommending to the authority the imposition of major penalty, in terms of rule 5 (I) (iv) it has been often observed that this opportunity of personal hearing is confused with the hearing given by the*

inquiry proceedings. This is not correct.

(viii) Under rule 5 (1) (iv) on receipt of the report of the Inquiry Officer or an Inquiry Commission on receipt of the explanation of the accused to the show cause notice, if any, the authorized officer has to determine whether the charge/charges have been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty he shall forward the case to the authority alongwith the charge-sheet, statement of allegations, the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed. *It has been generally found that (a) the Inquiry officer at times besides giving his findings on the charges also makes his recommendation regarding the imposition of a major or minor penalty, (b) the authorized officer does not make use of his independent judgement, (c) the recommendations of the authorized officer to the authority are not accompanied by all the documents mentioned above.*

2. The irregularities detailed above are grave in nature and a failure to fully comply with the requirements of the Government Servants (Efficiency and Discipline) Rules impairs and at times vitiates the disciplinary proceedings and the order imposing a penalty on an accused is frequently set-aside by the appellate authority or the Service Tribunal. This not only results in loss of prestige for the Government but also in the loss of unnecessary expenditure which the Government has to incur in defending the appeals of the aggrieved Government Servants in the Courts of Law.

3. It may kindly be ensured that provisions of the Government Servants (Efficiency and Discipline) Rules, 1973 are fully complied with in future by the officers responsible for discharging their duties under the said rules before and during the currency of the disciplinary proceedings against the Civil Servants as

Authority, Authorized Officer or Inquiry Officer.

[*Authority*.- Estt. Division D.O. letter No. 553/80-JS(Rev. & D), dated 22-10-1980].

**Supply of copies of  
Inquiry Reports to  
the accused officials**

*Sl. No. 107*

A reference is invited to rule 5 and 6 of the Government Servants (Efficiency and Discipline) Rules, 1973 and to state that the Supreme Court of Pakistan in their Judgement in *Mir Muhammad Vs. NWFP* (All Pakistan Legal Decisions. 1981 SC. 179) observed as follows in respect of corresponding rules 5 and 6 in the NWFP Government Servants (Efficiency and Discipline) Rules, 1973.

"It seems to us, therefore, that on a proper construction of rules 5 and 6 read together it is a statutory requirement that if a formal inquiry is held, then the authorized officer should, after he has tentatively decided upon the action he proposes to recommend to the Authority, give an opportunity to the accused officer to offer his explanation against the proposed action in the light of the findings of the inquiry officer or inquiry committee, before sending his recommendations to the Authority. This would, of course, necessitate that a copy of the inquiry report be furnished to the accused officer at this stage, and he should be apprised of the action proposed against him."

2. In view of the Supreme Court Judgement it is now necessary that in a case where a formal inquiry is held, a copy of the inquiry report is furnished to the accused official to enable him to offer his explanation with regard to adverse finding, if any, recorded against him by that inquiry officer or the Inquiry Committee, as the case may be.

3. It has been decided that after the authorized officer has considered the report and arrived at a provisional conclusion as to the penalty to be imposed, the accused shall be supplied with a copy of

the inquiry report and asked to show cause within a specified time, which shall not ordinarily exceed \*[fourteen days], against the particular penalty to be imposed and any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed.

4. The procedure described in para 3 may also be followed in those disciplinary cases which are in progress and have not been finally closed. Even in cases where the matter has been pending before the Service Tribunal or the Supreme Court the proceeding may be started *de novo* in consultation with the Law Division from the stage from which the error could be corrected in the light of the aforesaid Judgement. Cases finally closed need not be reopened.

[Authority.- Estt. Division O.M. No. 4/20/82-RI, dated 20-7-1982].

*Sl. No. 108*

Grant of personal hearing to the accused official- According to instructions contained in the Establishment Division circular

\* The words "one month" have been substituted by the words "fourteen days" *vide* Estt. Division O.M. No. 3/1/85-D-2 dated 3-7-1985.

O.M.No.4/20/82-R.I, dated 20th July, 1982 in a case where a formal inquiry is held, the authorized officer, on receipt of the inquiry report, shall arrive at a provisional conclusion as to the penalty to be imposed and shall supply a copy of the inquiry report to the accused and ask him to show cause within a specified time, against the penalty to be imposed. A question has arisen at what stage the accused will be given personal hearing by the authorized officer whether it will be given after the receipt of the inquiry report and before the accused is supplied with the inquiry report and, asked to show cause against the particular penalty to be imposed or it will be given after this action is completed and the reply of the accused to the Show Cause has been received.

2. The matter has been considered in the Establishment

Division in consultation with the Law Division and the view held is that the right stage for giving personal hearing to the accused by the authorized officer if the accused had asked for such opportunity comes after the accused has submitted his reply to the show cause notice and before the authorized officer finally makes up his mind as to the penalty to be imposed, and gives orders to that effect or submits the case to the authority as the case may be.

*[Authority.- Estt. Division O.M. No. 4/24/82-RI, dated 8-11-1982].*

**Disciplinary proceedings against  
the Government servants belonging  
to All-Pakistan Unified Grades and  
those holding the posts of Section  
Officer**

*Sl. No. 109*

Instances have come to the notice of the Establishment Division, where Provincial Governments have taken disciplinary action against officers of the All-Pakistan Unified Grades without consulting this Division. Government servants belonging to the All-Pakistan Unified Grade are under the administrative control of the Establishment Division. It follows that appointments, promotions and matters pertaining to disciplinary cases of such Government servants is the responsibility of the Establishment Division. It is, therefore, reiterated for the information of all concerned that disciplinary cases against Government servants belonging to the All-Pakistan Unified Grades and also those holding the posts of Section Officers will henceforth be initiated and processed in the Establishment Division on receipt of reports and recommendations of the Ministry or Division or Government to which they are attached at the time of commission of the alleged offence.

2. It is further decided that the cases which have already been initiated but not yet finalized may be sent to the Establishment Division for taking further necessary action.

[Authority.- Estt. Division O.M. No. 9/9/73-CII, dated 19-3-1974].

*Sl. No. 110*

It has been observed that some time an officer of APUG/OMG, posted in or under a Ministry/Division against whom some disciplinary action is contemplated by that Ministry or Division, is reverted to the Establishment Division without prior consultation. Thereafter the details of charges against such an officer are sent to the Establishment Division for initiation disciplinary action under the Government Servants (Efficiency and Discipline) Rules, 1973.

2. This practice creates many administrative complications. The relevant documents and other evidence are not available in the Establishment Division. The Ministry/Division where the documentary/oral evidence is available is always in a better position to draw up disciplinary proceedings and where necessary conduct an inquiry. It was in this context that the Secretary and other officers of a Ministry or Division in which an officer is for the time being serving, were declared as authorized officers *vide* Establishment Division notification No. S.R.O. 615(1)/79, dated 5-7-1979 (SI. No.79). Similarly, in respect of Federal Civil Servants in pay scale 17 and above lent to the provinces, the President had delegated powers to the Governors and Chief Secretaries of the provinces to act as authorities and authorized officers respectively to the extent of placing the lent officers under suspension, sending them on forced leave or initiating disciplinary proceedings without obtaining prior approval of the President *vide* \*Establishment Division Notification No. 4/23/83-D. 2, dated 3rd May 1984 amending the second proviso to rule 9(1) of the Government servants (Efficiency and Discipline) Rules, 1973. The reversion to the Establishment Division of officers against whom disciplinary action is contemplated defeats the object outlined in that notification. It also results in considerable delay in finalization of the disciplinary case.

\*3. In view of the above position, it is requested that in future a civil servant posted in a province, Ministry, Division or Department against whom some disciplinary case is contemplated or in progress

should not be transferred outside the province, Ministry, Division or Department concerned until the disciplinary case is initiated and finalized against him.

[Authority.-Estt. Secretary's d.o. letter No.3/17/84-D.2, dated 26-11-1984].

**Government servants to be  
placed under suspension  
when really necessary**

*Sl. No. 111*

Cases have come to the notice of the Establishment Division in which Government servants have been kept under suspension unduly long, the period in some cases extending over six months thereby subjecting them to unnecessary mental and other hardships.

\*Note.- The addition to the E&D Rules referred to in para 2 has been omitted *vide* Estt. Division Notification No. S.R.O. 246(I)/89 dated 16-3-1989.

2. The matter was considered at the Secretaries' meeting, held on the 7th July, 1949. It has been decided, in the first place, that no Government servant should be placed under "suspension" except when this is really necessary, and that the following factors should guide an officer in deciding whether or not to issue orders of suspension:

(a) There must be a strong *prima-facie* case against the delinquent;

(b) If the offence is of such a serious nature that dismissal will be the probable punishment, or such that it is in-advisable that the offender should be allowed to continue to perform the duties of his office pending decision on the case, suspension is justifiable;

(c) Unless there is some very strong reason why the offender should not be allowed to continue to work until the case has been decided, suspension should not be resorted to;

(d) No one should be suspended for petty breaches of discipline and for minor departmental offences;

(e) No one should be suspended unless:

(i) he wilfully and obstinately refuses to carry out an order;

(ii) during the course of an enquiry his retention in his appointment would hamper or frustrate such enquiry;

(iii) he is in police custody;

(iv) he is charged with an offence of a nature which, if proved against him, would ordinarily result in his dismissal.

*Note.*- Where documentary and oral evidence has already been collected and the risk of an official tampering with evidence (documentary or oral) no longer exists, the order of suspension should be cancelled. Where, however, there is still such a risk, he should be transferred. In cases where the police have intervened and the official is under arrest, the order of suspension must remain in force until the official is released on bail or until sentence has been pronounced.

[Authority.- Estt. Division O.M. No. F. 32/48-Estt. (SE), dated 21-7-1949].

**Leaving station by  
Government Servants  
under suspension**

*Sl. No. 112*

It has been observed that, on being placed under "suspension" an officer is generally prohibited from leaving the station. This is desirable where it is felt that, unless he is confined to a particular station, he might tamper with the evidence likely to be produced against him, but such prohibition should not be enforced if there is no

cause for such apprehension. He should simply be required to inform the authority concerned of his movement.

*[Authority.- Para 3 Estt. Division O.M. No. F. 32/48-Estt.(SE), dated 21-7-1949].*

**Bar against use of  
Government stationery  
and service postage  
stamps by accused  
Government servants in  
disciplinary proceedings**

*Sl. No. 113*

The question whether an accused Government servant is entitled to use Government stationery and service postage stamps in replying to the charges framed against him and in making other correspondence in connection with his defence has recently been examined and it is decided that an accused Government servant is not entitled to use Government stationery and service postage stamps in replying to the charges or making other correspondence in connection with his defence. Cost of stationery and postage stamps required by him in connection with his defence has in all cases to be borne by the accused Government servant himself.

*[Authority.- Estt. Division O.M. No. 2/29/67-D,I., dated 8-1-1968].*

**Payments and amenities  
admissible to Government  
Servants under Suspension**

*Sl. No. 114*

F.R.53(b) In the case of a Government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him

under the contract of service, during the period of his suspension.

*[Authority.- Finance Division Notification No.F.1(6)R.4/93(1), dated 21-9-1994].*

### **Filling up of suspension vacancies**

*Sl. No. 115*

The question whether a vacancy caused by suspension of a Government servant can be filled up like other ordinary vacancies has been recently examined in consultation with the Ministry of Finance and the Law Division. It has been decided that though a vacancy caused by suspension of an officer cannot be filled up substantively, it can be filled up on an officiating basis, and that no supernumerary post need be created in such case.

2. This supersedes Establishment Division's O.M.No.2/14/67-C.III, dated the 19th September, 1968.

*[Authority.- Estt. Division O.M. No. 6/2/71-D.I, dated 20-9-1971].*

### **Termination of services of temporary Government Servants under suspension**

*Sl. No. 116*

Attention is invited to Establishment Division's O.M. Nos. 21/11/61-D.I, dated 22 December, 1962 (Annex-II) and 18th April, 1963 (Annex-I) on the subject of "Speedy Disposal of Disciplinary Cases-Policy Regarding Government Servants undergoing Criminal Prosecution before Departmental Action", it is stated that the advice of the Justice Division was sought whether it was possible to terminate the services of an employee, who was arrested on a criminal charge of murder and had been undergoing trial for a long time, without any notice and without assigning any reasons, in

accordance with the terms and conditions of his service as contained in his letter of appointment. The position as per advice of the Justice Division, is as follows:

2. A Civil Servant is not necessarily in temporary employment merely because of a statement in the order of appointment that his appointment will be purely temporary and liable to termination at any time without any notice or reasons being assigned. No civil servant is a temporary employee as long as the employment is for an indefinite period or against a post which continues to exist for an indefinite period. It is extremely difficult to attribute to the legislature an intention to clothe the authorities concerned with arbitrary power of terminating the service of a civil servant in their discretion without assigning any reason. The courts have always been reluctant to interpret these provisions in a manner as would justify the externment of an employee without any justification.

3. Further after the enactment of Civil Servants Act, 1973, the services of a civil servant can either be terminated under Section 11 of the Act or under Government Servants (Efficiency & Discipline) Rules, 1973. It is not possible to spell out any power to terminate the services of an employee without notice and without assigning any reason from the provisions of sub section (3) of Section 11 of Civil Servants Act, 1973, especially in the presence of the provisions of sub-section (1) thereof regarding termination of service during the initial or extended period of probation. If an employee has passed through the period of probation to the satisfaction of the competent authority, he is no longer a temporary employee with the meanings of sub section (3) if his employment is for an indefinite period or against a post which continues to exist for an indefinite period.

4. In the light of the above advice of the Justice Division services of an employee can no more be terminated without notice and with assigning reason [on the basis of the contents of Establishment Division's O.M. dated 22nd December 1962 and 18th April 1963 referred to above].

### **ANNEXURE I**

Copy of Establishment Division O.M. No. 12/11/61-D-I date the 18th April, 1963.

*Reference.-* Establishment Division O.M. No. 12/11/61-D.I, dated the 22nd December, 1962 (Annexure II)

A question has arisen as to whether it was necessary to recall a suspended temporary Government servant to duty before serving him with the requisite notice of discharge on the ground that his services were no longer required. The point has been further examined in this Division in consultation with Law Division and it has been held that a suspended temporary Government servant can be served with service termination notice in accordance with the terms of the appointment during the period of suspension and discharged after the notice period without requiring him to resume duty.

2. Utmost precaution should, however, be taken to see that no reason is assigned for the termination except saying that his services are no longer required by the Government.

### **ANNEXURE II**

Copy of Establishment Division O.M. No.12/11/61-D.I, dated 22nd December, 1962.

Instances have come to the notice of the Government that there are still a number of cases pending in courts against officials for unusually long periods without departmental proceedings having been ever resorted to. It has also been found that in some cases the

accused officials have, while continuing under suspension, been absconding for long and sometimes for years, presumably with intent to frustrate or delay the court proceedings. With a view to meeting such situations it has been decided that whenever such an instance comes to the notice of the Government, the accused official whether permanent or temporary, should be asked by his last known address to report to his official superior/court. If he does not comply with the order, Government should take up the formalities of his dismissal from service on charge of misconduct under the Government Servants (Efficiency and Discipline) Rules. \* [If he turns up and is a temporary hand, his services should be terminated after serving him with the requisite notice or paying him salary in lieu thereof, without assigning any reasons for the action].

2. There may still be cases of temporary Government servants undergoing long-drawn court proceedings even if they have not absconded. If in any individual case of this nature, the appointing authority considers that irrespective of the outcome of the court proceeding, the accused official should not be allowed to continue any longer on the pay roll of the Government such authority may recall the official to duty and terminate his services after serving him with the requisite notice or paying his salary in lieu thereof without assigning any reasons for the action. \* [The course of action discussed in this paragraph should be resorted to unless, of course, there is any direction of the court to the contrary in any particular case].

3. It is requested that all Ministries/Divisions, etc., may kindly check up the position of their employees involved in court proceedings and deal with the individual cases in the light of the suggestions contained in preceding paragraphs.

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\*Note.- This applies to temporary employments made on or after 8-6-1962.

**Bar against mentioning of  
unfinalised departmental**

**proceedings in Confidential  
Reports**

*Sl. No. 117*

It has been noticed that in some annual confidential reports of officers received from various Ministries that a reference is made over to departmental proceedings which are still in progress against the officers concerned.

2. The Establishment Division feel that until and unless the result of such proceedings has been known and final orders, awarding punishment if any, have been passed by the competent authority, it would not be correct to make any such reference as may have the effect of creating doubts about the conduct and character of the officers concerned. It can hardly be controverted that such a reference, although factually correct if inadvertently made cannot fail to damage the officer's record even if in the long run he is completely exonerated.

3. In the circumstances it is requested that, in the case of an officer against whom departmental proceedings are in progress, no mention whatsoever should be made about it in their annual confidential reports. Only when such proceedings have been finalized, and the punishment if any has been awarded, should a mention about it be made in his confidential report. In such a case a complete copy of the final order may be placed, as is usually done, on his character roll.

*[Authority.- Estt. Secretary's D.O. letter No.9(1)/58-S.E.III, dated 8-5-1958].*

**Promotion of an officer  
to a higher post during  
pendency of the disciplinary  
proceedings**

*Sl. No. 118*

References are being received in the Establishment Division enquiring whether there is any bar to an officer being considered for promotion to a higher post during the pendency of a departmental proceedings against him. A similar question was examined in the past on a reference from the Home Affairs Division and it was decided that there is no bar to an officer being considered for promotion to a higher post during the pendency of investigation regarding alleged corruption etc. and all concerned were advised accordingly under this Division O.M. No. 2/10/62-DI, dated 13th February, 1962 (Annexure). This question has been further examined and it has been decided that the instructions contained in the above O.M. should apply *mutatis mutandis* to all types of disciplinary cases. In the cases of departmental proceedings, a copy each of the charge-sheet and the statement of allegations should be put before the Central Selection Board or the Departmental Promotion Committee, as the case may be.

[Authority.-Estt. Division O.M.No.2/20/67-DI, dated 13-11-1967].

#### ANNEXURE

Copy of Establishment Division O.M. No. 2/10/62-D I., dated the 13th February, 1962.

Cases of corruption against Government servants are normally investigated by the Special Police Establishment and are registered after preliminary inquiries only when a *prima facie* case appears to have been made out. A copy of the First Information Report is sent to the Ministry or Department in which the Government servant concerned is serving, by way of intimation of such registration. A question has arisen whether a Government servant against whom a case of corruption has been registered by the Police and is under investigation should be promoted to a higher rank

during the pendency of such investigation, if he is otherwise considered suitable and his turn or chance for promotion has come.

2. After a careful consideration of the matter, it has been decided with the concurrence of the Ministry of Home Affairs that in cases where a Government servant against whom a case is under investigation by the S.P.E. is proposed to be promoted, a copy of the F.I.R. should invariably be put up to the Selection Board or the Departmental Promotion Committee as the case may be. It will then be for the Board or the Committee to take cognizance of the report and ask for a progress report, postpone consideration of the case or ignore it.

*Sl. No. 119*

A reference is invited to the Establishment Division's O.M. No. 9/1/58-SE III, dated the 8th May, 1958, according to which no mention should be made in the confidential report of a government servant, of the departmental proceedings which may be in progress against him unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy of each of the charge sheet and the statement of allegations should be placed before the Central Selection Board or the Departmental Promotion Committee as the case may be, *vide* Establishment Division's O.M. No. 2/20/67-D.I. dated the 13th November, 1967.

2. A case has recently been brought to the notice of the Establishment Division where copies of the charge sheet and the statement of allegations were not put up to the Departmental Promotion Committee and a Government servant, against whom departmental proceedings were pending, was promoted, although as a result of the disciplinary proceedings, he was awarded a minor punishment. Thus, the Government instructions referred to in the last sentence of para 1 above were not observed.

3. It is the responsibility of the departmental representatives who attend the meetings of the Departmental Promotion Committee/Central Selection Board to apprise the Committee/Board whether or not any departmental proceedings are pending against the Government servants whose cases are being considered by the Committee/Board. A serious view should be taken if the departmental representatives do not give this information to the Committee/Board and if later comes to notice that a Government servant was promoted notwithstanding the fact that disciplinary proceedings were pending against him. The Ministries/Divisions are requested to strongly impress upon the officers who serve as members of Departmental Promotion Committees or who attend meetings of the Central Selection Board as departmental representatives, to scrupulously observe these instructions.

[Authority.- Estt. Division O.M. No.6/4/74-A II, dated 6-7-1974].

**T. A. admissible to  
witnesses an accused  
Government servant  
summoned by an Inquiry  
Officer**

*Sl.No. 120*

A Government servant summoned by an Inquiry Officer should be allowed TA as admissible to him under S. R. 154 *et seq* and he should draw it on a regular TA bill from his own Department on the strength of the Attendance Certificate furnished by the Inquiry Officer and this should be debited against the office at whose instance the inquiry was being conducted, by book adjustment. In the case of a witness who is not a Government servant, travelling expenses should be determined by the Inquiry Officer with reference to the status of the witness and should be paid on the basis of the orders passed by the Inquiry Officer, by the Department at whose instance the inquiry was being conducted. The TA to be paid to a non-Government servants should, however, in no case exceed the maximum TA admissible to a Government servant of the highest grade. The provisions of S.R. 190 *et seq* should also be kept in view in such

cases.

*[Authority. - Estt. Division O.M. No. 2/41/62-D.I, dated 28-2-1963].*

*Sl. No. 121*

In continuation of para 2 of the Establishment Division O. M. No. 2/41/62 D. I, dated the 28th February, 1963, a further question has since arisen as to whether the aforesaid provision of TA should equally apply to the defence witness summoned by the Inquiry Officer in a departmental proceedings. The point has been examined in this Division in consultation with the Ministry of Finance. The position of the defence witnesses regarding summoning them and paying them TA is as explained hereunder.

2. It is for the Inquiry Officer to consider if any particular witness cited by the accused as a defence witness is likely to be an essential witness for the purpose of defence or in other words, for the determination of truth. If the Inquiry Officer agrees that the examination of the witness will be essential he may summon him and as soon as summons him he will take upon himself the obligation to allow the witness reasonable TA. If the witness is an official, he is to draw the TA from his parent Department on the strength of the attendance certificate furnished by the Inquiry Officer, the amount being debited by book adjustment against the office at whose instance the inquiry was conducted.

3. If, however, the Inquiry Officer is not satisfied whether the examination of a particular witness will be essential for the determination of truth he may at his discretion refuse to summon such a witness. He may, however, agree to summon him on condition that the accused will bear the travelling expenses of the witness and he may accordingly require the accused to deposit with him the anticipated amount of the TA of the witness, in advance, so that the witness could be paid therefrom. In that case the attendance certificate to be furnished to the witness by the Inquiry Officer should contain the endorsement that the witness has been paid his travelling expenses. This will debar the witness from claiming the TA again from the Government.

[Authority.- Estt. Division O.M. No. 2/41/62-DI, dated 13-4-1963].

*Sl. No. 122*

A question has since arisen as to whether a Government servant under suspension who was required to perform official journey as a witness or as an accused, would be entitled to TA. The question has been examined in this Division in consultation with the Ministry of Finance and it has been held that such a Government servant would be entitled to TA in such cases and his grade and salary for that purpose would be taken as if he was not under suspension.

[Authority. - Estt. Division O.M. No. 2/41/62-DI, dated 19-7-1963].

**Framing of an additional  
charge during currency  
of the disciplinary  
proceedings**

*Sl. No. 123*

Instances have come to the notice of the Establishment Division that in cases where the main charge of "corruption" or "subversion" was not proved, but there was sufficient evidence to establish the charge of "misconduct" the accused could not be punished because he had not been charged with "misconduct", although the offences of "corruption" and "subversion" are the graver forms of "misconduct". To meet such exigencies it has been decided in consultation with the Law Division that in all suitable cases where an accused is charged with "corruption" or "subversion" and additional charge of "misconduct" may be added to the main charge.

[Authority.- Estt. Division O.M. No. 2/5/66-D.I, dated 11-6-1966].

**Scope of departmental  
proceedings under the  
Efficiency & Discipline**

**Rules in cases referred  
to the Courts**

*Sl. No. 124*

References are very often received in the Establishment Division on the above subject in various forms. The questions generally posed by the Ministries/Divisions are as under:-

- (i) Whether departmental proceedings can be started against a Government servant who is being prosecuted in a criminal court;
- (ii) Whether departmental inquiry can be conducted against a Government servant on the same charges after his acquittal by a court;
- (iii) Whether any departmental action lies against a Government servant who cannot be prosecuted in a court of law due to technical grounds.

2. The matter has been examined in consultation with Law Division. Each case has to be decided on its merits and in the light of its facts and circumstances. However some guidelines can be laid down in the matter, and the following general guidelines are indicated for deciding such matters :-

- (i) There is no legal bar to the holding of a departmental inquiry against a Government servant who is being prosecuted in a criminal court. It may, however, be pointed out that where the holding of departmental inquiry side by side with the criminal proceedings may have the effect of impeding the course of justice or of prejudicing the trial, the inquiry should be deferred till the termination of criminal proceedings.
- (ii) An acquittal from a criminal case may be on technical grounds or on the ground that all the ingredients of the offence are not proved by the evidence produced in court. But in departmental proceedings even one of the ingredients, if proved, may be sufficient to reach a conclusion that the accused has misconducted himself or has acted in a grossly negligent way or has shown inefficiency in the discharge of his official duties. As an example, to illustrate this point a recent case may be cited. An officer employed in the Registry of the

Supreme Court was charged and tried for embezzlement. He was, however, acquitted by the High Court in criminal appeal No. 676 of 1965. Subsequently he was dismissed on the same allegations which were found proved in a departmental inquiry initiated by the Supreme Court. Thus departmental proceedings on the same facts may be started even if the person concerned has been acquitted in criminal proceedings.

(iii) In some cases a Government servant cannot be criminally prosecuted on technical grounds. But this does not bar the Government from inquiring into the truth of a charge against a Government servant by means of a departmental inquiry. Therefore, there is no bar to proceed against a Government servant departmentally, when he cannot be criminally prosecuted in a court of law for some reason or other.

*[Authority. - Estt. Division O.M. No. 4/5/69-D.I, dated 17-6-1969].*

### **Speedy disposal of disciplinary and suspension cases**

*SI. No. 125*

It has been decided that the responsibility of seeing that a disciplinary case is disposed of expeditiously should rest with the Secretary in each Ministry. Fortnightly statements showing the stage in respect of each case of persons placed under suspension should be submitted by each Ministry to the Secretary to enable him to watch the progress of such cases. Quarterly statements, showing the particulars of persons under suspension and the stage of each case, should also be forwarded to the Establishment Division for the information of the Government. These reports should be supplied in the beginning of January, April, June and September each year.

*[Authority.- Estt. Division O.M. No. F.32/48-Ests (SE), dated 21-7-1949].*

*SI. No.126*

In spite of the instructions issued *vide* Establishment Division's O.M.No.F.32/48-Estt-(SE), dated 21-7-1949 (Sl.No.111), instances have been brought to the notice of Government where disciplinary cases have been pending for as long as two years or even more. The question of speedy disposal of disciplinary cases has, therefore, been considered by Government again and it has been decided that the following instructions should be strictly observed by the Ministries/Divisions.

2. As stated in paragraph 2 of the Establishment Division Office Memorandum dated the 21st July, 1949 quoted above, no Government servant should be placed under suspension except when it is really necessary. When, after due consideration and care it is decided to suspend an officer, it should be the primary responsibility of the Head of the Ministry/Division/Department to see that the case against the Government servant is disposed of as expeditiously as possible. In order to enable the Head of the Ministry/Division to watch the progress of each case where a Government servant has been suspended and issue necessary directions for its speedy disposal, the fortnightly statements as prescribed in paragraph 2 of the Office Memorandum dated the 21st July, 1949, referred to above should invariably be submitted to him by the office concerned.

3. Disciplinary proceedings against Government servants placed under suspension should be finalized within two months of the date of suspension. If in any case it is not possible to finalize (within the time limit of two months) departmental proceedings against a Government servant under suspension, the matter should be reported to the Establishment Secretary giving the following details :-

(i) Particulars of the case;

(ii) Reasons for delay; and

(iii) The period within which the case is expected to be finalized. The Establishment Secretary after scrutinising the report will offer such advice to the Ministry/Division/Department as he may consider necessary with regard to the speedy disposal of the case. If, the Establishment Secretary is satisfied in any case that the suspension of the Government servant concerned is no longer

justified or necessary, he may recommend to the competent authority to cancel the order of suspension. In cases relating to Government Servants other than Grade 17 and above orders of suspension may also be cancelled by the Head of the Ministry or other competent authority if he is satisfied at any time, before the finalization of the disciplinary proceedings against him that the suspension of the Government servant concerned is no longer justified or necessary.

4. The quarterly statements as prescribed under Establishment Division Office Memorandum dated the 21st July, 1949 showing particulars of Government servants under suspension and the stage of such case should continue to be forwarded to the Establishment Division.

[Authority.- Estt. Division O.M. No. 3/53/58-SE II, dated 17-1-1959].

*Sl. No. 127*

*Reference.-* Establishment Division Office Memorandum No. 3/53/58-SE II, dated the 17th January, 1959.

A question has arisen whether cases of those Government servants who are facing trial in the Courts of Law on Criminal charges, should also be included in the statement mentioned in paragraph 2 of the said Memorandum. The matter has been carefully considered and it has been decided that cases of those Government servants, who are criminally involved, should also be included in the prescribed statements. This will provide an opportunity to Government to watch the progress of such cases so that in cases of extreme hardship, or where circumstances permit, Government may consider withdrawing suspension order, even before the case is decided in the Court.

[Authority.- Estt. Division O.M. No. 3/53/58-SE II, dated 26-5-1959].

*Sl. No. 128*

It has come to the notice of the President that a large number of cases of disciplinary nature are pending final disposal since long

and in some cases for over years. This is obviously contrary to the dictates of justice, and inevitably, results in undue hardship to the affected persons, particularly those in the lower income groups. Besides these delays, invariably subject the administration to unnecessary criticisms.

2. It is, therefore, advised that each Ministry/Division/Department and semi-autonomous bodies under the Federal Government should maintain suitable records of all cases of Gazetted and non Gazetted staff wherein investigations/inquiries have been instituted and disciplinary action is proposed to be initiated or has been initiated showing the reasons for initiation of such action. Periodic progress in the disposal of each case should be recorded therein to facilitate authorities concerned to conduct quick scrutiny for assessing delays, their causes and to pursue their expeditious disposal.

3. All Ministries/Divisions/Departments and semi-autonomous bodies are requested to prepare an up-to date list of all disciplinary cases pending with them in the enclosed proforma (Annexure) and forward it, in duplicate, to the Establishment Division.

*[Authority.- Estt. Division O.M. No. 1/3/70-D. I, dated 7-5-1970].*



*Sl. No. 129*

In a case of disciplinary proceedings against an officer the President has observed that the progress of disciplinary cases is very slow and has desired that such cases should be disposed of expeditiously. All Ministries and Divisions are requested to make a note of the President's observation and ensure that all disciplinary cases are disposed of as quickly as possible.

[Authority.- Estt. Division O.M. No. 1/21/65-C.I, dated 15-7-1967].

*Sl. No. 130*

Delay in process of Disciplinary Cases. It has been observed that inquiry proceedings against Civil Servants under E&D Rules tend to be unduly protracted for various avoidable reasons, causing hardship to the affected officers, on one hand, and defeating the purpose of speedy disposal of cases, on the other.

2. It has, therefore, been decided that in all disciplinary cases, in addition to strict observance of the provisions of Rule 6 of Efficiency & Discipline Rules, 1973 and the instructions already issued with my D.O. No. 553/80-JS (Rev. & D), dated 22nd October, 1980, the following measures should be strictly observed:-

- (a) The Inquiry Officer be carefully selected for his competence and capability to hold the inquiry.
- (b) A time-limit should be prescribed for completion of the inquiry.
- (c) Until the inquiry is completed, the Inquiry Officer, the accused as well as the witnesses concerned should not be permitted to proceed on leave, training course or on transfer in or outside Pakistan.
- (d) A check-sheet, recording the day to day progress, should be maintained by the Inquiry Officer.

- (e) The inquiry proceedings once started should be held without interruption, as far as possible, on day to day basis.
- (f) On receipt of the inquiry, the case should be processed expeditiously by the Ministry concerned.
- (g) It should be impressed upon the Inquiry Officer that the quality of work produced by him will reflect on his efficiency, which will be recorded in his ACR.
- (h) The initiating officer should record his assessment of the Inquiry Officer's performance in the ACR.

*[Authority.- Estt. Secretary's d.o. letter No. 5/1/81-C.II (A), dated 6-6-1981].*

**Quick disposal of disciplinary proceedings pending against Government Servants who are about to superannuate**

*Sl. No. 131*

It has come to the notice of government that inquiry proceedings against civil servants under the Government Servants (Efficiency and Discipline) Rules, 1973 tend to be unduly protracted for various avoidable reasons causing hardships to the affected government servants on the one hand and defeating the purpose of speedy disposal of cases in others. This is obviously against dictates of justice.

2. The disposal of disciplinary proceeding assumes vital importance especially in cases against government servants who are about to attain the age of superannuation. It goes without saying that delay in disposal of such cases not only causes hardships to the affected persons but also puts the administration to unnecessary criticism.

3. It is, therefore, requested that disciplinary proceedings against government servants nearing the age of superannuation in future should be disposed of before they superannuate. All the agencies working under the administrative control of the Ministry concerned should be advised accordingly.

[Authority:-Estt. Division O.M. No.12/2/88-R.3, dated 3-10-1988].

*Sl. No. 132*

Reference Estt. Division's O.M.No.12/2/88-R.3, dated the 3rd October, 1988 (Serial No.131) on the subject mentioned above, wherein all the Ministries/Divisions were requested that disciplinary proceedings against Government Servant nearing the age of superannuation should in future be disposed of before they superannuate. Despite this, instances have come to the notice of this Division wherein the disciplinary cases have been delayed to such an extent that these stood abated due to non-finalisation thereof before the age of superannuation of the accused civil servants, which is not a happy state of affairs.

2. In order to guard against recurrence of such instances, it is once again requested that the instructions (printed at Sl. No. 131) may please be brought to the notice of all concerned for strict compliance to ensure that the State's interests are fully protected and the civil servants really guilty of misdemeanour of any sort do not go unpunished due to the inefficiency and/or connivance of the departmental personnel in finalising the Efficiency and Discipline cases before the accused's superannuation.

[Authority:- Estt. Division O.M.No.6/14/94-D.I, dated 19-12-1994].

### **Censure, reprimand and warning**

*Sl. No. 133*

From references received, it appears that some authorities are not clear regarding the procedure to be followed where punishment of Censure is awarded and regarding the distinction between 'Censure' and 'Warning'.

2. Censure is one of the punishments mentioned in rule 4 (1) (a) of the Efficiency and Discipline Rules.

3. There is essentially no difference between 'Censure and reprimand', but as the official term is Censure, it seems preferable that normally this term should be used.

4 [ Not reproduced ]

5. According to rule 3 of the Civil Servants (Appeal) Rules, 1977 every Civil Servant is entitled to appeal to the appellate authority from an order of Censure passed by an authorized officer or an authority provided that, where the penalty is imposed by an order of the President, the Civil Servant has no right to appeal but he can apply for review of the order.

6. A warning, whether oral or written and whether given ad hoc or in annual confidential report, is not a censure and does not constitute a punishment, provided that it is genuinely a warning and not a censure distinguished as such.

*[Authority. - Estt. Division O.M. No. 3/1/52-SE. II, dated 12-4-1952 with necessary adaptations in the light of prevailing circumstances].*

### **Indulging in critical remarks against Ministers**

*Sl. No. 134*

All Government servants should be warned that they should

not indulge in critical remarks against their own Ministers or other Ministers. This is against discipline or good conduct, and should be dealt with as such.

*[Authority. - Estt. Secretary's D.O.letter No.4/20/61-D.II, dated 23-9-1961].*

**Participation of  
Government Servants  
in Drinking Parties**

*Sl. No. 135*

It has been reported that a number of persons organize drinking and other parties in Rawalpindi/Islamabad, which are attended by Civil as well as Military Officers, and where views on Government policies are expressed without reservations.

2. While drinking is a manifest violation of the law of the country and the sanctity of Islam, criticism of Government by its functionaries, particularly at such gatherings, is a serious offence.

3. Under the Prohibition (Enforcement of Hadd) Order, 1979, alcoholic drinks are available to only non-Muslim foreigners and non-Muslim Citizens of Pakistan. As such all Government servants are apt to strictly follow the aforesaid Order and desist from such vices.

4. It is requested that severe disciplinary action may be taken against the defaulters, irrespective of their status; and they may also be debarred from employment under the Government, semi-Government organizations, and autonomous bodies.

5. These instructions may kindly be brought to the notice of all officers/employees, serving in your Ministry, including those in attached/subordinate offices as well as autonomous bodies/corporations etc. under your Ministry.

*[Authority. - Estt. Secretary's D.O. letter No.5/1/79 DIV, dated 17-9-1979].*

**Officers' duty to  
watch conduct of  
their subordinates**

*Sl. No. 136*

It has been decided that all officers should be informed that it is their duty to watch the conduct of their subordinates and to ensure that corruption does not spread among them. Failures to do so would be reflection on their own efficiency.

*[Authority. - Estt. Division O.M.No. 3/35/59-SE.II, dated 4-3-1959].*

*Sl. No. 137*

Measures undertaken to curb corruption in the Police have shown appreciable results, and its personnel deserve to be commended, and encouraged to continue with their efforts in that direction.

2. Meanwhile, public complaints of corruption in several Government departments persist, and effective steps are required to root it out. It is the bounden duty of every Head of Department to exercise utmost vigilance, analyse the cause, and trace the source where incidence of corruption occurs.

3. In future, a Head of Department will bear the responsibility, and be answerable for proven charges of corruption within the area of his administrative Jurisdiction. It is self-evident that corruption prevails in a department if its Head is:

- (a) himself corrupt, or
- (b) wilfully blind to corruption taking place, or
- (c) so inefficient that he is unable to control it.

4. Whichever of these three reasons may be applicable, such a

Head of Department cannot be retained in service to the detriment of Government's objective of serving the people and promoting their weal and welfare.

[*Authority.*- President of Pakistan's note No. 57/1/CMLA, dated 25-9-1978].

**Avoidance of favouritism  
or nepotism in making  
ad hoc appointments**

*Sl. No. 138*

Considerable time often elapses before candidates recommended by the Federal Public Service Commission become available for appointment. Consequently, *ad hoc* appointments are made pending selection of suitable candidates by the Commission. In this connection it has been brought to the notice of Government that in making such *ad hoc* appointments, officers in certain Ministries/Departments indulged in favouritism and nepotism. Government view this with concern and it has been decided that suitable disciplinary action should be taken against the delinquent officers.

2. Acts of favouritism or nepotism being prejudicial to good order or service discipline constitute misconduct as defined in the Government Servants (Efficiency and Discipline) Rules. It is, therefore, requested that if, instances of favouritism or nepotism or irregularity in making *ad hoc* appointments are brought to notice, the officers responsible should be proceeded against under those Rules. Suitable instructions may also kindly be issued to all officials concerned in the Ministry including Attached Departments and Sub-ordinate Offices.

[*Authority.*- Estt. Division D.O. letter No.2/2/62-D.I, dated 15-2-1962].

**Loss of Security Passes to  
be treated as 'misconduct'**

*Sl. No. 139*

As provided in para 97 of the [Security Instructions] (1973 Edition) prepared by the Cabinet Division and this Division's Circular letter No. 14/17/71-Cord., dated the 18th November, 1971 a Government Servant who has lost the Security Pass issued to him is required :-

- (i) to make report to the Police Station and to the Head of his Department about the loss of the Pass; and
- (ii) to deposit Rs. 5 in the State Bank of Pakistan

before a new security pass is issued to him. The amount of Rs.5 covers only the cost of the pass and actually no penalty has been imposed on him. It has been noticed that the Government Servants generally do not take sufficient care to keep the passes in safe custody with the result that loss of security passes is on the increase. As the pass lost can be misused by any unauthorized person which involve serious security risk, it has been decided in consultation with the authorities concerned that the loss of Security Pass would be treated as "misconduct" in terms of Government Servants (Efficiency and Discipline) Rules, 1973.

2. However before any action is initiated against a Government Servant who has lost his Security Pass, it is necessary to determine in each case as to whether the security pass in question was lost due to negligence. If the Government Servant concerned is able to give a satisfactory account of the circumstances under which the security pass was lost by him, it may not be proper to proceed against him. If after preliminary inquiry, it is found that the security pass was lost due to the negligence of the Government servant concerned or that the lost security pass had fallen into unauthorized hands as a result of any wilful omission or commission on his part, only then, it would be appropriate to take disciplinary action against him under the Government Servant (E&D) Rules 1973.

3. All Ministries and Divisions are, therefore, requested that in future while referring the case of issue of a Security Pass to a person who has already lost a Security Pass, it may also please be

clearly indicated whether disciplinary action for if any has been taken/is being taken against the official concerned.

*[Authority.- Ministry of Interior O.M. No. 19/2/75-Security dated 31-3-1975 as amended vide O.M. No.19/9/75- Security dated August, 1982].*

**Use of intemperate and inappropriate language in representations and petitions of Government servants**

*Sl. No. 140*

At time representations of Government servants contain wild allegations against superior officers. While Government servants would be free to submit their representations in accordance with the prescribed procedure whenever they feel aggrieved, they should be informed that the use of such language constitutes misconduct. You may, therefore, impress upon all Government servants working under your administrative control, the need and propriety of refraining from the use of such language and to scrupulously observe the norms of decency and decorum. Failure to do so on their part will not only result in no action being taken on requests contained in such representations/petitions but will also render them liable to disciplinary action for misconduct. Serious action will also be taken when wild allegations are made against senior officers which on investigations are found to be without any basis.

*[Authority.- Estt. Division D.O.letter No.8/13/71-F.II, dated 28-5-1974].*

**Grant of Pension Gratuity etc. to a Government servant compulsorily retired from service under the Government servants (Efficiency and Discipline) Rules, 1973**

*Sl. No. 141*

A doubt has been felt in some Ministries/Divisions as to whether a Government Servant compulsorily retired under the Government Servants (Efficiency and Discipline) Rules, 1973, is eligible for grant of pension/gratuity.

2. In this connection it is clarified that sub-section (1) of section 19 of the Civil Servants Act, 1973 provides that on retirement from service, a civil servant shall be entitled to receive such pension or gratuity or both as may be prescribed. It is laid down in sub-section (3) of section 19 of the aforementioned Act that pension is not admissible in the case of Civil Servants who have been removed or dismissed for reasons of discipline. As such a Government servant compulsorily retired under the Government Servants (Efficiency and Discipline) Rules, 1973, is entitled to pension or gratuity or both as admissible under normal rules in terms of sub-section (1) of section 19.

3. According to the Auditor General of Pakistan's Letter No. 71/A/46-73, dated the 1st March, 1975 (Annexure) the term "retirement" used in section 19(1) of the Civil Servants Act, includes "compulsory retirement" under Government Servants (Efficiency and Discipline) Rules, 1973.

4. It may be recalled that all persons who were screened out in 1959, or were prematurely retired under MLR-58 (1969) or MLR-114 (in March, 1972), or who were compulsorily retired under Government Servants (Efficiency and Discipline) Rules, 1973, in October, 1976, were allowed normal pensionary benefits, and the production of certificate of thoroughly satisfactory service in terms of Article 470-CSR was waived. The production of certificate was also waived in the cases of those who were retired under section 13 of the Civil Servants Act, 1973.

5. The position under rules be brought to the notice of all Departments, offices and autonomous bodies under the administrative control of the Ministries/Divisions so that civil servants and employees of the autonomous bodies compulsorily

retired under Government Servants (Efficiency and Discipline) Rules, 1973 and under similar rules framed by autonomous bodies are not deprived of their retirement benefits.

6. In all cases of compulsory retirements, the requirement of certificate of thoroughly satisfactory service (required in terms of Article 470-CSR, and section (7) of the pension papers, or in corresponding provisions in the rules of autonomous bodies should be deemed to have been waived.

*[Authority.-Estt. Division O.M. No. 4/16/80-D.I, dated 25-9-1980].*

#### ANNEXURE

Extract from Auditor-General of Pakistan Letter No. 71-A/46-73, dated 1st March, 1975.

The term retirement used in section 19(l) of the Civil Servants Act, 1973 includes "Compulsory Retirement" under the Government Servants (Efficiency and Discipline) Rules, 1973.

**Grant of leave to Government  
Servants compulsorily retired  
from service under the Government  
Servants (Efficiency & Discipline)  
Rules**

*Sl. No. 142*

A reference is invited to the Establishment Division's O.M. No. 4/13/60-SR, dated the 4th October, 1960 (Annexure) and it is stated that the instructions contained therein have been reviewed in this Division and in supersession of these instructions, it has been decided that Government servants compulsorily retired from service as a measure of punishment under the Government Servants (E&D) Rules, 1973 should not be granted leave preparatory to retirement.

*[Authority.- Estt. Division O.M. No.4/8/88-D.I, dated 4-4-1977].*

## ANNEXURE

Copy of O.M. No. 4/13/60-SR, dated the 4th October, 1960.

It has been decided that the Government servants compulsorily retired from Establishment Division service under the Government Servants (Efficiency and Discipline) Rules, 1960, may be granted leave preparatory to retirement under the normal rules. However, each case should be decided on its own merit by the competent authority as defined in Rule 2 (1) of those Rules.

**Grant of arrears of pay and allowances  
to Government servants for period of  
absence from duty, on re-instatement  
as a result of Court's decisions**

*Sl. No. 143*

The Supreme Court in its recent judgment in C.A. No.28 of 1969 [West Pakistan Vs. Mrs. A. V. Issacs] has ruled that a civil servant has and always had the right to recover salary already accrued due to him despite the fact that his service was during "Pleasure". This has rendered obsolete its own two earlier judgments in the cases of Mehrajuddin [PLD 1959 SC (Pak) 147] and Fazl-e-Haq Mussarrat [PLD 1960 SC (Pak) 208] and a judgment of the former Federal Court in the case of Ali Ahmed Hussain Shah [PLD 1955 FC 522] all of which followed the Privy Council's view on I. M. Lall's case and which was also followed in the Law Ministry. In its latest judgment, the Supreme Court has taken the view that if the dismissal of a Government servant is held to be unlawful he should be allowed salary for the period he was kept out of service. This was, however, subject to the condition that if he has accepted other employment or engaged in other profitable business during this period any amount earned by him by way of salary from such employment or as profits of such business would have to be set off against the salary due, firstly because as Government servant he cannot serve elsewhere or engage in any other business without the permission of the Government and secondly, because on general principle a person cannot be allowed to reap a double advantage. Therefore, it would be no more open to the

Government to resist claim for arrears of pay of a civil servant wrongfully removed from service on the plea that no such claim was competent. The claim will have to be resisted, if at all, on the facts of a particular case referred to in the judgment as exceptional cases. The right of the Government servant to claim future salary has, however, been negated by the Court.

2. In view of the latest judgment of the Supreme Court on the subject a civil servant's claim for arrears of salary in the relevant circumstances cannot now be refused. Therefore, this Division's earlier advice to the contrary must be deemed to have been recalled and the Establishment Division is requested to review, in consultation with the Ministry of Finance, all the pending cases relating to claims of arrears of pay in the light of the fresh declaration of law by the Supreme Court and settle such claims. The Supreme Court's judgment underlines the necessity of duly observing with care the provisions of the Constitution and the Government Servants (Efficiency and Discipline) Rules, in all disciplinary cases against Government servants and of expeditious disposal of such cases.

[Authority.- Law Division O.M.No.F.7(8)/70-SOL(I), dated 12-8-1970].

*SI. No. 144*

A reference is invited to the O.M. from the Law Division No. F. 7(8)/70-Sol(I), dated 12th August, 1970, which states *inter alia* that, in accordance with the Supreme Court's judgment in CA No. 28 of 1969 (West Pakistan vs Mrs. A. V. Issacs), if the dismissal of a Government servant is held to be unlawful he has to be allowed salary for the period he was kept out of service, reduced by the amount, if any, that he might have earned by way of salary, or as profits, on account of having accepted some employment, or having been engaged in some profitable business, during the above period. Thus, the legal status of Government servants' claims for arrears of pay and allowances is no longer the same as had been indicated in para 3 of this Ministry's circular d.o.No.F.9(15)-RI (Rwp)/61, dated 23rd December, 1961. Consequently, it is no longer appropriate for

the enquiry committee referred to in para 4 of that circular D.O. to consider on merits, in cases in which Government servants are restored to their posts as a result of court's decisions, as to whether or not, and to what extent, pay and allowance for the period of their absence from duty should be restored.

2. It has accordingly been decided that, in cases where a Government servant is reinstated retrospectively as a result of a Court's decision, the functions of the enquiry committee to be set up under para 4 of this Ministry's circular d.o.No.F.9(15)-RI (Rwp)/61, dated 23rd December, 1961, as amended (Annexure)

would henceforth be as follows:-

- (a) The Ministry/Division/Department as the case may be, may obtain from the Government servant concerned a solemn declaration, supported by an affidavit, as to the particulars of his employment, or engagement in profitable business, during the period of his absence from duty, and the amount earned by him by way of salary from such employment, or as profits in such business.
- (b) After examining such evidence as might be available, and cross-examining, if necessary, the Government servant, the Ministry/Division/ Department as the case may be, may give their finding as to whether or not the above declaration is *prima facie* acceptable and on what grounds.
- (c) If the declaration is found to be *prima facie* unacceptable, the Ministry/Division/Department as the case may be, should refer the case to the committee, which before giving their finding as to the amount earned by the Government servant during the period of absence from duty, may get the declaration properly verified/scrutinized by any agency they consider appropriate. For example, if the case had

been dealt with by the Special Police Establishment at an earlier stage in any connection, this verification/scrutiny may be arranged to be carried out by that Establishment. For purposes of this verification/security assistance of the relevant Income-tax authorities, may also be sought, if the Government servant concerned be an Income-tax payer.

- (d) In case the reinstatement of the Government servant has been ordered by the Court on account of the relevant administrative action having been found to be defective, the Committee should also give their findings :
- (i) as to which officers were responsible for that defectiveness of administrative action; and
  - (ii) as to whether any, and what part, of the amount payable to the Government servant by way of net salary for the period of his absence from duty, might justifiably be recovered from such officers. The recovery from such officers will, of course, follow departmental proceedings under the Government Servants (Efficiency and Discipline) Rules.

3. The above instructions do not apply to cases in which Government servants are reinstated as a result of acceptance of appeals by departmental appellate authorities, which will continue to be regulated by the provisions of FR-54, as hitherto.

*[Authority.- Finance Division O.M.No.781-R4/73-F.3(4)-R.1/73, dated 10-7-1973].*

## ANNEXURE

Extract of paras 4 & 5 of the Finance Division letter No. F.I(15) RI (Rwp)/61, dated 23rd December, 1961 as amended.

4. If as a result of Court's decision, a Government servant restored to his post, the question whether pay and allowances for the period he was under suspension or was removed from service should be decided on the merit of each case. For this purpose it is suggested that in all cases the Ministry or Department concerned should order a departmental enquiry headed by the representative of the Ministry/Deptt. administratively concerned with their Financial Adviser/Deputy Financial Adviser as a member of the Committee. This Committee should consider whether on the merits of the case, Government would be justified in restoring the official concerned, the pay and allowances for the period involved and, if so, whether in full or in part. In coming to a conclusion whether pay and allowances to individual should or should not be restored, following consideration will have to be kept in view:-

- (a) Whether the person concerned was acquitted on a purely technical or procedural grounds or whether the actual allegations against him had been gone into and were found to be incorrect;
- (b) Whether the individual during the period he was away from active duty and other sources of income; and so on.

5. It has further been decided that in cases where the total period involved does not exceed 12 months from the time the individual was suspended or removed from service, the final decision should be taken by the Ministry concerned at the level of the Secretary and in all other cases the matter should be referred to the Ministry of Finance for prior concurrence.

**Government Servants  
(Marriage with Foreign  
Nationals) Rules, 1962**

*SI. No. 145*

In exercise of the powers conferred by clause (2) of article 178 of the Constitution, the President is pleased to make the following rules, namely:-

**1. Short title, application and commencement.-** (1) These rules may be called the Government Servants (Marriage with Foreign Nationals) Rules, 1962.

(2) They shall apply to every person who is a member of an All-Pakistan Service or who is serving in a civil capacity in connection with the affairs of the Central Government, but shall not apply to any person who is employed on contract.

(3) They shall come into force at once.

**2. Definitions.-** In these rules, unless there is anything repugnant in the subject or context:-

- (a) "foreign national" means a person who is not a citizen of Pakistan;
- (b) "government servant" means a person in the service of Pakistan to whom these rules apply whether such person is, for the time being, on foreign service or not;
- (c) "marriage" means matrimonial relationship entered into in accordance with any law for the time being in force or any religious rites or ceremonies, and its grammatical variations and cognate expressions shall be construed accordingly;
- (d) "misconduct" has the same meaning as in the Government Servants (Efficiency and Discipline) Rules, 1960.

\*"3. Marriage with Foreign nationals prohibited.-(1) Subject to the provisions of sub-rule (2), a Government servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties under the Government Servants (Efficiency and Discipline) Rules, 1973.

(2) A Government servant, may with the prior permission of the Federal Government marry or promise to marry a Muslim Citizen of India.

(3) The grant of permission under sub-rule (2) shall be at the discretion of the Federal Government, and may be subject to such conditions, if any, as it may specify."

4. Supersession of previous rules, notifications, etc.-These rules shall supersede all previous rules, notifications and instructions relating to the conditions of marriage of a Government servant.

[Authority.- Estt. Division Notification No. S.R.O. 341 (K)/63 (4)/103/5, dated 29-4-1963 as amended up to 13-9-1965].

Note.- Officials who propose to marry Indian nationals should submit applications on the form prescribed *vide* Establishment Division O. M. No. 4/103/59-D-II, dated the 11th June, 1963.

*Sl. No. 146*

*Marriage or promise of marriage with foreign national (except Indian) to be considered 'Misconduct'.*- Attention is invited to the Government Servants (Marriage with Foreign Nationals) Rules, 1962, whereunder marriage or promise of marriage with foreign national except those of India, by any Government servant is not permitted and contravention of these rules is considered as

\*Subs *vide* Estt. Division Notification No. S.R.O. 497 (I)/81, dated 27-5-1981.

misconduct rendering the Government servants found guilty, liable to be removed from service. Marriage or promise thereof with the citizens of India is possible only with prior permission of the Government.

2. It has come to notice that in some cases of the Government servants concerned were not fully aware of these rules. Ministries/Divisions are therefore, requested to draw attention of their officers to the provisions of these rules and advise their strict observance. The attention of all those who enter service in future may also be specifically drawn to these rules at the time of assumption of duties.

3. There is also need for forewarning the officers particularly the young at the time of their going abroad. The officers on such occasions may be granted interviews by Secretaries or Heads of departments under whom they work in which the risk involved in violating the marriage rules may be explained.

[Authority.- Estt. Division O.M. No. 3/13/68-D.II, dated 14-6-1968].

*Sl. No. 147*

*Bar against making requests for ex-post facto approval for marriages with foreign nationals.-* Lately there has been an increase in requests of *ex-post facto* approval for marriages with foreign nationals in relaxation of the above rules. Invariably the excuse for having contracted such marriages by the Government servants is ignorance of the rules.

2. The competent authority has taken serious notice of this tendency and has been pleased to direct that all Ministries/Divisions/Departments be asked to disseminate the rule position to Governments servants for strict compliance. The competent authority has further directed that in future no more *ex-post facto* permission will be granted in such cases.

3. Ministries/Divisions are requested to please bring the above instructions to the notice of all employees working under them

and also to the employees of autonomous statutory bodies under their administrative control.

[Authority.- Estt. Division O.M. No.2/7/81-D.IV/D.3, dated 26-9-1988].

*Sl. No. 148*

Under the Government Servants (Marriage with Foreign Nationals) Rules, 1962, marriage or promise of marriage with a foreign national by any Government Servants except with those of Indian Muslims with prior approval of the government, as a misconduct under the Government Servant (Efficiency & Discipline) Rules, 1973. Further, under Establishment Division's O.M. of even number, dated 26-9-1988, (Sl. No.147) it has been made clear that no request is entertained for *ex-post facto* approval in such cases.

2. All Ministries/Divisions are again requested to bring the above position to the notice of all employees working in the Ministries/Divisions or in the autonomous/statutory bodies under their administrative control, for strict compliance and not to forward cases of *ex-post facto* approval to the Establishment Division.

[Authority.- Estt. Division O.M.No.2/7/81-D.IV/D.3, dated 8-1-1996].

### **Prohibition of wasteful expenditure on marriages**

*Sl. No. 149*

The Cabinet in its meeting held on 11.2.1997, has, inter alia, decided that the government functionaries henceforth should not attend any such marriage functions which violate the provisions of the Marriages (Prohibition of Wasteful Expenses) Act, 1997 and use discretion in attending marriage functions other than those of close family and personal friends.

2. It is requested that the above decision may be brought to the notice of all concerned for strict compliance.

[Authority.- Estt. Division letter No.2/3/97-D.3, dated 18-6-1997].

### **Committals to prison**

*Sl. No. 150*

\*[CSR 194-A: A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a Government servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under "FR-53"].

*Sl. No. 151*

*Suspension of a Government servant accused of criminal offences.-* In cases where Government servants are accused of criminal offences, frequent references are made to the Establishment Division on issues such as :

- (i) whether, on their committal to prison, they are to be suspended by a specific order or their suspension is automatic ;

\*CSR-194 subs and CSR 194-A omitted *vide* Finance Division S.R.O. No.25(KE)/97 dated 4-2-1997.

- (ii) whether or not on their release on bail after arrest, they can be reinstated in service ;
- (iii) whether their continued suspension requires approval of the authority after every three months.

2. The matter has been considered in the Establishment Division in consultation with the Law Division. It has been held that cases of the above nature are to be dealt with under Article 194 and 194-A of the Civil Service Regulations which are existing rules and which cannot be over-ridden by administrative instructions contained in section IV of Appendix-3 of Fundamental Rules and Supplementary Rules Vol. II.

3. In the context of the points mentioned in paragraph 1, the position that emerges from Article 194 and 194-A of CSR is explained below :-

- (a) A Government servant committed to prison either for debt or on a criminal charge should be considered as under suspension from the date of his arrest and until the termination of the proceedings against him, *i.e.*, his suspension is automatic from the date of arrest till termination of proceedings against him ;
- (b) a Government servant against whom a criminal charge or proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (*e.g.* whilst released on bail) if the charge made or proceedings taken against him is connected with his position as a Government servant or is likely to embarrass him in discharge of his duties as such or involves moral turpitude ; and
- (c) the requirement of obtaining approval of authority for extension of suspension period after every 3 months laid down in Government Servants (Efficiency and Discipline) Rules, 1973 applies to suspensions ordered under these rules. Article 194 or 194-A do not mention any such requirement.

4. In view of the position stated above, the answers to the queries mentioned in para 1 are as follows in *seriatim*:-

- (i) suspension under Article 194 is automatic. Suspension under Article 194-A requires specific approval of the competent authority;
- (ii) in the light of what is stated in the preceding paragraph, the competent authority can, in case the accused official is no longer detained in custody, reinstate him in service unless it like him to continue to be under suspension on the consideration that the charges against him are connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involve moral turpitude. From the date of reinstatement onwards, the Government servant will no doubt be paid full pay. However adjustment of allowances for the period he remained under suspension will be made as Article 194 and 194-A envisage after the termination of the proceedings;
- (iii) approval of competent authority for suspension under Article 194 or 194-A is not required every 3 months.

5. With reference to (i) and (ii) in the preceding paragraph, the following administrative instructions may also be followed :-

- (a) a report may be immediately to the "competent authority" whenever a person is committed to prison and is considered to be under suspension under article 194 CSR in order to ensure that the competent authority remains in touch with the position of the official and his case; the fact of suspension may also be notified under advice to all concerned including the audit authorities in terms of Article 194 CSR; and

- (b) a report on the progress of the criminal case leading to the suspension of a Government servant under Article 194 or 194-A, CSR, as the case may be, be submitted to the authorized officer every three months for his information to ensure that he remains in touch with the position of the official and his case.

6. The O.M. issues with the concurrence of the Ministry of Finance.

[Authority.- Estt. Division O.M.No.4/12/74-DI, dated 10-3-1980].

*Sl. No. 152*

*Detention of Government servants under the Public Safety Acts.-* A question has arisen whether an employee of the Federal Government who is detained in prison for a period of time under the provisions of the Sindh Maintenance of Public Safety Act, 1948 or a similar enactment and is released without any trial loses his service under the Government and whether such a person is entitled to any leave salary or subsistence allowance for the period he remained under detention. As some doubts seemed to exist in the matter, the question has been fully considered in consultation with the Law Division and it has been decided that the following procedure should be adopted to regulate cases of detention in prison and subsequent acquittal or conviction:-

- (i) As soon as it comes to notice that an employee has been detained in prison, action should be taken to place him under suspension. The period of the employee's detention [should be treated as period spent under] committal to prison within the meaning of Article 194 C.S.R. and the pay and allowances during suspension should be regulated under F.R.53;
- (ii) If the employee is subsequently acquitted honourably he should be reinstated forthwith. He will be entitled to receive full salary for the entire period of his

absence from duty under F.R. 54(a) ;

- (iii) If on the other hand the acquittal is not honourable, then the provision of F.R. 54 (b) will apply ;
- (iv) If the employee is released from detention without any trial, it is open to the competent authority to take disciplinary action against him if good and sufficient reasons exist from such action. In that case the procedure prescribed in the Efficiency and Discipline Rules must be observed; and
- (v) If the employee is convicted, he may be dismissed from service if his retention in service is not desirable. In that case the procedure prescribed in the Efficiency and Discipline Rules, need not be

\*Amended *vide* Estt. Division O.M.No. 27/41/52-SE II, dated 7-12-1954].

observed. He will be entitled to nothing more than the subsistence allowance up to the date of his dismissal from which date the pay and allowance will cease under F.R. 52.

[*Authority*.-Estt. Division O.M.No. F/19/11/49-Ests (SE), dated 20-12-1949].

*Sl. No. 153*

A reference is invited to the Establishment Division's O.M. No.F. 19/11/49-Ests (S.E.), dated the 20th December, 1949, and it is stated that a certain amount of confusion has arisen from the words "considered as resulting from" which occur in item (i) of that Office Memorandum. These words, as they stand, are capable of being interpreted as if a person who is detained under the Public Safety Act will be governed by the provisions of Article 194, Civil Service Regulations, as it stands. The position, however, is that Article 194 does not strictly apply to such cases but the intention is that, when a

person is detained under the Public Safety Act, his pay and allowances should on the analogy of the provisions of Article 194, be regulated as if he was committed to prison. In order to make this intention clear it has been decided that the words "considered as resulting from" referred to above may be replaced by the words "treated as period spent under".

[Authority.-Estt. Division O.M.No.27/41/52-SE-II, dated 7-12-1954].

*SI. No. 154*

*Removal from service as a result of conviction in Court of Law.-* Attention is invited to the Establishment Division's O. M. No. 3/24/59-SE.II, dated 21-3-1959 (Annexure) it is stated that the instructions contained therein have been reviewed in the Establishment Division and in

supersession of these instructions, it has been decided that in future all Government servants *convicted of a criminal charge involving moral turpitude* should be dismissed from Government service. For this purpose, Government Servants (Efficiency and Discipline) Rules, 1973 provide for dispensation of the normal disciplinary procedure.

2. The Ministries and Divisions are requested to bring the above position to the notice of all concerned for strict compliance in future.

[Authority.-Estt. Division O.M.No.2/2/73-DI, dated 15-4-1976].

ANNEXURE

Copy of Establishment Division O.M. No. 3/24/59-SE.I, dated the 21st March, 1959.

References have been received from time to time from Ministries and Divisions etc. enquiring whether a Government servant convicted by a Court of Law can be removed or dismissed from service or reduced in rank straightway or it is necessary to give him a show cause notice before passing final orders in the matter.

2. This question has been given due consideration in the Establishment Division who are of the view that as a general principle if a Government servant is convicted in a Court of Law he does not automatically lose his employment under Government. But if in the opinion of the authority competent to pass orders of dismissal, removal or reduction in rank grounds which led to his conviction are good and sufficient for imposing any of these penalties, that authority can pass such an order. If however, the competent authority considers that a lesser penalty or no penalty at all is called for in the circumstances of the case (such as minor or technical nature) there is no bar to that authority taking a decision accordingly.

3. If it is decided to award the penalty of dismissal, removal or reduction in rank it is not necessary to give a show cause notice to the person concerned *vide* Article 181 (2) proviso (a) of the late Constitution or Rule 55 of the Civil Services (Classification, Control and Appeal) Rules [Article 177 (I) (b) of the 1962 Constitution or Rule 6 of the Efficiency and Discipline Rules, 1960 may be referred to in the present context]. The order of removal, dismissal or reduction can be passed by the competent authority taking into consideration the grounds of conduct which led to the conviction of the person concerned in the Court of Law. The removal, dismissal or reduction in such cases takes effect from the date of orders and not from the date of verdict passed by the Court.

**Strictures passed by  
Courts against Government  
servants**

*Sl. No. 155*

The question whether strictures passed by Courts of Law against a Government servant render him liable to departmental action has been under consideration of the Establishment Division for some time. It has been held that when a Court passed any strictures against a Government servants, it should not necessary be assumed that he is guilty of some misconduct or breach of rules or an act of omission or commission. The nature of the action to be taken should be decided after careful consideration of the facts and circumstances of each individual case. If the strictures are such as to merit disciplinary action against the Government servant concerned, he should be dealt with departmentally in the light of the Government Servants (Efficiency and Discipline) Rules. No Government servant should, however, be punished on the basis of the strictures without drawing up necessary proceedings in accordance with the aforesaid rules. An entry may be made in the Character Roll of the Government servant concerned or a copy of the strictures placed therein only when specific orders are passed to that effect by the competent authority. In no other case, strictures should find a place in the Character Roll of the Government servant.

[Authority.- Estt. Division O.M.No. 3/110/59-E.V., dated 28-4-1960].

**Payment of costs incurred  
by Government servants in  
defending themselves in  
Judicial proceedings**

*Sl. No. 156*

Under Section 266 (3) (d) of the Government of India Act, 1935, it was necessary to consult the Federal Public Service Commission in matters relating to reimbursement of costs incurred by Government servants in defending themselves in legal proceedings and accordingly, after Independence, detailed instructions were issued indicating *inter alia*, at what stage the Commission were to be consulted in such matters, *vide* this Division Office Memorandum No. 3/15/52-SE. II, dated the 10th July, 1952

(Annexure). These instructions continued to operate also under the 1956 Constitution which kept alive the above legal position by its Article 188 (2) (d).

2. With the commencement of the new Constitution, the position in this regard will, however, undergo some change as consultation with the Federal Public Service Commission in respect of matters mentioned above will not be necessary [*vide* Article 185 (2) *ibid*]. It is, therefore, requested that the instructions contained in the Office Memorandum referred to above may please be followed subject to the modification that such cases need not be referred to the Commission with effect from the 'commencing day' of the new Constitution.

[*Authority*.-Estt. Division O.M.No.2/16/62-D.I, dated 25-5-1962].

## ANNEXURE

Copy of Establishment Division O.M. No. 3/15/52-SE.II, dated 10-7-1952.

The question has been raised what the practice should be where applications are received from Government servants asking for the costs of defending criminal or civil proceedings filed against them when the opposite party is (a) a private person, (b) Government.

2. The law on the subject is contained in section 197 of the Code of Criminal Procedure and in Section 266(3) (d) and 271 of the Government of India Act, 1935.

3. As regards proceedings initiated by members of the public against Government servants in respect of an act or acts done by them in their official capacity, there is little difficulty. In a letter issued in 1919, the Government of India in the Finance Department set out the practice in the following terms:-

"For many years, it has been the practice to apply the same

principles in all departments. When a Government officer has been accused of committing an offence, or has been used for damages on the ground of some act done by him in his official capacity, and it appears to the local Government that his conduct was not open to blame, it is usual to employ the Government law officers to defend the case at the expense of Government. When Government is not so satisfied, the practice is to leave the officer to defend himself at his own expense. But if he is subsequently acquitted and his character cleared Government defrays such reasonable charges as he has incurred in defending himself. The amount, which Government should pay is settled on the merits of each case according to circumstances. The justification for this procedure plainly is that had the facts been fully ascertained at the beginning Government would have undertaken his defence".

4. It is not necessary to amplify the above statement of practice, save to invite the attention of Ministries to the necessity of consulting the Pakistan Public Service Commission before passing orders, as required under Section 266 (3) (d) of the Government of India Act, 1935, and of consulting the Ministries of Law and Finance whether the expenses claimed are reasonable.

5. A more difficult question arises when Government are themselves the prosecutors. Unlike prosecutions launched by members of the public, prosecutions of officials by Government start with a presumption that they have been filed in good faith, after careful consideration and not vexatiously. When a case fails owing to its having remained unproved or the accused being given the benefit of the doubt or on some technicality. Government are under no obligation to pay compensation; and any general practice of doing so merely because a case had failed in Court would be a waste of Government funds and make the cost of anti-corruption proceedings prohibitive. On the other hand the possibility cannot be excluded that there will occasionally be cases in which there are good reasons to believe that the accused was in fact innocent. In such cases compensation may and should be paid.

6. The procedure in all cases where application for such compensation is made will be as follows. If the tentative view of the administrative Ministry concerned is that compensation should be paid, they will consult the Ministry of Law both on any legal issue which may arise and on the reasonability of the charges claimed (counsel's fees, etc.). They will then in any case whether or not they favour payment of compensation, forward the file to the Pakistan Public Service Commission, with a concise statement of the case and all relevant papers, for their advice. \*On receipt of their advice, they will decide whether or not to pay compensation and, if it is proposed to make any payment, will obtain the concurrence of the Ministry of Finance.

\*Note.- Attention in this connection is invited Sl. No.15 (b) (XVII) Annex II to the Ministry of Finance's O.M. No. F. 1 (5) R. 12/80, dated 11th March, 1981 according to which Ministries/Divisions have been delegated full powers to sanction "Law Charges" in consultation with the Ministry of Law.

**Maintenance and circulation  
of list of persons debarred  
from future employment under  
Governments**

*Sl. No. 157*

*Establishment of convention between Central Government and Provincial Governments.-*As all Government addressed have indicated their willingness to establish a convention with the Central Government and between themselves to the effect that persons debarred from service under one Government will be treated as such by other Government, it has been decided to establish the proposed convention with immediate effect.

[Authority.- Estt. Division No.39/4/48 Estt.(ME), dated 2-8-1948].

*Sl. No. 158*

*Procedure for the maintenance and circulation of lists of persons debarred from future employment under Government.-* In order to effect economy in time, labour, and expense and to ensure the systematic preparation and maintenance of the list of debarred persons, it has been decided to centralise the work and to adopt the following procedure for this purpose:-

- (a) Ministries/Divisions will notify to the Establishment Division particulars of Government employees dismissed and debarred from future employment by them or by any of their Attached Departments or Subordinate Offices;
- (b) The Federal Public Service Commission will also notify to Establishment Division particulars of all candidates declared by them as unsuitable for Government employment;
- (c) Provincial Governments will also notify to the Establishment Division particulars of Government employees debarred by them from future employment, together with particulars of candidates declared by Provincial Public Service Commission as unsuitable for Government Service;
- (d) The Particulars under (a) to (c) above will be supplied monthly to the Establishment Division so as to reach that Division not later than the 20th of the month concerned; and
- (e) Establishment Division will prepare a consolidated list, in alphabetical order, once a month and circulate it to the Ministries/Divisions and the Provincial Governments.

*SI. No. 159*

According to the procedure laid down in the Establishment Division Office Memorandum No.39/6/48-Estt. (ME), dated the 25th October, 1948, as amended in their Office Memorandum of even number, dated the 2nd June, 1949, Ministries/Divisions, Federal Public Service Commission, Provincial Governments and Administrations are required to furnish to the Establishment Division the particulars of Government servants dismissed from service and debarred from future employment under Government, in the form prescribed therein. It is felt that the form in question should be amplified to include the educational qualification and permanent address of the person debarred from Government service. It is requested that in future information in regard to the person debarred from future employment under Government may please be furnished in the revised form (Annexure).

2. It has been observed in several cases that authority concerned are not in a position to furnish to the Establishment Division all the necessary particulars of the person debarred from future employment under Government for the reason that a proper record of their particulars have not been maintained by them. It will be appreciated that unless full particulars of the individuals concerned are included in the consolidated list issued by the Establishment Division, there is a danger of some of these individuals re-joining Government service undetected and thus the very purpose for which these lists are issued will be defeated. Ministries, etc., are, therefore, requested to ensure that full particulars of all Government servants are maintained by them so that necessary particulars are made available to the Establishment Division in case any of them is debarred from future employment under Government.

*[Authority. - Estt. Division O.M.No.38/6/65-ME, dated 18-6-1955].*

## ANNEXURE

## LIST OF PERSONS DISMISSED OR DEBARRED FROM GOVERNMENT SERVICE

Ministries/Divisions

Provincial Government

| Serial No | Name and Permanent address | Educational Qualifications | Father's Name and address | Date of birth | Office in which employed and the <u>post held</u><br>*Post or service for which he was a candidate | Reasons for dismissal or *disqualification | Height and personal marks of identification, if known |
|-----------|----------------------------|----------------------------|---------------------------|---------------|--|--|---|
| 1         | 2                          | 3                          | 4                         | 5             | 6  | 7  | 8   |

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the case of persons declared unsuitable by the Public Service Commission. In

*Sl. No. 160*

Nil reports in respect of persons debarred from future employment under Government need not be sent to the Establishment Division.

[Authority. - Estt. Division O.M.No. 15/6/59-ME, dated 5-9-1959].

*Sl. No. 161*

Under instructions issued from time to time Ministries are required to supply to the Establishment Division a statement, giving particulars of persons dismissed from service and debarred from future employment under the Government in the prescribed form by the 20th of each month. This statement is to be arranged alphabetically, typed only on one side of the paper and supplied to the Establishment Division in duplicate in a consolidated form.

2. It appears that these instructions are not being followed and these statements are not received in the prescribed form in accordance with the existing instructions. The last date prescribed for submission of these statements, *e.g.*, 20th of each month is also not being adhered to. The result is that the lists cannot be printed in time.

3. In order to ensure the systematic preparation and maintenance of the lists of debarred personnel, it is requested that the above instructions may kindly be complied with strictly in future.

[Authority.- Estt. Division O.M. No. 103/10/59-Con., dated 22-12-1959].

*Sl. No. 162*

The Ministries/Divisions are requested that henceforth the names with particulars of persons sent to the Establishment Division for publication in the quarterly lists of dismissed and debarred from future employment under the Government may kindly be sent to this Division *in triplicate* on the prescribed proforma in alphabetical order

*e.g.*, the names starting with Alphabet `A' on one sheet and those starting with `B' on a separate sheet and so on.

2. It is also requested that the material for publication in the said lists may be sent well in time so that the lists can be published immediately after the expiry of the quarter.

[*Authority.*- Estt. Division O.M. No. 22/4/71-F.I, dated 30-11-1971].

*Sl. No. 163*

The periodical lists of persons dismissed from Government service and debarred from future employment under the government are issued by the Establishment Division with the object that Ministries/Divisions etc., remain abreast of the information in regard to the persons dismissed from Government Service on account of serious charges against them and that such persons should not be re-employed under the Government in future.

2. The Ministries/Divisions/Attached Departments etc. should consult these lists before making fresh appointments to avoid chances of such persons getting into the Government service again. The Establishment Division may kindly be informed that the instructions are being strictly followed by the Ministries/Divisions and that these have been brought to the notice of other authorities and offices under their administrative control.

[*Authority.*- Estt. Division O.M. No.22/4/71-F.I, dated 3-4-1973].

**Submission of forged  
documents in support  
of age/educational  
qualifications**

*Sl. No. 164*

A large number of cases have come to notice in which candidates for Competitive examinations conducted by the Central Public Service Commission have submitted forged documents in support of their age or educational qualifications. This malpractice has become so frequent that it is considered that it can be eradicated only if strict measures are adopted. The Establishment Division, therefore, consider that no punishment less than that of dismissal is normally appropriate in such cases.

2. It is, therefore, advised that while considering cases of this nature the Ministry of Finance, etc., may keep in view the views expressed in the Establishment Division letter No.40/6/50-SEI, dated 21-6-1950 (Sl.No.20, Chapter II).

*[Authority.- Estt. Division O.M.No. 40/15/51-SEI, dated 8-5-1951].*

*Sl. No. 165*

Under the existing orders candidates for posts in Government service who give false information about their educational qualifications, or tamper with their dates of birth in their educational certificates are disqualified by the Central Public Service Commission from appearing at any examination, and they are also debarred by the Government from employment under them. A number of such cases of forgery have been detected by the Central Public Service Commission, and it is felt that unless deterrent action is taken by way of prosecution in a Court of Law, forgers will not be discouraged. It has, therefore, been decided that whenever there are good grounds for suspecting a candidate for a post under the Government of having given false information about his educational qualifications, or tampering with his date of birth as recorded in his educational certificate action should be taken immediately to prosecute him and have the case tried summarily.

*[Authority.- Estt. Division Letter No.6/26/58-R, dated 11-11-1958].*

*Sl. No. 166*

Government of Pakistan do not agree with the views expressed by the Government of East Pakistan in their letter No. 2070-GAC, dated 9th December, 1958 (Not reproduced) that the furnishing of false information by candidates for posts in Government service is punishable under section 177 of the Pakistan Penal Code. Section 177 of the Pakistan Penal Code deals with the cases of persons legally bound to furnish information to a public servant, whereas there is no legal obligation in the part of a candidate to furnish information when applying for a post in Government service. The offence of furnishing false information in such cases is not, therefore, punishable under section 177, but under section 182 of the Pakistan Penal Code.

2. As for tampering with the date of birth as recorded in an educational certificate, it is considered that this amounts to forgery within the meaning of section 463 of the Pakistan Penal Code. The forging of certificates to support false assertions of educational qualifications would appear to be punishable under section 465, and the use of forged certificates punishable under section 468 of the Pakistan Penal Code. It is considered that these offences, which are punishable with long periods of imprisonment, cannot be tried summarily for the reason that under section 260 of the Code of Criminal Procedure, only offences punishable with imprisonment for a term not exceeding six months can be tried summarily.

3. In the circumstances prosecution for the offences mentioned above should be restricted to cases of false information under section 182 of the Pakistan Penal Code, ignoring the offence of forgery where it is also present. Steps should also be taken to have the cases tried in a summary manner under sub-section (1) of section 260 of the Code of Criminal Procedure, 1898.

*[Authority.- Estt. Division Letter No.6/26/58-R, dated 20-1-1959 addressed to the Government of East Pakistan].*

## **Anti-Corruption Measures**

*Sl. No. 167*

*Government servants to disclose their assets/severe disciplinary action for indulging in corrupt practices.*- Government of Pakistan have recently considered certain measures for the elimination of corruption among Government servants and have *inter alia* decided as follows:-

- (a) that a Government servant when required by Government to disclose his assets, immovable as well as liquid, must comply;
- (b) that a Government servant who indulges in nepotism, favouritism, victimization and wilful abuse of office will be liable to disciplinary action which may include dismissal.

It is requested that the above decisions may please be brought to the notice of all Government servants serving under the Government of Pakistan.

[Authority.- Estt. Division O.M.No. 4/15/53-SE II, dated 7-7-1953].

*Sl. No. 168*

*Responsibility of all officers to watch the conduct of their subordinates.* - It has been decided that all officers should be informed that it is their duty to watch the conduct of their subordinates and to ensure that corruption does not spread among them. Failures to do so would be reflection on their own efficiency.

[Authority.- Estt. Division O.M.No.3/5/59-SE II, dated 4-3-1959].

*Sl. No. 169*

*Responsibility of Heads of Departments/Organizations to eradicate corruption from officials working under them.*-

Government has recently considered the question of eradication of corruption from Services and decided that "Heads of Organizations" should be made responsible for rectifying and punishing corrupt officials working under them. It was further decided that they should be provided with a list of suspected corrupt officials whose activities should be watched vigilantly. In accordance with the existing instructions it is duty of all officers to watch the conduct of their subordinates and to ensure that corruption does not spread among them. The inspector General, Special Police Establishment, is being asked to furnish to the Heads of Departments/Organizations, lists of suspected corrupt officials of their Departments/ Organizations. The services of the Special Police Establishment should be freely utilized for verifying the allegations of corruption, or for conducting enquiries/investigations, into suspected cases of corruption.

2. The Office Memorandum may be brought to the notice of all Heads of Departments/Organizations under the Ministry of Finance, etc.

*[Authority.- Interior Division O.M. No.1/8/67-SP(P), dated 20-9-1967].*

*Sl.No.170*

Measures undertaken to curb corruption in the Police have shown appreciable results, and its personnel deserve to be commended, and encouraged to continue with their efforts in that direction.

2. Meanwhile, public complaints of corruption in several Government departments persist, and effective steps are required to root it out. It is the bounden duty of every Head of Department to exercise utmost vigilance, analyse the cause, and trace the source where incidence of corruption occurs.

3. In future, a Head of Department will bear responsibility, and be answerable for proven charges of corruption within the area of his administrative jurisdiction. It is self-evident that corruption prevails in a department of its Head is:

- (a) himself corrupt, or
- (b) wilfully blind to corruption taking place, or
- (c) so inefficient that he is unable to control it.

4. Whichever of these three reasons may be applicable, such a Head of Department cannot be retained in service to the detriment of Government's objective of serving the people and promoting their weal and welfare.

[Authority.- President and CMLA's Note No.57/1/CMLA, dated 25-9-1978].

*Sl. No. 171*

*Setting up of Committees to deal with cases of corruption.-*  
The question of eradicating corruption from the various walks of life in the country has been engaging the attention of the Government for some time. More particularly, corruption and indiscipline in Government offices have given Government cause for a great deal of concern. Accordingly, amongst other measures that the Government is contemplating, the Prime Minister has been pleased to approve the following procedure for cleansing Government offices and departments of corrupt and inefficient elements.

2. The Inspector General, Special Police Establishment should periodically compile lists of Government servants who are either guilty of corrupt practices or enjoy a persistent reputation of being corrupt. These lists should be forwarded to the Establishment Division in the case of officers of Grade 17 and above and to the concerned Ministries in case of Government servants of Grade 16 and below. Secretaries to the Government and heads of departments may also report, in respect of the Ministries and Departments under them, such cases of Government servants in Grade 17 and above to the Establishment Division.

3. The cases thus referred to the Establishment Division will be looked into by a Committee consisting of Establishment Secretary,

Interior Secretary and Secretary of the Ministry concerned. The Committee will be responsible for making recommendations to the Prime Minister as to the action that may be taken against the corrupt officials concerned. In respect of Government servants of grade 16 and below Ministries may take final action.

4. In big departments such as Railways, Telephones and Telegraphs and Pakistan Public Works Department, where corruption is rampant in a big way, separate Committees should be set up. These Committees should finalize action in respect of officers in Grade 16 and below. For Grade 17 and above they should make recommendations to the Committee referred in para 3, who after scrutiny will submit cases to Prime Minister. There should be a separate Committee for corporations.

5. These departments should also have their own separate anti-corruption cells, which they may organize in consultation with the Interior Division and I.G., S.P.E.

6. The Committees referred to in paras 3 and 4 should also deal with cases of inefficient Government servants. \* [As you no doubt know senior Government servants of Grades 21 and 22 can now be retired at any time if they are inefficient or have outlived their utility.] Other Government servants can also be retired on completion of 25 years of service. It has been decided with the Prime Minister's approval that 2 to 3 years before a Government servant is due to complete 25 years service, a special entry should be made by the reporting officer in his ACR indicating whether his continued retention in service is justified. Such cases as are reported unfit for further retention for 3 consecutive years should come up before the respective Committee for necessary scrutiny and action.

[Authority.- Estt. Division D.O. No.1/7/74-CV, dated 22-8-1974].

*Sl. No. 172*

*Cooperation with investigating Officers of the Federal Investigating Agency.-* The New Federal Investigation Agency has

been constituted by the Government of Pakistan for the investigation of cases of bribery and corruption involving persons serving in connection with the affairs of the Centre. The cases of corruption usually relate to the functions of the public servants concerned and involve the examination of official record for coming to a conclusion whether an offence has been committed or not. Instances have come to notice that in some cases when the Investigating Officers of the Special Police Establishment approached the Departments for papers relevant to the cases under investigation, the officers concerned delayed handing over of papers on one pretext or the other and in some cases even refused to hand over the documents. They were perhaps not aware that under section 94 of the Criminal Procedure Code, an Investigating Officer is empowered to demand the production of any paper connected with the offence, the investigation of which is being conducted by him and omission to comply is punishable under section 175 of the Pakistan Penal Code. Even otherwise, it is the

*Note.*- Pl. see Section 13 of Civil Servants Act, 1973, as amended, in the present context.

duty of each public servant to assist the anti-corruption agencies in their arduous task of eradicating corruption. The responsibility of the Heads of Departments in this matter has also been emphasized in this Ministry's Office Memorandum No. 1/8/67-SP (P), dated the 20th September, 1967. Delay in the investigation of corruption cases is detrimental to the prosecution and goes in favour of the accused who gets a chance to tamper with the record and win over the witnesses before the police can examine them. It is, therefore, requested that suitable instructions may be issued to all concerned impressing upon them the need for prompt handing over of the requisite record to the Investigating Officers and the desirability of extending full co-operation to them in the investigation of corruption cases.

*[Authority.- Interior Division O.M. No.1/8/68-SP(P), dated 24-7-1968].*

*Sl. No. 173*

It has been again reported by the Inspector General, Special Police Establishment, that most of the investigations are delayed as the relevant record of the case is not readily made available by the

Department concerned to the investigating officers.

2. It is, therefore, requested that fresh instructions may kindly be issued to all concerned impressing upon them the need for prompt handling over of the requisite record to the investigating officers and the desirability of extending full co-operation to them in the investigation of corruption cases.

*[Authority.- Interior Division O.M.No.1/8/68-SP(P), dated 27-2-1971].*

**Instructions regarding  
investigations by the  
Federal Investigation  
Agency into cases of  
bribery and corruption**

*Sl. No. 174*

With the coming into force of the F.I.A. Act No. VIII of 1975, the Special Police Establishment stands converted into the Federal Investigation Agency. Instructions regarding investigations by the Federal Investigation Agency into the conduct of cases of bribery and corruption have, therefore, been drawn upon the lines of the former instructions regarding investigations by the Special Police Establishment with necessary modifications, and a copy thereof is forwarded herewith (Annexure I) for information and guidance.

*[Authority.- Interior Division O.M. No. 1/21/74-SP (P), dated 5-3-1975].*

**ANNEXURE I**

**Instructions regarding investigation of cases of Bribery and Corruption by the Federal Investigation Agency.**

*Note.-* The expression "Competent Authority" in these instructions means the Anti-Corruption Council at the Centre (Annexure II) in the case of an officer of grade 17 and above who is serving in connection with the affairs of the Federal Government is not removable from his office save by or with the sanction of the Federal Government and, in any other case, the Interior Division.

1. The Federal Investigation Agency may start an investigation either on its own initiative or on receipt of a complaint or information, oral or written.

2. When the identity of the complainant is not known, as will happen when the complainant is anonymous or pseudonymous, the Agency, shall not register a case unless they are able to obtain, by the preliminary enquiry, independent corroboration of the allegations made in the complaint.

3. When the identity of the complainant is known, the Agency shall ascertain from him full facts in support of his allegations and shall, after doing so, proceed in the manner laid down in the succeeding paragraphs.

4. If the preliminary enquiry, referred to in paragraphs 2 and 3 above, shows that there is reason to suspect the commission of an offence which the Agency is empowered to investigate, the Agency shall at once send a brief statement of the case to the competent authority and seek its concurrence to the registration of the case. On receipt of this concurrence, the Ministry or Department under which the Government servant concerned is serving shall be informed of the registration of the case:

Provided that a reference to the competent authority shall not be necessary to the case of those Government servants who are not governed by section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that the Agency may register a case against any Government servant at once, if for reasons to be recorded, it consider that delay in investigation will, or is likely to, result in the disappearance of, or in tampering with, the evidence or in immediate loss to Government. When registration is effected without prior reference, under this proviso, a report of the action taken alongwith reasons thereof shall be forwarded by the Agency at the earliest opportunity to the competent authority.

5. Before the registration of a case, all inquiries shall be secret as far as possible. After a case has been registered, investigation shall proceed with care and discretion and no undue publicity shall be given to it. Special care shall be taken to ensure that no unnecessary damage is caused to the prestige, reputation and dignity of the Government servant involved in the case.

6. At the close of investigation into cases for which sanction for prosecution is required under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or under sub-section (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958). The Agency shall submit to the Anti-Corruption Council, in the case of officers of grade 17 and above, as per instructions noted under (a) below, and to the Interior Division, in the case of other officers as per instructions noted under (b) below, full facts of the case, the opinion of the legal Adviser, the draft sanction order, a charge-sheet and a brief statement of allegations to be supplied to the accused Government servant.

(a) In cases registered against officers of Grade 17 and above, explanation of the accused officer, giving him 15 days time will be obtained by the Deputy Director of the Agency before submission of the case to the Anti-Corruption Council for decision regarding disposal of the case viz. charge-sheet for trial or departmental action or dropping the case. The Anti-Corruption Council will take into consideration the explanation of the accused in taking decision regarding disposal of the case. The Secretary of the Ministry concerned in which the accused officer serves, if he is not a member of the Anti-Corruption Council, will be co-opted as a member of the Council while deciding the case. If charge-sheet for trial in court is recommended by the Anti-Corruption Council, Interior Division will accord sanction for prosecution, without further reference to the Ministry concerned to obtain explanation of the accused, on the basis of the decision of the Anti-Corruption Council.

(b) In the case of officers of Grade 16 and below, the Interior Division shall Communicate the full facts of the case to the Ministry under whom the Government servant concerned is employed and they shall supply to the Government servant concerned

a copy of the charge-sheet and the brief statement of allegations furnished by the Agency and give him an opportunity to submit within 15 days of its receipt a statement in writing to show cause why he should not be prosecuted in a court of law or otherwise proceeded against:

Provided that the giving of an opportunity to the Government servant concerned to submit a statement in writing shall, in no case be in the nature of a departmental enquiry or proceedings. The intention is that his statement should be on record when taking a final decision before according sanction for prosecution.

7. In all cases, referred to the Anti-Corruption Council, under para 6, the following procedure for obtaining the explanation etc., of the accused officer shall be observed before seeking permission for registration of a case or open enquiry from the Anti-Corruption Council:-

- (1) Explanation of an accused officer shall be obtained before permission for open enquiry is sought by the Federal Investigation Agency, provided there be no difficulty in seizing documents during confidential enquiry and there is no apprehensions for disappearance of material evidence;
- (2) Officers of the Federal Investigation Agency will be able to seize documents during preliminary confidential enquiry as there is no legal bar to it;
- (3) Explanation of the accused officers should be obtained before seeking permission for registration of a case against him. This will be done by the Deputy Director of the Federal Investigation Agency. Questions asked and replies furnished by the officer whose conduct is under enquiry shall invariably be sent to the Secretary of the Ministry concerned under which the accused officer serves, through the Director General, Federal Investigation Agency; and

- (4) In each case, explanation shall be obtained within 15 days.

8. The Ministry concerned to whom reference is made under para 6 (b) shall communicate their recommendations alongwith the statement of the Government servant concerned to the Interior Division within one month of its receipt.

9. If it is decided to prosecute in a court of law a person who is serving in connection with the affairs of the Federal Government or is not removable from his office save by or with the sanction of the Federal Government, the sanction for his prosecution under section 197 of the Code of Criminal Procedure, 1898, or sub-section (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958) as the case may be, shall be issued forthwith by the Interior Division.

10. If it is decided to take departmental action against Government servant, the necessary action shall be taken by the authority under whom the Government servant is serving. The agency shall supply to the Ministry or Department under which the Government servant concerned is employed, all materials required for the departmental enquiry and thereafter that Ministry or Department may avail of the services of the whole-time Enquiry Officers of the Interior Division in accordance with the provisions of their Memo. No. 2/7/67-SP (P), dated the 13th March, 1963. The Ministry or Department, as the case may be, shall intimate the result of the enquiry to the Interior Division and to the Federal Investigation Agency.

11. In case where departmental action is taken, the Interior Division may call for records of the departmental proceedings.

12. When sanction for prosecution is issued, the Government servant concerned shall be placed under suspension, unless this action has been taken at an earlier stage.

## ANNEXURE II

Copy of Interior Division O. M. No. 1/9/67-SP (P), dated 29-6-1968.

Setting up of Anti-Corruption Council at the Centre to deal with cases of Class I Officers.

The undersigned is directed to say that it has been decided to set up an Anti-Corruption Council at the Centre to deal with cases of corruption against Class I Officers investigated by the Special Police Establishment. The composition etc., of the Council will be as follows:-

(1) *Composition.*-The council will be composed as follows:-

- |       |  |                  |
|-------|--|------------------|
| (i)   | Secretary, Cabinet Secretariat<br>(Establishment Division).                    | <i>Member</i>    |
| (ii)  | Secretary, Ministry of Home<br>and Kashmir Affairs<br>(Home Affairs Division). | <i>Member</i>    |
| (iii) | Secretary, Ministry of Law   | <i>Member</i>    |
| (iv)  | Inspector-General, Special<br>Police Establishment.                            | <i>Secretary</i> |

*Note.*- (a) The senior most of the three permanent members will act as the Chairman of the Council.

(b) The Council will co-opt the Secretary of the Ministry concerned, the case of whose official comes up for decision.

(2) *Jurisdiction.*- The Council will deal with cases of corruption against:-

- (i) All Class I Officers of the Central Government;

- (ii) Officers of the Provincial Governments or of the corporate bodies and other organizations set up by the Centrally Government where the authority competent to remove the accused from service is the President;
- (iii) Members of All Pakistan Services or of Central Class I Services or holders of Class I Posts under the Central Government who were at the time of the commission of the offence serving in connection with the affairs of a Province.

(3) *Functions.*- The functions of the Council will be as follows:-

- (i) To permit institution of open enquiry by the Special Police Establishment.
- (ii) To permit registration of a case by the Special Police Establishment, for formally investigation.
- (iii) To consider the enquiry/investigation report and recommend, as the case may be,
  - (a) prosecution of the accused, or
  - (b) departmental action, or
  - (c) dropping of the case, or
  - (d) further enquiry/investigation.

*Note.*- Recommendations of the Council shall have the same sanctity and shall be given the same weight as the recommendations of the Central Public Service Commission.

*Sl. No. 175*

*Correspondence with the F.I.A.-* The Federal Investigation Agency (formerly Pakistan Special Police Establishment) is authorized to undertake the investigation of crime under the various laws included in the Schedule to the F.I.A. Act, 1974 (VIII of 1975) (Annexure). As such, all Ministries and Divisions including their subordinate and attached offices, and for that matter an agency or individual, can directly bring to the notice of the Circle and Branch Offices of the F.I.A. (located in various cities), any incidence or alleged incidence of a crime, under the law included in the said Schedule. However, while doing so they are requested to endorse a copy of their communication to the Director General, Federal Investigation Agency, to help to facilitate a quick disposal of the reference.

2. References regarding important matters should, however, continue to be addressed to the Interior Division.

*[Authority.- Interior Division O.M. No.8/9/74-Admn.IV., dated 6-3-1975].*

## ANNEXURE

### THE FEDERAL INVESTIGATION AGENCY ACT, 1974 (ACT VIII OF 1975)

[Dated: 13-1-1975]

*An Act to provide for the constitution of a Federal Investigation Agency.*

Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal

Government, and for matters connected therewith;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.**- (1) This Act may be called the Federal Investigation Agency Act, 1974.

(2) It extends to the whole of Pakistan and also applies to all citizens of Pakistan and public servants, wherever they may be.

(3) It shall come into force at once.

2. **Definition.**- In this Act, unless there is anything repugnant in the subject or context, -

- (a) "Agency" means the Federal Investigation Agency constituted under section 3;
- (b) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (c) "Director-General" means the Director-General of the Agency;
- (d) "Provincial Police" means the Police constituted by a Provincial Government under the Police Act, 1861 (V of 1861);
- (e) "Public servant" means a public servant as defined in section 21 of the Pakistan Penal Code (Act XLV of 1860), and includes an employee of any corporation or other body or organization set up, controlled or administered by or under the authority of the Federal Government;
- (f) "Special Police" means the Pakistan Special Police Establishment constituted under the Pakistan Special Police Establishment Ordinance, 1948 (VIII of 1948);

- (g) "Specified persons" means the persons who were appointed to posts in or under a Provincial Police in pursuance of Article 3 of the Special Police and Provincial Police (Amalgamation) Order, 1962 (P.O. No.1 of 1962); and
- (h) "rule" means rules made under this Act.

**3. Constitution of the Agency.-** (1) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of, the offences specified in the Schedule, including an attempt or conspiracy to commit, and abetment of, any such offence.

(2) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.

**4. Superintendence and administration of the Agency.-**(1) The superintendence of the Agency shall vest in the Federal Government.

(2) The administration of the Agency shall vest in the Director General who shall exercise in respect of the Agency such of the powers of an Inspector General of Police under the Police Act, 1861 (V of 1861), as may be prescribed by rules.

**5. Powers of the members of the Agency.-** (1) Subject to any order which the Federal Government may make in this behalf, the members of the Agency shall, for the purpose of an inquiry or investigation under this Act, have through out Pakistan such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the Code or any other law for the time being in force.

(2) Subject to rules, if any, a member of the Agency not below the rank of a Sub-Inspector may, for the purposes of any inquiry or investigation under this Act, exercise any of the powers of an officer incharge of a Police-station in any area in which he is for the time being and, when so exercising such powers, shall be deemed to be an officer-incharge of a police-station discharging his functions as such within the limits of his station.

(3) Without prejudice to the generality of the provisions of subsection (1) and sub-section (2), any member of the Agency not below the rank of a Sub-Inspector authorized by the Director-General in this behalf may arrest without warrant any person who has committed, or against whom a reasonable suspicion exists that he has committed, any of the offences referred to in sub-section (1) of section 3.

(4) For the purpose of the exercise by the members of the Agency of the powers of an officer-in-charge of a police-station, "Police-station" includes any place declared, generally or specially, by the Federal Government to be a police-station within the meaning of the Code.

(5) If, in the opinion of a member of the Agency conducting an investigation, any property which is the subject matter of the investigation is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such member may, by order in writing, direct the owner or any person who is, for the time being, in possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that member and such order shall be subject to any order made by the court having jurisdiction in the matter.

(6) Any contravention of an order made under sub-section (5) shall be punishable with rigorous imprisonment for a time which may extend to one year, or with fine, or with both.

**6. Power to amend the Schedule.-** The Federal Government may, by notification in the official Gazette, amend the Schedule so as

to add any entry thereto or modify or omit any entry therein.

**7. Delegations of powers.-** The Director General may by order in writing, direct that all or any of his powers under this Act or the rules shall, subject to such conditions, if any, as may be specified in the order, be exercisable also by any member of the Agency so specified.

**8. Indemnity.-** No suit, prosecution or other legal proceeding shall lie against the Federal Government, any member of the Agency or any other person exercising any power or performing any function under this Act or the rules for anything which is in good faith done or intended to be done under this Act or the rules.

**9. Power to make rules.-** (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the terms and conditions of service of the Director-General and other members of the Agency and the qualifications for recruitment to various posts;
- (b) the powers and functions of the members of the Agency in relation to the conduct of inquiries and investigations;
- (c) the nature and extent of the assistance which the Agency may provide to Provincial investigating agencies;
- (d) the powers of the Inspector General of Police under the Police Act, 1861 (V of 1961), which shall be exercisable by the Director-General; and
- (e) the manner in which rewards may be given to the

members of the Agency or of the public for rendering commendable services.

10. **Repeal.**- (1) The Pakistan Special Police Establishment Ordinance, 1948 (VIII of 1948), and the Special Police and Provincial Police (Amalgamation) Order, 1962 (P. O. No. I of 1962), hereinafter referred to respectively as the said Ordinance and the said Order, are hereby repealed.

(2) Upon the repeal of the said Ordinance,-

(a) all persons who were members of the Special Police immediately before such repeal, including the specified persons, shall stand transferred to the Agency and shall, subject to sub-section (5), be entitled to the same terms and conditions to which they were entitled immediately before such repeal; and

(b) any inquiry or investigation pending with the Special Police immediately before such repeal shall continue to be conducted by the Agency.

(3) Notwithstanding the repeal of the said Order, but subject to sub-section (4), every specified person shall continue to be appointed in or under the Provincial Police in or under which he was holding a post immediately before the commencement of this Act.

(4) On the recommendation of the Director-General, and with the concurrence of the Provincial Government concerned, the Federal Government may direct that such of the Specified persons referred to in sub-section (3) as may within thirty days of the commencement of this Act express their willingness to serve in or under the Agency shall be appointed to posts in or under the Agency.

(5) A specified person referred to in clause (a) of sub-section(2), and a person in respect of whom a direction is issued

under sub-section (4) shall, upon the repeal of the said Ordinance or, as the case may be, the issue of such direction, cease to hold a post in or under the Provincial Police concerned and shall be entitled to the same terms and conditions of service to which he was entitled immediately before such repeal or the issue of such direction.

## THE SCHEDULE

[See Sections 3 (1) and 6]

\*[(1) Offences punishable under section 161, 165A, 168, 169, 217, 218, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 263, 353, 366B, 402A, 402B, 402C, 403, 404, \*\* [406], 409, \*\* [420, 468, 471], 477A, 489A, 489B, 489C, 489D, 489E, of the Pakistan Penal Code (Act XLV of 1860)

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\*Subs *vide* Establishment Division Notification No. S.R.O. 826(I)/97, dated 20-9-1997.

\*\*Ins *vide* Establishment Division Notification No. S.R.O. 237(I)/98, dated 10-4-1998.

- (2) Offences punishable under the Explosive Substances Act, 1908/VI of 1908).
- (3) Offences punishable under the Official Secret Act, 1923 (XIX of 1923).
- (4) Offences punishable under the Engineers Act, 1946 (XXXI of 1946).
- (5) Offences punishable under the Prevention of Corruption Act, 1947 (II of 1947).
- (6) Offences punishable under the Foreign Exchange Regulation Act, 1947 (VII of 1947).
- (7) Offences punishable under the Imports and Exports (Control)

Act, 1950 (XXXIX of 1950)

- (8) Offences punishable under the Banking Companies Ordinance, 1962 (LVII of 1962).
- (9) Offences punishable under the Pakistan Arms Ordinance, 1965 (W.P. Ord. XX of 1965).
- (10) Offences punishable under Section 156 of the Customs Act, 1969 (IV of 1969).
- (11) Offences punishable under Foreign Exchange Repatriation Regulation, 1972.
- (12) Offences punishable under the Foreign Assets (Declaration) Regulation, 1972.
- (13) Offences punishable under the National Registration Act, 1973.(LVI of 1973)
- (14) Offences punishable under the High Treason (Punishment) Act, 1973 (LXVIII of 1973).
- (15) Offences punishable under the Prevention of Anti-National Activities Act, 1974 (VII of 1974).
- (16) Offences punishable under the Banks (Nationalization) Act, 1974. (XIX of 1974).
- (17) Offences punishable under the Passport Act, 1974 (XX of 1974).
- (18) Offences punishable under the Drugs Act, 1976 (XXXI of 1976).
- (19) Offences punishable under the Emigration Ordinance, 1979 (XVIII of 1979).

- (20) Offences punishable under the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981)].

*Sl. No. 176*

*Suspension of public servants involved in cases of bribery and corruption.*- It has come to the notice of the Interior Division that Government servants who were involved in cases of bribery and corruption and were suspended from service in accordance with paragraph 12 of the Instructions regarding investigation of cases of Bribery and Corruption by the Federal Investigation Agency have been kept under suspension unduly long period. In some cases the period of suspension extend over six months or even more, thereby subjecting such officials to unnecessary mental and other hardships. In order to obviate such hardships, it has been decided that the cases of public servants who are being prosecuted on charge of corruption and have been under suspension for over a year should be reviewed after every six months, with a view to determining whether they can be reinstated. It is accordingly requested that the particulars of such cases may be furnished to this Ministry, in the enclosed form (Annexure) every six months *i.e.* by the middle of January and July every year alongwith the recommendations of the Ministry/Division concerned, for carrying out the proposed review.

2. Nil statements may also please be sent in respect of these Ministries/Divisions/Departments/Organizations in which no public servant of the category mentioned above is under suspension.

[*Authority.*- Interior Division O.M. No. 1/7/68-SP (P), dated 29-6-1968].



**Annexure**

**STATEMENT OF PUBLIC SERVANTS INVOLVED IN CORRUPTION  
CASES AND CONSEQUENTLY SUSPENDED FROM SERVICE**

Ministry/Department.....

Statement for the half year ending.....

| Serial<br>No. | Name and<br>designation<br>of public servant | Date from which<br>continuously<br>under suspension | Reason for suspension viz,<br>whether<br>arrested by police and<br>whether<br>sanction for prosecution<br>issued | If sanction for<br>prosecution<br>issued its number and<br>date | Remarks |
|---------------|--|---|--|---|---------|
| 1             | 2  | 3   | 4  | 5   | 6       |