GUIDE TO
DEPARTMENTAL ENQUIRIES
(PROCEDURAL INSTRUCTIONS)

1973

[REPRINT JUNE 1985]

KARNATAKA ELECTRICITY BOARD
BANGALORE

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April 1973

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(For the use of Board Officers only)

PREFACE

Pending the promulgation of the Karnataka Electricity Board Employees' (Discipline and Appeal) Regulations under Section 79 (*c*) of the Electricity Supply Act, 1948, the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as amended from time to time have been, by Board Orders Nos. (1) A1. 6469/61-62, dated 13-9-1962 and (2) BLO. 97/67-68, dated 18-8-1967, adopted for being followed in the conduct of disciplinary proceedings against the Board employees.

Since April, 1971, based on the provisions of the said Rules and Judicial pronouncements, several circulars laying down procedural instructions have been issued from time to time. The conduct of disciplinary proceedings is an important function which has to be performed by the inquiring and disciplinary authorities, correctly and swiftly, and in strict conformity with the rules of procedure.

For the benefit of the officers, the various circulars issued in this behalf have been rearranged subjectwise and printed in this booklet.

It is hoped that the officers stand benefited by this compendium

H. V. NARAYANA RAO
Chairman
Karnataka Electricity Board

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Preliminary enquiry before the institution of Regular Departmental Enquiry–necessity of

1. Before commencing any departmental inquiry against an employee with regard to a disciplinary matter, it is necessary that there should be sufficient evidence gathered by way of preliminary enquiry and the authority, competent to order the regular enquiry, should also be satisfied that there is sufficient prima facie evidence, to start disciplinary proceedings.

2. Such preliminary enquiry could be made by an officer under whose administrative control the employee alleged to have committed any misconduct complained of, is working, or was working, at the time of the commission of the alleged misconduct.

3. In cases where, all oral and documentary evidence, are already available and are quite sufficient to initiate disciplinary proceedings there is no need to undertake any such preliminary enquiry.

4. In other cases, a preliminary enquiry should normally be undertaken as on the evidence prima facie disclosed during such enquiry, the authority, competent to order a disciplinary proceeding, should be satisfied that sufficient evidence is forthcoming, to start a disciplinary proceeding.

5. When a preliminary enquiry in regard to any allegation of misconduct is undertaken, the officer undertaking the enquiry should carefully examine the allegations before starting the enquiry. Thereafter he should examine all relevant witnesses and record their statements and also collect all the documentary evidence available.

6. The statements of witnesses should be recorded in a narrative form, bringing out all the relevant facts within their knowledge and relative to the allegations under inquiry.

7. The authority holding the preliminary enquiry should not be satisfied with mere hearsay evidence. If some witnesses say what they have heard about the allegations, not only their statements but also the statements of those persons from whom they have heard, should also be recorded.

8. All corroborating witnesses should be examined and their statements recorded. This is necessary, as during the regular enquiry if any of them turn hostile, the others could be examined in proof of the charges.

9. The presence of the employee complained against, is not necessary during the preliminary inquiry which can be commenced, continued and completed without his presence. It can be held EXPARTE.

10. The employee complained against has no right to

insist that he should be present during the time of the preliminary inquiry nor has he any right to insist that he should be permitted to cross examine the witnesses during the time of the preliminary inquiry. His right to cross-examine witnesses arises only during the regular deqartmental inquiry.

11. It is open to the authority conducting the preliminary enquiry to also obtain from the employee compained against, an explanation in respect of any matters appearing against him in such preliminary inquiry, as sometimes, after obtaining such explanation, there may not be any justification for instituting a regular department enquiry. It should, however, be noted that it is not always compulsory that the authority conducting the preliminary enquiry should, before preparing his report, obtain the explanation of the employee complained against.

12. The preliminary enquiry is quite distinct from and should not be confused with, the inquiry that is conducted after regular charges are framed under Rule 6 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 or after a proposal to take action is drawn up under Rule 7 and served on delinquent employee.

13. After the preliminary enquiry is completed, the authority, completing it, should prepare his report embodying in it his views on the allegations and whether there is sufficient

evidence to justify the initiation of a regular departmental enquiry.

On receipt of that report, it will be for the competent authority to decide whether or not a regular departmental enquiry should be ordered.

(Circular No. 5 - S.O. (L) 2/71-72 Dated 10.4.1971)

Preliminary Enquiry Before The Institution of a Regular Departmental Enquiry – Non-Holding of Whether Vitiates the Regular Enquiry.

1. It has been noticed that in regular departmental enquiries instituted against employees or in appeals preferred by them, under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board, it is sometimes contended that the non-holding of the preliminary enpuiry has vitiated the regular enquiry. such contentions are legally untenable and unsustainable.

2. In Board Circular No. 5 dated 16.4.1971, certain instructions have been issued in regard to the conduct of preliminary. enquiries before the institution of regular departmental enquiries

3. Attention is drawn to instruction 1 (a) of the procedural instructions regarding the holding of departmental enpuiries under the Karnataka Civil Services (Classification, Control and Appeal), Rules, 1957 as adopted by the Board, which provides for the holding of a preliminary enquiry.

4. The provision which envisages the holding of a preliminary enquiry does not appear in the Statutory Rules but only in the procedural instructions. The provision, therefore, is only directory and not mandatory.

5. While it may be desirable to hold a preliminary enquiry for the satisfaction of the authority competent to order the regular enquiry that there is sufficient prima facie evidence to start disciplinary proceedings, It may not be necessary at all to hold that preliminary enquiry, if he is otherwise so satisfied.

(Revanna, Yeleri V State 1965 My L.J.97)

(Circular No. 49-M.S.E.B. -S.O. (L) 148/71-72 dated 26-11-1971)

Judicial Strictures Against Board Employees In Judgements Of Courts- Necessity to take up Departmental Action - Framing of Charges.

1. In circulars No. 8 instructions have been issued as to how charges should be framed by a disciplinary authority or an authority empowered by it to do so, when on the conclusion of a preliminary euquiry or even without that inquiry, but on oral and documentary evidence already available, it is decided to hold a regular departmental enquiry under the provisions of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

2. Sometimes, when judicial anim-adversions (strictures) are made on an employee of the Board examined as a witness in the case, it may become necessary to initiate departmental action against that employee on those anim-adversions.

3. In every such case, a copy of the judgement of the court and such other relevant papers as may be necessary should be obtained and, thereafter, the anim-adversions (strictures) should carefully be examined for their justification.

4. If on such examination, the anim-adversions (strictures) are unjustified, no departmental action against the employee anim-adverted upon may be necessary. The question whether

the anim-adversions deserve to be got expunged should be carefully examined and thereafter the necessary steps should be taken for their expunction.

5. If on the contrary, it is considered that the anim-adversions (strictures) are justified and it is necessary to institute a departmental enquiry, then those anim-adversions should be examined for their subject matter and thereafter action should be taken to either frame charges under Rule 11 or draw up a proposal under Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, according as the imputations attributable to the employee as a result of those anim-adversions, when proved, warrant a major or minor penalty.

6. It should be specially noted that it is the subject anim-adverted upon which should form the content of the charge and not the anim-adversions.

7. Judicial observations or anim-adversions do not by themselves constitute proof of the charges arising from them and hence no punishment could be imposed directly.

8. All disciplinary and inquiring authorities should, therefore, note that whenever departmental proceedings have to be initiated on the basis of judicial anim-adversions, the charges under Rule 11 or the proposal to take action under Rule 12 according as the case may warrant, are drawn up strictly following these instructions.

(Circular No. 9-M.S.E.B. S.O. (L) 7/71-72 Dated 24-7-1971)

Selection of the Procedure laid down in Rule 11 or Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Before starting the Inquiry-Proper exercise of discretion.

1. Disciplinary proceedings in respect of charges which when held proved would warrant only minor penalties, are sometimes conducted following the elaborate procedure laid down in Rule 11 of the said rules and after following that elaborate procedure minor penalties have been imposed. Disciplinary authorities should exercise proper discretion in the selection of procedure, considering the gravity of the charges and the penalties which would be warranted if those charges are ultimately held proved.

2. Attention is drawn to Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, which lays down the procedu.e to be followed when anyone of the major penalties, viz., reduction, compulsory retirement, removal from service or dismissal from service is to be imposed and Rule 12 which provides the procedure to be followed when any minor penalty is to be imposed.

3. If in cases in which charges when held proved justify the imposition of only a minor penalty, the elaborate procedure

prescribed in Rule 11 is followed, the disciplinary proceedings get protracted, resulting in unnecessary waste of time and labour.

4. The disciplinary authorities before, initiating disciplinary proceedings, should personally examine the nature of the charges and the evidence on which they are based and consider what penalty would be merited and justified, if the charges are ultimately held proved.

5. If on such examination and consideration, the disciplinary authority holds the view, that having regard to the gravity of the charge, a major penalty would be warranted if the charge is ultimately held proved, he should conduct the disciplinary proceedings, following the procedure laid down in Rule 11 and in every such case where he appoints a specially empowered authority, for conducting the inquiry, he should make an order that the inquiry should be conducted under the said Rule i.e, Rule 11.

6. If on the contrary, the disciplinary aufhority on such examination and consideration, holds the view, that having regard to the gravity of the charge only a minor penalty would meet the ends of justice when the charge is ultimately held proved, he should proceed to draw up a proposal to take action against the concerned employee and thereafter conduct the inquiry following the procedure laid down in Rule 12 of the Rules.

7. The whole intention behind these instructions is that any disciplinary action taken against an employee should be swift and there should be no protraction involving avoidable cost, labour and time.

8. The exercise of discretion and taking a decision on the selection of one of the two prescribed procedures does not in the least mean that the disciplinary authority has either prejudged the charges or has made up his mind to impose a penalty.

(Circular No. 6. M.S.E.B. S.O. (L) 71-72 dated 17-4-1971)

Framing of charges in inquiries under Rule 11 of the Karnataka Civil Services (Clasification, Control and Appeal) Rules, 1957.

1. The imperative need to frame correctly and precisely charges in disciplinary proceedings instituted against the employees of the Board need hardly be emphasised.

2. A charge envisaged in Rule 11 of the KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules, is distinct from and should not be confused with a "proposal to take action" contemplated in Rule 12 of the said rules.

3. It is only when disciplinary proceedings are initiated under Rule 11 of the Rules, the necessity to frame charges and draw up a charge-sheet arises. In proceedings instituted under Rule 12, there is no need to frame a charge.

4. For each act of misconduct, a separate charge should be framed. Composite, clubbed, blended or jumbled up charges should be avoided.

5. Every charge framed against an employee should be definite, clear, accurate and precise, special care being taken to avoid indefiniteness and vagueness.

6. Under each charge a clear and precise statement of the allegations on which it is based should be recorded.

7. A list of witnesses proposed to be examined and a list of documents relied upon, in support of the charges should accompany the charge-sheet. Mention should be made in the charge-sheet that additional witnesses and additional documents, if necessary would be examined and relied upon, after giving prior notice.

8. Whenever practicable, the time, date and place of the act of misconduct and the name of the person against whom it is alleged to have been committed, should also be mentioned in the charge.

9. The charge-sheet should ultimately conclude with the following formula :—

"Please show cause why suitable disciplinary action should not be taken against you on the charges mentioned above.

You are required herewith to put in any written statement yoy maydesire to submit in your defence by.......(specify the date)

Please also state whether you desire any oral enquiry and/or to be heard in person. In case you desire any oral enquiry to be held please specify the witnesses you desire to cross-examine and

the witnesses you desire to examine in your defence. Your attention is drawn in this connection to Sub-Rule (6) of Rule 11 of the KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules, 1957. In case you fail to submit your written statement by the above date the undersigned may proceed with the enquiry on the basis that you have no defence to offer."

10. The whole object of furnishing a charge-sheet is to give an opportunity to the accused employee who is charged with misconduct to give an explanation to defend himself. He should, therefore, be informed, with full particulars, what his alleged faults are and it should not be left to the employee to find out what the specific charges against him are.

11. The charge-sheet should in no manner indicate that the disciplinary authority inqiuiring authority has already pre-judged the charges and has made up his mind.

12. It should not also indicate any penalty for the charges under enquiry.

13. The charge-sheet should be signed by the disciplinary authority or, when another authority has been specially empowered by him to frame charges and conduct an enquiry, it should be signed by that authority.

14. When a disciplinary authority draws up the charge-sheet and then specially empowers another authority to conduct only the

inquiry, on those charges, the latter cannot frame charges but should only conduct the inquiry into the charges framed by the disciplinary authority.

15. When a specially empowered authority is appointed to frame charges and conduct the enquiry, the charge-sheet drawn up by him, should in the preamble clearly indicate:

a) the number and date of the order by which and the name and designation of the officer by whom, he has been empowered as a specially empowered authority to frame charges and conduct the enquiry, and

b) that the charges have been framed in the exercise of the powers vested by the said empowerment.

16. A model form of the charge-sheet is here to annexed for adoption with appropriate modifications according to circumstances of each case. Where the disciplinary authority himself proceeds to frame the charges, and conduct the enquiry, the preamble in the model form should be suitably modified.

(Circular No. 8-M.S.E.B. S.O. (L) 5/71-72, dated 24.4.1971)

CHARGE-SHEET

(Model Form)

I, Sri................................ , Executive Engineer (El).......
.... Division, empowered by Sri.............. . ...
Superintending Engineer (El) .... Circle, in his Order
No.................dated........................issued under Sub-Rule (2) of
Rule 11 of the KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules, 1957 to frame against you ....charges on the imputations set out in the said order, and to conduct an enquiry under the said Rule, do hereby charge you as under :

1. That you............(now under suspension) while functioning as Cashier in the office of the Executive Engineer (Elecl), Bangalore Division, during the period between 12.9.1970 and 3.2.1971, collected on 2.1.1971 from the employees, viz., A. B and C, Rs. 10/- (Rs Ten) each towards the recoupment of the excess travelling allowances paid to said employees and thereafter committed graveofficial misconduct, in that you misappropriated the said amount of Rs. 30/-.

STATEMENT OF ALLEGATIONS

You were doing duties as Cashier in the Office of the Executive Engineer (E1), Bangalore Division, Bangalore, between 12-9-1970 and 3.2.1971 and as such were bound to account for all the moneys received and paid by you in the course of your duties as

Cashier. A, B and C who had been paid excess Travelling Allowances had to refund the excess amounts and in Order No...................., dated.................... you had bean directed to recover from each of them the excess amount due, at Rs. 10/- a month. On 2 1.1971, A, B and C paid you a sum of Rs. 10/-each towards part recoupment which you received. D and E were present and witnessed the payments made to you by A, B and C. Having received the said amounts you failed to bring them on the Cash Book and subsequently misappropriated the said amount of Rs. 30/-. when the information reached the Executive Engineer, he sent for you on 3.2.1971 and called upon you to account for the said amount. You then lost your temper, threw away the Cash Book and left the Chambers of the Executive Engr, challenging him and shouting that you had seen many Officers, etc.

2. That you...........(now under suspension) while functioning as Cashier in the office of theExecutive Engineer (E1),Bangalore Divisionduring the period between 12.9.1970 and 3.2 1971 commited on 3.2.1971 grave official misconduct in that you, when called upon to account for the said amount of Rs. 30/- collected from A, B and C as described in Charge No. 1, lost your temper, threw away the Cash Book and left Chambers of the Executive Engineer challenging him and shouting that you had seen many executive engineers there by conducting your-self in an insubordinate and indisciplined manner.

STATEMENT OF ALLEGATIONS

You were doing duties as Cashier in the Office of the Executive Engineer (E1), Bangalore Division, Bangalare, between 12-9-1970 and 3.2.1971. On 3.2.1971, The Executive Engineer, EI sent

for you to appear in his chambers with the Cash Book. Accordingly, you went to his chambers on that day at 12 Noon, when the Executive Engineer was present with the Assistant Engr. Sri..............., the Executive Engineer, questioned you as to whether you had collected a sum of Rs. 10/- each from A, B and C, towards the recoupment of the excess Travelling allowances paid to them. You denied having collected the amount He then sent for D and E who stated that they had witnessed you collecting Rs. 10/- each from A, B and C on 2.1.1971. The Executive Engineer, then asked you to show the Cash Book and also told you that if you did not account for the amount, he would take action against you. You suddenly lost your temper, threw away the Cash Book and left the chambers challenging the Executive Engineer, shouting at the top of your voice that you have seen many officers. As a result of your throwing the Cash Book, the Cash Book was torn.

3. That you......................(now under suspension) while functioning as Cashier in the Office of the Executive Engineer (E1), Bangalore division from 12.9.1970 have commited grave misconduct in that you have remained unauthorisedly absent from your duties as Cashier from 4.2.1971.

STATEMENT OF ALLEGATIONS

You were doing duties as Cashier in the Office of the Executive Engineer (EI), Bangalore Division, Bangalore, from 12-9-1970. After you appeared before the Executive Engineer on 3-2-1971 and conducted yourself in the manner set out in the statement

of allegations accompanying charge No. 2, you left the Office and thereafter have not turned up for your duties as Cashier. You havenot also applied for leave so far. On 4.2.1971, you sent away the keys of the Cash Box with ....A notice was sent to you on 5.2.1971 calling upon you to appear for dutyand thou/gh it was served on you, you did not affear for duty on 6.2.1971, an order suspending you, pending enquiry, was passed and it was served on you on 8.2.1971. Even then you did not turn up for duties and you did not also send any explanation as to why you have absented yourself from duties.

A list of witnesses and a list of documents in support of the charges are here to annexed. Additional witnesses and additional documents if necessary, will be examined and produced, with due prior notice.

Please show cause why suitable disciplinary action should not be taken against you on the charges mentioned above.

You are required here with to put in any written statement you may desire to submit in your defence by.............. (specify the date).

Please also state whether you desire any oral enquiry and/ or to be heard in person. In case you desire any oral enquiry to be held please specify the witnesses you desire to crossexamine and the witnesses you desire to examine in your defence. Your attention is drawn in this connection to sub-Rule(6)of Rule 11 of KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules,

1957. In case, you fail to submit your written statement by the above date, the undersigned may proceed with the enquiry on the basis that you have no defence to offer.

Executive Engineer and Specialy Empowered Authority

To

....

.... (Under Suspension)

....

(Circular No. 5 - M.S.E.B. S. O. (L) 5/71-72 dated 24.4.1971)

Framing of charges in Inquiry under Rule 11 of the Karnataka Civil Services (Clasification, Control and Appeal) Rules, 1957.

1. In Board Circular No. 8 detailed instructions have been issued as to how charges should be framed, what details they should contain and in what form they should be drawn up. A Model Form has also been appended to it for adoption with appropriate modifications according to the circumstances of each individual case.

2. When a disciplinary authority frames charges in a Departmetnal Enquiry instituted under Rule 11, the articles of charges should clearly indicate that he has framed those charges in the exercise of his competence as a Disciplinary Authority.

3. If after framing charges as in Paragraph 2, the Disciplinary Authortty empowers another authority for conducting an inquiry into those charges, the specially empowered authority need not frame chargas again but he may have the articles of charges drawn up by the disciplinary authority served on the delinquent employee, in case, they have not been served by the disciplinary authority and after that service, he may as specially empowered authority proceed with the enquiry.

4. When a Disciplinary Authority without framing any charges empowers an authority as a specially empowered authority for framing definite charges and for holding an enquiry into those

charges, the specially empowered authority should carefully examine the records, including the records of the preliminary enquiry, if any, and then draw up the articles of charges.

5. The grant of a copy of the order of the disciplinary authority appointing an authority as a specially empowered authority is unobjectionable and will set at rest any controversy by the delinquent employee regarding the competence of the specially empowered authority to frame charges and conduct the enquiry.

(Circular No. 38-M.S.E.B.-S.O. (L) 123/71-72 dated 10.11.1971)

Departmental Enquiries-Examination of Written Statement of defence filed in explanation of the Charges-inquiry Into only such of the Charges as are not admitted,

1. In Para 13 of circular No. 13, instructions have been conveyed as to what an inquiring authority is required to do, on receipt of the written statement of defence filed by a delinquent employee in explanation of the charges framed against him.

2. Sub-Rule (5) of Rule 11 of the KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules, 1957, has laid down interalia that on receipt of the written statement of defence, the inquiring authority should proceed to inquire into such of the charges as are not admitted.

3. It is, therefore, clear that if a delinquent employee has admitted some charges and denied others, it is not necessary to conduct any inquiry into those charges which are admitted by the delinquent. It is, therefore, the responsibility of the inquiring authority to examine the written statement of defence with proper care and attention and find out which of the charges have been admitted and which of them have been denied and thereafter make a clear record indicating that the inquiry would be confined only to the charges which are denied by the delinquent. The adoption of this prcedure will save time and expense and will contribute to the expeditious conclusion of inquiries.

In judging whether a charge has been admitted by the delinquent in his written statement of defence, the inquiring

authority should ensure that the admission is clear and unequivocal. (I) Admissions of doubtful nature; (II) ambiguous admissions; (III) admissions made by a Board employee prior to the framing of charges when he was not in the position of a delinquent and (IV) asking for pardon after denying the charges. do not amount to admissions and in all such cases the inquiry will have to be conducted. It is only when there is a clear admission to a charge which amounts to a plea of guilty, that the inquiry into that charge can be dispenced with and the inquiry conducted into the other charges not admitted.

(Circular No. 17-M.S.E.B. - S.O. (L) 115 / 17-6-1971

Duties and Responsibilities of Presenting Officers in Departmental Enquiries.

1. In Board Circular No. 13 detailed instructions have been issued on the observance of the several stages in the conduct of Departmental Inquiries instituted under the provisions of Rule 11 of the KARNATAKA CIVIL SERVICES (Classification, Control and Appeal) Rules, 1957, as adopted by the Board.

2. Attention is drawn to Sub-Rule (5) (c) of Rule 11 of the said Rules under which it is competent for a disciplinary authority to nominate any person to present the case in support of the charges before the inquiring authority.

3 When under the said Sub-Rule, a presenting Officer is nominated for presenting the case, it is his primary duty to make a thorough study of all the oral and documentary evidence (which is required to be produced in support of the charges) available in the records of the preliminary enquiry and such other papers as are available.

4. After making a thorough study as afore said, he should carefully study the charges framed against the employee proceeded against, the statement of allegations, and the lists of witnesses proposed to be examined and documents proposed to be produced in support of the charges.

5. If on such study the Presenting Officer considers that –

(I) the charges framed or any of them require to be amended;

(II) some witnesses who require to be examined but have been omitted in the list, should be examined;

(III) some documents which require to be produced but have been omitted in the list, should be produced;

he should make an application in that behalf to the inquiring authority.

6. If the inquiring authority allows the application, amends the charges and/or frames additional charges, and permits the summoning of additional witnesses and/or documents' the presenting Officer should before leading evidence, ensure that copies of the amended charges, and additional lists of witnesses and documents are furnished to the employee and the employee be given reasonable time to file his supplementary written statements.

7. If on the contrary the inquiring authority disallows the application or after the employee files his supplementary written statement in explanation of the amended and/ or additional charges, the Presenting Officer should then proceed to lead evidence in support of the charges.

8. Before leading evidence, the Presenting Officer should ensure that the delinquent employee has been afforded adequate opportunity to inspect the necessary documents and take notes/ copies.

9. For the purpose of leading evidence, it is the duty of the Presenting Officer to properly prepare the case in support of the charges and arrange for himself the order in wh ch he should examine witnesses. While examining witnesses and eliciting evidence he should strictly adhere to the instructions conveyed in Board Circular No 13 and also ensure that the several stages setout therein are correctly followed in the enquiry.

10. When more than one witness are cited to speak to material facts against the delinquent employee, and the Presenting Officer has to examine more than one of them, he should as far as practicable examine them one after the other so that later the delinquent may not complain of prejudice for non-examination of corroborating witnesses immediately one after the other.

11. The Presenting Officer should realise that it is his duty to assist the inquiring authority to arrive at the truth or falsity of the charges.

12. In every case in which witnesses in defence of the employee proceeded against are proposed to be examined, the Presenting Officer should get into touch with the concerned Officers and collect well in time, materials for their cross-examination.

13. The Presenting Officer should refrain from putting indecent, scandalous and scurrilous questions in the cross-examination of witnesses and his cross-examination should be confined to relevant matters.

14. The Presenting Officer should assist the inquiring authority to conclude the inquiry promptly and for that purpose he should always be prepared with his case and refrain from seeking unnecessary adjournments on exiguous grounds.

15. The Presenting Officer should be fully conversant with the rules and the Board circulars relating to departmental enquiries and ensure that there is no lapse on his part in presenting the case in support of the charges.

(Circular No. 53-M.S.E.B. - S.O. (L) 157/71-72, dated 9 12.1971)

Conduct of Departmental Enquiry under Rule 11 C.C.A. Rules, 1957 – Observance of Several Stages – Preparation of the Records.

1. In Circular Numbers 8 and 9, instructions have been issued as to how charges, on the basis of allegations disclosed in the report of a Preliminary Enquiry or in the documentary and other evidence already available when no such preliminary enquiry has been conducted, should be framed and how charges should be drawn up when an employee of the Board is anim-adverted upon/in the judgments of courts and an enquiry in that connection is undertaken.

2. Every such charge-sheet should be drawn up in triplicate, one copy being retained by the inquiring authority and the other two copies sent for service on the delinquent employee. The serving employee should hand over one copy to the delinquent employee, taking the latter's dated acknowledgment on the other copy which should be sent back to the inquiring authority, who should file it in the enquiry records.

3. Delays in the issue and service of the charge-sheets should be avoided. If the inquiring authority and delinquent employee are in the same place, the former could send for the latter and serve the charge-sheet. This will save time. In other cases, it should be served on the delinquent employee within a reasonable time, at any rate not/later than 10 days from the date of the issue of the charge-sheet.

4. Within the time stipulated in the charge-sheet, the delinquent employee has to file his written statement of defence. The time granted to the delinquent employee for filing his written statement of defence should be resonable time. While in a case

which the charges framed are simple and the evidence is not either voluminous or complicated, a period of one week may be considered as reasonable, a longer period may be necessary in cases in which there are several charges and the evidence in support thereof, is bulky and complicated. The inquiring authority should, therefore, take into consideration all aspects and fix a reasonble period within which the written statement of defence should be filed.

5. If within the period so stipulated, the delinquent employee does not file his written statement but makes an application for an extension of time, the inquiring authority, on being satisfied that the reasons assigned in the application are substantial and justify the grant of extension of time, may grant an extension for a reasonable period. It should be noted that any rejection to grant that extension will amount to a deprivation of reasonable opportunity. If on the contrary, the inquiring authority considers that the application should be rejected on the ground that it is made for the purpose of vexation, or delay or for defeating the ends of justice, he may by a written order reject the application, recording his reasons, therefor, and direct the delinquent employee to file his written statement of defence within a date which should be specified in that order. A copy of that order should be furnished to the delinquent employee There should be a reasonable interval between the date on which the order is furnished to the delinquent employee and the date by which he is to file his written statement of defence.

6. If the delinquent employee fails to put in his written statement of defence within the stipulated date or does not request for any extension of time, it is open to the inquiring authority to proceed with the enquiry on the basis that the delinquent employee has no defence statement to file. In such a case, the delinquent employee will not have availed of the reasonable opportunity afforded to him for defending himself.

7. If the delinquent employee applies for copies of the statements of witnesses and other records on the basis of which the charge-sheet has been framed, to enable him to file his written statement of defence, his attention should be drawn to Sub-Rule (3) of Rule 11 of the C C.A. Rules and he should be permitted to inspect the statements and other records and take notesor extracts there from. There is no provision in the Rules for the grant of copies.

8. While permitting such inspection of the records, the inquiring authority should always ensure that no access is given to the delinquent employee to inspect those documents or parts there of, the disclosure of which is against the public interest. In every case in which he refuses access for inspection of any document, either on the ground that it is against the public interest or on the ground that it is not relevant, he should make a clear order recording his reasons therefor.

9. If on receipt of the written statement of the delinquent employee, the inquiring authority finds that the delinquent employee has pleaded guilty to the charges, he should conclude the enquiry and draw up his findings. The plea of guilt must be unambiguous and unequivocal.

10. If on receipt of the written statement of the delinquent employee and after such examination of the records as may be necessary, the inquiring authority finds that the delinquent employee is not guilty of the charges and that it is not necessary to hold any oral enquiry, the inquiring authority should conclude the enquiry and draw up his findings accordingly.

11. If on the contrary, the inquiring authority considers that an oral enquiry is necessary or the delinquent employee has demanded such enquiry, he should fix a date for such enquiry and issue a written notice in duplicate for service on the delinquent employee.

Every such notice should be served in the manner in which the charge-sheet is served on the delinquent employee. At the same time, notices to witnesses should also be issued and all necessary steps taken to ensure that the witnesses are served and are in attendance on the date fixed for the enquiry.

12. In cases where the delinquent employee has pleaded guilty to some of the charges and not guilty to others and an oral enquiry is considered by the inquiring authority to be necessary or is demanded by the delinquent employee, the enquiry may be confined only to the charges to which the delinquent employee has pleaded not guilty.

13. When, on the date fixed for the enquiry, the delinquent employee appears, the inquiring authority should then read out and explain to him the charges and call upon him to plead to the charges. If he pleads not guilty, that plea should be recorded. If on the contrary, the delinquent employee pleads guilty that plea should also be recorded and if in any event the delinquent employee has not pleaded guilty in his written statement of defence, the inquiring authority should elicit a clear explanation as to why he is pleading guilty when in his written statement he had not done so. That plea with the any explanation which may be furnished should be recorded. The pleas and the explanation should be recorded in the very words of the delinquent employee. This is called the first oral statement. After this statement is recorded, it should be read and explained to the delinquent employee who in token of its corrections should attest the record. The inquiring authority should also append to the statement a certificate that it was read over (and translated) and admitted to be correct. A model form in which such statement and pleas should be recorded is hereto annexed.

14 After the first oral statement is recorded as in the preceding paragraph, the inquiring authority should proceed with the

examination of the witnesses in support of the charge/s. As each witness's examination-in-chief is concluded by the Presenting Officer nominated by the inquiring/disciplinary authority as the case may be for presenting the case, the inquiring authority should call upon the delinquent employee to cross-examine the witness. If as a result of the cross-examination, any doubts are raised, the Presenting Officer may re-examine that witness, for clarification and where the Presenting Officer fails to do so and the doubts raised in cross-examination do warrant clarification, the inquiring authority could himself put questions and elicit the necessary clarification, marking those questions as questions by the inquiring authority. If on such re-examination either by the Presenting Officer or the inquiring authority, any new matter is introduced, the delinquent employee should be afforded an opportunity to cross-examine the witnesses with reference only to that new matter. If the delinquent employee, when afforded an opportunity to cross-examine a witness on the conclusion of the examination-in-chief, says that he has no cross-examination or refuses to cross-examine, the inquiring authority should make a clear record at the foot of the examination-in-chief as under :

"Cross-examination by the delinquent employee—nil ;"

"Delinquent employee refuses to cross-examine the witness."

15. The evidence of each witness should be recorded in the form of a narrative in the first person but whereever necessary or it has been specifically provided for, the questions put to the witness and the answers given by him should be recorded. After the evidence of each witness is concluded, it should be read and explained to him and if he admits the correctness of the record, a certificate to that effect should be appended at the foot of the deposition. The last page of the deposition should then be signed not only by the witness but also by the delinquent employee the other pages being initialled by them. A model form for recording the evidence of witnesses is hereto annexed.

16. If more than one witness speaks to material facts against the delinquent employee the inquiring authority should as far as practicable ensure that they are examined one after the other, so that, later, the delinquent employee may not complain of prejudice.

17. It is the inquiring authority's responsibility to arrive at the truth or falsity of the charges against the delinquent employee and for that purpose he is competent to put whatever questions as may be necessary both to witnesses examined in support of the charges and to the witnesses examined by the delinquent employee in his behalf. However, the inquiring authority should not cross examine the witnesses.

18. If a witness whose evidence is considered essential for the just decision of the case, is neither examined as a witness in support of the charges nor as a witness on behalf of the delinquent employee, the inquiring authority could summon that witness and record his evidence and when he does so both the Presenting Officer and the delinquent employee should be permitted to cross-examine that witness.

19. Witnesses examined in support of the charges should be serially numbered as PW1, PW2, PW3, etc., while witnesses examined by the delinquent employee should be numbered as DW1, DW2, DW3, etc., witnesses examined by the inquiring authority should be serially numbered as CW1, CW2, CW3, etc., Documents relied upon in support of the charges and spoken to by witnesses should be marked in red ink in a conspicuous place, as Ex. P1, Ex-P2 and Ex. P3 and those relied/upon by the delinquent employee and spoken to by witnesses should be marked as Ex. D1, Ex. D2, Ex. D3, etc., after deciding on their relevancy. Documents spoken to by witnesses called and examined by the inquiring authority should be marked as Ex. C1, Ex. C2, Ex. C3,

etc. Documents should be marked as exhibits as aforesaid as and when the witness refers to them in his evidence and not at the close of his evidence or at the close of the enquiry.

20. When the examination of *all* the witnesses in support of the charges is concluded and the Presenting Officer has closed his case, the inquiring authority should question the delinquent emyloyee as to whether he wishes to say anything in regard to the evidence of the witnesses in support of the charges and whether he has any defence witnesses to be examined. If the delinquent employee states that he will file a written statement, he should be asked to file it within three days. Any statement made by him should be recorded in his very words and it should be attested by him in token of its correctness. This is called the second oral statement. Any written statement filed by him should be filed in the records.

21. In cases where the delinquent employee makes a statement that he means to adduce defence evidence and wishes to examine his witnesses, that statement should also be recorded in the second oral statement referred to in the preceding paragraph. A model form is hereto annexed.

22. If the defence witnesses are present on the date on which the second oral statement is recorded they should be examined forth-with. If they are not present and the delinquent employee applies for some time to produce them or requests that notices for their attendance should be issued, the inquiring authority should grant reasonable time or issue notices, and adjourn the enquiry.

23. Every reasonable opportunity should be afforded to the delinquent employee to produce his witnesses. Before issuing

notices to defence witnesses the inquiring authority should satisfy himself about the relevancy of their evidence in regard to the charges under enquiry and where he is satisfied that the evidence of any witness is not relevant or that the delinquent has made the application for summoning him, only for the purpose of vexation or delay or for the defeating the ends of justice, he may refuse to summon that witness and record his evidence. A clear record of such refusal with reasons therefor should be made.

24. The delinquent employee should then be allowed to examine his witnesses and their evidence should be recorded in the same manner, as has been done during examination of management witnesses. If the delinquent employee examines only some witnesses and gives up the others named by him as his witnesses, a clear record should be made by the inquiring authority that the delinquent employee dispensed with the examination of those other witnesses, and his attestation to that record should be obtained.

25. When the enquiry has finally concluded, the inquiring authority should call upon the delinquent employee to say what he wishes to say on the charges and on the evidence for and against him and make a brief record of what he pleads. This is called the third oral statement, a Model Form of which is hereto annexed. If the delinquent employee forthwith files a written statement it should be filed in the record. If on the contrary, he applies for some time for filing a written statement, the enquiry should be adjourned giving him reasonable time to prepare and file his written statement. If within that time the delinquent furnishes it, it shall be filed in the recods. If he does not do so, it is open to the inquiring authority to conclude the enquiry on the basis that he has no such statement to furnish in this behalf.

26. Thereafter, the inquiring authority should carefully examine the records and draw up his report within one week

from the date the enquiry is concluded, recording his findings clearly in respect of each charge after discussing the evidence for and against.

27. Where the enquiry has been conducted by an authority empowered under Sub-Rule (2) of Rule 11 of the C.C.A. Rules, the records of the enquiry should be forwarded to the disciplinary authority, duly arranging the records of the enquiry in accordance with the instructions conveyed in Circular No. 11 for taking further action.

28. The inquiring authority should maintain an order sheet recording therein the date on which the records of the preliminary enquiry were received, the date on which the charge-sheet was framed and was served and the subsequent day-to day proceedings, till the conclusion of the enquiry, as also the applications presented by the delinquent employee and the orders passed thereon. The order sheet for each day should be attested by the inquiring authority, the Presenting Officer and the delinquent employee.

29. The authority conducting the enquiry must be strictly impartial and should conduct it in such a manner as to inspire belief that it is being conduted in an impartial and detached manner.

30. Enquiries should be concluded with as little delay as possible, care being taken to avoid all dilatoriness. Adjournments and postponement of the enquiry should be allowed only when absolutely necessary. It should be noted that when a Board Employee has been placed under suspension it will be all the more necessary to complete the enquiry and issue final orders, with all expedition.

(Circular No. 13-M.S.E.B.-S.O. (L) 9/71-72 dated 6 5.71)

ANNEXURES

Departmental Enquiry Against..................

Present : .... (Name of the inquiring authority with designation). Dated : ....

FIRST ORAL STATEMENT OF THE DELINQUENT EMPLOYEE

Question 1 : Have you received a copy of the charge-sheet with a statement of the allegations ?

Answer :

Question 2 : Have you submitted a written statement in reply to the charge-sheet ? Is it now read out to you ? Is it your statement ?

Answer :

Question 3 ; Have you understood the charges ?

Answer :

Question 4 : The charges have now been read out and explained to you. Do you plead guilty or not guilty to them ?

Answer :

Question 5 : Have you any objection to my holding the enquiry against you ?

Answer :

Question 6 : Have you anything else to say before I proceed with the enquiry ?

Answer :

Recorded by me, read over (and translated) to the deponent and acknowledged by him to be correct.

Signature of the delinquent employee

Signature of the Inquiring Authority.

Departmental Enquiry Against..............

Present : .... (Name of the inquiring authority with designation) Dated..................

SECOND ORAL STATEMENT OF THE DELINQUENT EMPLOYEE

Question 1 : You have heard the evidence of the witnesses against you. Do you wish to say anything at this stage ?

Answer :

Question 2 : Have you any witnesses to be examined in your defence ?

Answer :

Question 3 : Do you wish to produce any documents in your defence ?

Answer :

Recorded by me, read over (and translated) to the deponent and acknowledged by him to be correct.

Signature of the delinquent employee

Signature of Inquiring Authority

Departmental Enquiry Against ....

Present : .... (Name of the inquiring authority with designation). Dated : ....

THIRD ORAL STATEMENT OF THE DELINQUENT EMPLOYEE

Question 1 : You have heard and cross-examined the witnesses in support of the charge and examined witnesses (with the exception of those refused by me as noted already in these proceedings for the reasons shown) on your side and such documents as you required have been produced and exhibited (with the exception of those refused by me as noted already in these proceedings for the reasons shown). Have you anything further to request or say? You are entitled to put in, if you desire, a further written statement of defence.

Answer :

Recorded by me, read over (and translated) to the deponent and acknowledged by him to be correct.

Signature of the delinquent employee.	Signature of the Inquiring Authority.

Departmental Enquiry Against ....

Present : .... (Name of the inquiring authority with designation). Dated : ....

Deposition by Shri .... P.W. No. ....

Father's Name : ....

Age : ....

Occupation : ....

Residence : ....

Examination-in-Chief by the Presenting Officer : ....

Cross-examination by the delinquent employee : ....

Re-examination by the Presenting Officer : ....

Read over (and translated) to the deponent and admitted by him to be correct.

Signature of the Deponent.

Signature of the Inquiring Authority.

Signature of the delinquent employee.

(Circular No. 13. = M.S.E.B. — S.O.(L) 9/71-72, dated 6-5-1971).

Departmental Enquiries — Whether the Enquiry Officer is bound by the technical rules of evidence contained in the Evidence Act — Whether principles of natural justice could be ignored.

In Board Circular No. 13, detailed instructions have been issued regarding the observance of several stages and preparation of records, in an enquiry under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board.

2. It may sometimes contended that during such enquiry, the inquiring authority should, while recording evidence, adhere to rules of evidence contained in the Indian Evidence Act. Such contentions are untenable.

3. It has been held in several cases that —

(*i*) Domestic tribunals like an Enquiry Officer are not bound by the technical rules of evidence, contained in the Evidence Act ;

but

(*ii*) they cannot ignore the substantive rules which form part of the principles of natural justice.

4. While dealing with the scope of Section 33 (2) (b) of the Industrial Disputes Act (XIV of 1947) in Central Bank of India Limited *vs.* Prakash Chand Jai – (1969) 11 S.C.J. 583, the Supreme Court has held :--

"There are two cases where the findings of a Domestic Tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the Tribunal. When an Industrial Tribunal is asked to give its approval to an order of dismissal under Section 33(2) (b) of the Industrial Disputes Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity is that the findings may not be supported by any legal evidence at all. It is true that in numerous cases, it has been held that Domestic Tribunals like an Enquiry Officer are not bound by the tchnical rules about evidence contained in the Indian Evidence Act : *but it has no where been laid down that even substantive rules which form part of the principles of natural justice also can be ignored by the Domestic Tribunals. The principle that the facts sought to be proved must be supported by statements made in the*

presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence is one of the basic principles which cannot be ignored on the mere ground that Domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act. An exception was envisaged where the previous statement could be used after giving copies of that statement well in advance to the workman charged but with the further qualification that previous statement must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman."

5. It should, therefore, be noted—

(*i*) that a fact sought to be proved against an employee charged must be supported by statements made in his presence.

(*ii*) that statements made behind the back of the employee charged should never be treated as substantive evidence.

(*iii*) that a violation of (*i*) and/or (*ii*) would constitute a violation of the basic principle of natural justice.

(*iv*) that a domestic enquiry is not bound by the technical rules of evidence contained in the Indian Evidence Act, 1878.

6. The deciplinary and specially empowered authorities should bear in mind the above principles while recording evidence in departmental enquiries conducted by them.

(Circular No. 39—M.S.E.B. S.O. (L) 124/71-72, dated 11-11-1971).

Departmental Enquiries — whether cross-examination can be controlled by the inquiring authority — whether the inquiring authority may refuse the examination of witness whom he finds irrelevant.

1. Enquiries are sometimes prolonged by unnecessary cross-examination and bringing on record irrelevant materials and by giving adjournments for the examination of some witnesses whose evidence is not relevant or material. The inquiring authorities appear to be of the view that they are bound to record whatever evidence is adduced both in support of and against the charges framed against an employee.

2. Attention is drawn to Paragraph 14 of the judgment of the Supreme Court in the case, State of Bombay *vs.* Nurul Latif Khan --A.I.R. 1966, Supreme Court 269.

3. The Supreme Court, in the said paragraph have observed:
" It is true that the oral enquiry which the Enquiry Officer is bound to hold can well be regulated by him in his discretion If the charge-sheeted officer starts cross-examining the departmental witnesses in an irrelevant manner, such cross-examination can be checked and controlled. If the officer desires to examine witnesses whose evidence may appear to the Enquiry Officer to be thoroughly irrelevant, the Enquiry Officer may refuse to examine such witnesses but in doing so he will have to record his special and sufficient reasons. In other words, the right given to the charge-sheeted officer to cross-examine the departmental witnesses or to examine his own witnesses can be legitimately examined and controlled by the Enquiry Officer; he would be justified in conducting the enquiry in such a way that its proceedings are not allowed to be unduly or deliberately prolonged. But in our opinion it

would be impossible to accept the argument that if the charge-sheeted officer wants to lead oral evidence, the Enquiry Officer can say that having regard to the charges framed against the officer, he would not hold any oral enquiry".

4. It is thus clear from the pronouncement of the Supreme Court, that it is within the competence of an inquiring authority.

(*i*) to control the cross-examination of the witnesses in support of the charges, by the charge-sheeted employee and also of the witnesses on behalf of the charge-sheeted employee, by the Presenting Officer, by disallowing irrelevant questions ;

(*ii*) to refuse to examine witnesses either in support of the charges or on behalf of the charge-sheeted employee, if their evidence is found to have no relevance to the subject matter of the charges under enquiry.

5. When an Enquiry Officer disallows any question on the ground that it is irrelevant, he should record the question and then make an order giving reasons for disallowing it.

6. Similarly when an Enquiry Officer refuses to call a witness to be examined either by the Presenting Officer or by the charge-sheeted employee on the ground that that witnesse's evidence is irrelevant, he should make a clear order indicating his reasons for such refusal.

[Circular No 44-M.S.E.B.-S.O. (L) 138/71, dated 27-11-1971]

Examination of witnesses not cited in the list of witnesses accompanying the charge-sheet.

1. In Paragraph 6 of Circular No. 8, it has been pointed out that a list of witnesses proposed to be examined and a list of documents relied upon in support of the charges, should accompany the charge-sheet.

2. It is sometimes contended in departmental enquiries, that witnesses not mentioned in the list of witnesses accompanying a charge-sheet, cannot be examined in support of the charges. Such contentions are untenable.

3. There is no provision of law or rule prohibiting an inquiring authority from examining witnesses not mentioned in the list of witnesses accompanying the charge-sheet, if he considers that they should be examined in the interests of justice, but such witnesses should not be sprung on a delinquent employee, by surprise.

4. If in the course of a departmental enquiry, the inquiring authority considers that in the interests of justice it is necessary to examine a witness whose name is not found in the list of witnesses accompanying the charge-sheet, he should inform the delinquent employee charged, of his proposal to examine that witness and make a record to that effect in the order sheet and obtain his signature to that record.

5. If the delinquent employee on being so informed states that he has no objection to the examination of that witness forthwith, a record to that effect should similarly be made in the order sheet and the delinquent employee's signature obtained and thereafter the witness should be examined.

6. If the delinquent employee on being so informed states that he has no objection to the examination of that witness but requests for time to prepare for his cross-examination, the inquiring authority should adjourn the enquiry to a nearby future date giving him reasonable time to prepare for cross-examining the witness and on the adjourned date, should examine the witness.

7. If on the contrary, the delinquent employee objects to the examination of that witness but the inquiring authority considers that in the interests of justice it is necessary to examine him, the objections raised should be considered on merits and an order made thereon. The order should be recorded in the order sheet and the delinquent employee's signature obtained.

8. When after considering the objections raised by the delinquent employee as in Paragraph 7, the inquiring authority has made an order that the witness shall be examined, but the delinquent employee requests for time for preparing for cross-examination, the inquiring authority should adjourn the enquiry, giving him reasonable time. If the delinquent employee does not request for time and has no objection to the examination of the witness forthwith, the witness could be examined forthwith.

9. If witnesses not mentioned in the list accompanying the charge-sheet are proposed to be examined and their statements have been recorded in the preliminary enquiry preceding, the regular enquiry, copies of those statements should be supplied to the delinquent employee well in time or he should be allowed access to those statements, so that he may persue them and make copies to enable him to cross-examine those witnesses.

10. In this connection, attention is also drawn to the pronouncement of the High Court of Mysore in the case of Syed Hussain Ali *vs* State–1965 (1), *Mysore Law Journal* 422.

[Circular No. 26—M.S.E.B.—S.O. (L) 63/71-72, dated 19-7-1971]

Departmental Enquiry—opportunity to a delinquent employee (i) *to cross-examine witnesses examined in support of the charges,* (ii) *to further cross-examine a witness who on cross-examination by a co-delinquent, implicated him, and* (iii) *to cross-examine defence witness examined by a codelinquent, etc.*

1 Attention is drawn to Paragraph 14 of Circular No. 13. The procedure detailed therein for the examination, cross-examination and re-examination of witnesses has to be strictly adhered to.

2. The present practice of allowing the Preseting Officer to first cross-examine his own witnesses even though they may not have turned hostile to him, should be given up. The normal procedure is that (*i*) a witness in support of the charge should be examined in chief by the Presenting Officer, cross-examined by the delinquent employee or by one who defends him and re-examined by the Presenting Officer, and (*ii*) a witness on behalf of the delinquent should be examined in chief by the delinquent employee or by one who defends him, cross-examined by the Presenting Officer and re-examined by the delinquent employee.

3. If in the re-examination of a witness in support of the charges or in the re-examination of a defence witness, any new matter is introduced the other side should be given an opportunity of cross-examination and on that cross-examination, the party introducing such new matter, should be allowed to re-examine the witness.

4. In a departmental enquiry conducted against two or more Board employees in a common proceeding, the inquiring authority should afford to every delinquent employee an opportunity to cross examine witness examined in support of the charges.

5. If in the course of such cross-examination in a joint enquiry, one delinquent employee brings on record any evidence which implicates his co-delinquent employee/co-delinquent employees, the latter should be given an opportunity to further cross-examine that witness.

6. Similarly, if in the course of a joint enquiry, one delinquent employee examines any defence witness in his behalf and brings on record evidence which implicates his co-delinquent employee/co-delinquent employees, the latter should be allowed to cross-examine that defence witness.

7. If such opportunity of cross-examination as in the preceding Paragraphs (5) and (6) is not given by the inquiring authority the use of such evidence brought on record by the delinquent employee, implicating his co-delinquent is not permissible.

8. The depositions of witnesses in support of the charges and those of the defence witneses should clearly indicate that such opportunities were given to the delinquent employees and co-delinquent employees, and that they were or were not availed of by them

(Circular No. 16 – M.S.E.B. S.O. (L) 49/71-72, dated 17-6-1971).

Departmental enquiries—examination of delinquent employee as a defence witness.

1. Attention is drawn to Sub-rule (6) of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board, for the holding of departmental enquiries against its employees for acts of misconduct committed by them.

2. The said Sub-rule has provided that the employee charged shall be entitled *"to give evidence in person"* and to examine witnesses in his behalf.

3. As the Sub-rule stands, it is always optional to the employee charged to examine himself as a defence witness and the inquiring authority *cannot and should not* compel him to examine himself as a defence witness.

4. The expression *"to give evidence in person"* in the said Sub rule only means the examination of the employee charged as a defence witness *if he chooses to examine himself as such witness.* The right of the employee charged to rebut the evidence adduced against him being fundamental and implicit in the enquiry against him, his examination as a witness in his defence *is his choice and not dependent on the discretion of inquiring authority.*

5. The inquiring authorities should therefore note that—

(i) they have no authority to compel a delinquent employee to examine himself as a defence witness;

(ii) they have equally no authority to reject a delinquent's request to allow him to examine himself as a defence witness; but

(iii) they should always allow the application of a delinquent (oral or written) seeking permission to examine himself as a defence witness.

6. When an application in writing is made by a delinquent employee for permission to examine himself as a defence witness, the application should form part of the records of the enquiry, a note about its receipt and the order passed thereon, being made at the same time in the order sheet. When the request for such permission is made orally, that oral request and the order made thereon should be recorded in the order sheet. In either case, the delinquent's signature should be obtained to the order sheet.

[Circular No. 25 – M. S. E. B.–S.O. (L) 61/71–72, dated 13–7–1971].

Departmental Enquiries – Section 133 Evidence Act not applicable – evidence if an accomplice can be the basis of a disciplinary order.

1. The question whether in departmental enquiries instituted against the employees of the Board under the provisions of the Karnataka Civil Services (Classification, Control and Appeal) Rules, as adopted by the Board, the evidence of a witness who is an accomplice can be the basis of a desciplinary penalty, although it is uncorroborated in material particulars by other evidence, has been examined.

2. Attention in this connection is drawn to Section 133 of the Evidence Act and Illustration (*b*) to Section 114 of that Act. The rule of prudence that an accomplice is unworthy of credit unless

corroborated in material particulars, which has now hardened itself into a rule of law and which has reduced the wide ambit of Section 133 Evidence Act, *has no application to departmental enquiries.*

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3. There is, therefore, no reason why an accomplice's evidence cannot be made the basis of a disciplinary penalty, even though it may not have been corroborated by other evidence in material particulars.

4. If in a departmental enquiry, the inquiring authority chooses to rely on the evidence of an accomplice even if uncorroborated and holds the charge as proved, a court cannot set aside that finding merely on the ground that it is founded upon the evidence of an accomplice.

5. Attention in this connection is drawn to the pronouncement of the High Court of Mysore in the case of B.V.N. Iyengar *vs.* State of Mysore-Writ petition No. 877/1962.

6. The disciplinary and inquiring authorities in the Board should take due note of the above principles while assessing the evidence in departmental enquiries.

[Circular No. 31—M. S. E. B.—S.O. (L) 78/71-72, dated 4-8-1971.]

Departmental Enquiries — extraneous evidence or document in regard to which the employee has no opportunity of say — not to be relied upon.

1. It has been noticed in an appeal preferred to the Board by an employee against an order made by the disciplinary authority imposing on him a penalty, that after the enquiry had concluded, the inquiring authority made a reference to an Executive Engineer seeking clarifications on certain points raised by the employee and after obtaining the clarifications, made use of his letter and the clarifications in respect of which the employee had no opportunity of his say, in his report of enquiry. Any such use without giving an opportunity to a delinquent employee to say what he wishes to, is against the principles of natural justice.

2. In State of Assam and another *vs.* Mahendra Kumaradas and others–(1970), *II Supreme Court Journal 659,* the Supreme Court has held :–

> "It is highly improper for an Enquiry Officer during the conduct of an enquiry to attempt to collect any materials from outside sources and not make that information so collected, available to the delinquent officer and further make use of the same in the enquiry proceedings. There may be cases where a very clever and *astute* enquiry officer may collect outside information behind the back of the delinquent officer and without any apparent reference to the information so collected, may have been influenced in the conclusions recorded by him against the delinquent officer concerned. If it is established that the material behind the back of the delinquent officer has been collected during the enquiry and such material has been relied on by the enquiry officer without its having been disclosed to the delinquent officer, it can be stated that the enquiry proceedings are vitiated."

3. The disciplinary and inquiring authorities should take due note of the aforesaid observations of the Supreme Court and ensure that the disciplinary proceedings they conduct, do not suffer from any such infirmity.

[Circular No. 21—M.S.E.B.—S.O. (L) 49/71-72, dated 29-6-1971]

Procedure in denovo enquiries—whether the statement of witnesses recorded in the original regular enquiry could be treated as evidence when they are either dead or are not available—steps to be taken.

1. In Circular No. 13, detailed instructions have been issued on the observance of the several stages and the preparation of the records of the enquiry when a departmental enquiry under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules is undertaken.

2. When a penalty imposed on a Board employee in any such enquiry is set aside, on account of any procedural defect, technical irregularity or other reasonable cause and a *denovo* enquiry is ordered, the question whether, when some witnesses become unavailable by reason of their death, physical incapacity or other cause, their statements recorded during the original enquiry on the conclusion of which the penalty which has been set aside was imposed, could be treated as evidence in the *denovo* enquiry, has been examined.

3. There is at present no provision in the Civil Services (Classification, Control and Appeal) Rules giving any guidance in this behalf but it should, however be noted that if in the *denovo* enquiry any witnesses required to be examined are either dead or have become incapable of giving evidence or are untraceable, their statements recorded during the original enquiry on the conclusion of which the penalty which has been set aside was imposed, can be treated as evidence in the *denovo* enquiry provided that–

(*a*) in the original enquiry the delinquent Board employee has either cross-examined or at least had the right and was given the opportunity to cross-examine those witnesses, and

(*b*) the questions in issue in the *denovo* enquiry are substantially the same as in the said original enquiry.

4. If the two conditions set out in (*a*) and (*b*) in the preceding paragraph are not fulfilled, such statements cannot be treated as evidence in the *denovo* enquiry.

5. In cases where the evidence of witnesses recorded in the earlier proceeding is treated as evidence in the *denovo* enquiry, the records of the denovo enquiry should *clearly bear out:*

(*a*) that attempts were made to secure the attendance of those witnesses, and

(*b*) their attendance could not be secured because they were dead or their whereabouts could not be traced in spite of efforts ; or

(*c*) that those witnesses were secured but had become incapable of giving evidence ;

(*d*) that in the original enquiry those witneses were cross-examined by the delinquent Board employee ; or

(*e*) that in the original enquiry the Board employee had the right and opportunity to cross-examine those witnesses but had failed to exercise that right and avail that opportunity ;

(*f*) that in the exercise of that right the delinquent Board employee had stated that his cross–examination was nil ; and

(*g*) that the questions in issue in the *denovo* enquiry are substantially the same as in the original enquiry.

6. As regards (*a*) and (*b*) in the preceding paragraph, notices issued to those witnesses for service and returned with endorsements of non-service, should be marked as exhibits and those who made attempts to serve the notices, should be examined as witnesses. As regards (*c*) there should be medical evidence of incapacity to give evidence. As regards (*d*). (*e*) and (*f*) the inquiring authority should closely examine the relevant records of the original enquiry and make, in the order sheet, a clear record of his findings before treating the statements of those witnesses as evidence in the *denovo* enquiry.

[Circular No. 28—M. S. E. B. —S. O. (L) 68/71-72, dated 16-7-1971].

Departmental Enquiries — appointment of specially empowered authority by designation — whether a successor inquiring authority can continue the enquiry and draw his report on evidence partly recorded by his predecessor.

1. In Circular No. 7, it has been pointed out as to how an order appointing an authority as a specially empowered authority for conducting a departmental enquiry under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, should be made.

2. Whenever an order under Sub-rule (2) of Rule 11 of the said Rules appointing an authority as a specially empowered authority is required to be made, that appointment *should be made not by name but by designation.*

3. When an authority is appointed by designation, as a specially empowered authority under Sub-rule (2) of Rule 11 of the said Rules

for conducting a departmental enquiry and in pursuance thereto he conducts the enquiry in part and is, thereafter, transferred and is succeeded by an officer of the same designation, the latter is competent to continue the enquiry, conclude it and draw up the report of enquiry, recording his findings.

4. Any contention that a report of enquiry with findings drawn up by a successor inquiring authority on the basis of the evidence partly or wholly recorded by his predecessor inquiring authority is violative of the principles of natural justice, is untenable.

5. Attention in this connection is drawn to Bauribandhu Misra *vs.* Inspector-General of Police—AIR 1970, Orissa 213.

6. The High Court of Orissa, relying on the pronouncements of the Supreme Court reported in (*a*) A.I.R., 1964, S.C. 364, (*b*) A.I.R., 1969, S.C. 966 and (*c*) of the Madras High Court reported on A.I.R., 1966, Madras 203 (MB) has ruled that ;

(*i*) there is no rule that in a disciplinary proceeding the successor inquiring authority cannot rely upon the evidence recorded by the predecessor inquiring authority ;

(*ii*) in the absence of any such rule there is no violation of the principles of natural justice merely because the successor inquiring authority was not in a position to observe the demeanour of witnesses

(*iii*) the disciplinary authority is the authority to impose the penalty and in cases where the evidence is recorded by inquiring authorities, the disciplinary authorities necessarily have no opportunity of marking the demeanour of witnesses ;

(*iv*) when the ultimate punishing authority can take the decision to impose the penalty without marking the demeanour of witnesses it would be fantastic to say that a successor inquiring officer cannot draw up the report of enquiry unless he himself has recorded the entire evidence.

7 Therefore a successor inquiring authority can draw up the report of enquiry recording his findings on the basis of materials collected by his predecessor inquiring authorities.

[*Circular No.* 27.—*M.S.E.B.* — *S.O.*(*L*) 62/71-72, *dated* 24-7-1971].

Departmental enquiry conducted in part by one inquiring authority — whether could be continued by a successor inquiring authority or by another inquiring authority to whom it is transferred.

1. In Board Circular No 28, instructions have been issued as to when and under what circumstances, statements of witnesses recorded in the original regular departmental enquiry could be treated as evidence when that enquiry is held *denovo*. . Those instructions should be noted.

2. The questions as to whether (*i*) when an inquiring authority who has conducted a departmental enquiry in part is transferred and he is succeeded by another, the latter is competent to continue and conclude the enquiry or has to commence it *denovo*, and (*ii*) when an enquiry which has been conducted in part by one inquiring authority is transferred to another authority for disposal, the latter is competent to continue the enquiry and conclude it or has to com-

mence it *denovo,* have been examined with reference to judicial pronouncements.

3. When an authority, who by his designation has been appointed as a specially empowered authority to conduct an enquiry, conducts it in part and is, thereafter, transferred to another jurisdiction and is succeeded by another authority of the same designation, the latter is quite competent to continue the enquiry from the stage it has reached and conclude it. In case, he considers that he should commence it *denovo,* he could do so.

4. When an authority who by his name and designation has been appointed as a specially empowered authority to conduct an enquiry, conducts it in part and is, thereafter, transferred to another jurisdiction and is succeeded by another authority of the same designation, the latter is not competent to continue the enquiry and conclude it. Separate orders are necessary for him to continue the enquiry from the stage reached or to commence it *denovo.*

5. When an enquiry which has been conducted in part by an authority who either by his designation or by his name and designation has been appointed as a specially empowered authority, is transferred to another authority appointed as a specially empowered authority, the latter is quite competent to continue the enquiry from the stage reached and conclude it or commence it *denovo.*

6. A departmental enquiry is not a judicial trial and the employee proceeded against has no statutory right to demand a *denovo* enquiry before a successor inquiring authority or before the authority to whom the enquiry is transferred.

7. Attention in this connection is drawn to ...:

(*i*) Hardeepsingh *vs.* I.G. of Police ... A.I.R., 1963, Punjab 90.

(*ii*) N. K. Prasad *vs.* State of Bihar and Orissa ... A.I.R., 1967, Patna 173.

(*iii*) D.I.G. of Police *vs.* Amalanathan...A.I.R., 1966, Madras 203.

[*Circular No. 51 ... M.S.E.B. ... S.O.(L)* 155/71-72, *dated* 4-12-1971].

1. Sometimes inquiring authorities have either in their report of enquiry or separately, recommended penalties also for the charges held by them to have been proved.

2. According to Sub-rules (7) and (8) of Rule 11 of the said Rules, it is clear that while it is within the competence of an inquiring authority to record in his report of enquiry his findings on each of the charges together with reasons, therefor, it is outside his competence to recommend either in his report of enquiry or separately by a letter, any penalty for the charges held proved. The penalty to be imposed for the charges held proved, is within the province of the disciplinary authority.

3. Attention in this connection is drawn to State of Gujarat *vs.* R. G. Teredesai and another -- (1969), *II Supreme Court Journal* 740, wherin the Supreme Court has held :--

"The Enquiry Officer is under no obligation or duty to make any recommendation in the matter of punishment to be imposed on the servant against whom the departmental enquiry is held, and his function merely is to conduct the enquiry in accordance with law and to submit the record along with the findings or conclusions on the various charges which have been preferred against the delinquent servant. But if the enquiry officer proceeds to recommend that a particular penalty or punishment should be imposed in the light of the findings or conclusions, the question is whether the officer concerned should be informed about his recommendations. In other words since such recommendations form part of the record and constitute appropriate material for consideration of the Government it would be essential that that material should not be withheld from him, so that he could, while showing cause against the proposed punishment make a proper representation. The entire object of supplying a copy of the report by the enquiry officer is to enable the delinquent officer to satisfy the punishing/authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved, the punishment proposed to be inflicted is unduly severe. If the enquiry officer has also made recommendations in the matter of punishment that is likely to affect the mind of the punishing authority even with regard to the penalty or punishment to be imposed on such officer, the requirement of a reasonable opportunity would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant."

4. The pronouncement of the Supreme Court has been relied upon by the High Court of Mysore, while dealing with a similar question, in the case of Y. Rupla Naik *vs.* State — (1969), 2 *Mysore Law Journal* 452.

5. The inquiring authorities should, therefore, refrain from making any recommendations either in their report of enquiry or elsewhere, as to what particular penalty should be imposed for the charges held by them to have been proved.

6. If in any event, an inquiring authority, either by oversight or in contravention of these instructions, has made any recommendations about the penalty to be imposed for the charges held proved, either in his report of enquiry or separately by a letter, the disciplinary authority should take particular care to ensure that a copy of those recommendations is also furnished to the delinquent employee.

[Circular No. 18 -- *M.S.E.B.* -- *S.O (L)* 44 *dated* 17-6-1971*).*

Departmental Enquiry under Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 -- issue of show-Cause Notice -- before passing orders.

1. In Circular Nos. 8, 9 and 13, detailed instructions have been issued as to how charges should be framed and a charge-sheet should be drawn up when a departmental enquiry is undertaken by a disciplinary authority or when another authority is ordered by the former to conduct a departmental enquiry under the provisions of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules. 1957 and as to how such enquiries should be conducted.

2. Paragraph 26 of Circular No. 13 lays down that on completion of the enquiry, the inquiring authority should carefully examine the records and draw up his report of enquiry recording his findings

clearly in respect of each charge, after discussing the evidence for and against.

3. When the report of the enquiry along with relevant records, duly arranged in accordance with the instructions laid down in Circular No. 11, is received by the Disciplinary Authority, from the inquiring authority, it is the responsibility of the former to carefully examine the records, properly assess the evidence and ensure whether the findings reached by the inquiring authority are justified by the oral and documentary evidence produced during the enquiry in support of the charges and on behalf of the delinquent employee.

4. If the inquiring authority's findings are that the delinquent employee is not guilty of any of the charges framed and the disciplinary authority agrees with those findings, the latter should make an order exonerating the delinquent employee, and it will not be necessary in such cases to give to the delinquent employee, show-cause notice.

5. If on the contray, the inquiring authority's findings are that the delinquent employee is guilty of all or some of the charges framed and the disciplinary authority is in agreement with those findings, it becomes incumbent on the disciplinary authority to issue to the delinquent employee a show-cause notice. A model form of the show-cause notice is annexed hereto and marked *Annexure 'A'*. The form could be adopted with suitable modifications, if any, according to the circumstances of each case. A copy of the report of enquiry drawn up by the inquring authority should accompany the ~~the report of the~~ show-cause notice, to enable the delinquent employee to effectively and adequately, show-cause.

6. If the inquiring authority's findings are that the delinquent employee is guilty of some charges and not guilty of others, but the

disciplinary authority is in disagreement with the inquiring authority and finds that the delinquent employee is guilty of all the charges, it becomes incumbent on the disciplinary authority to issue a show-cause notice. A model from of the show-cause notice is annexed hereto and marked *Annexure 'B'*. The form could be adopted with appropriate modifications, according to the circumstances of each case.

7. Before issuing the show-cause notice in every such case, the disciplinary authority should make a clear record of his reasons for disagreeing with the inquiring authority in regard to the charges in respect of which the inquiring authority has recorded a finding of not guilty. Along with the show-cause notice, the disciplinary authority should also furnish to the delinquent employee, copies of — (*i*) the report of the inquiring authority containing his findings; and (*ii*) his (disciplinary authority) record of his reasons for disagreement with the inquiring authority, drawn up as above required.

8. Any omission to furnish to the delinquent, copies of the report of the inquiring authority and the disciplinary authority's record of reasons for disagreement referred to in the preceding paragraph, will vitiate the whole enquiry and ultimately, the penalty imposed on the delinquent employee. The disciplinary authorities should, therefore, take special care to ensure that there is no such omission on their part.

9. Special care should be taken to clearly mention in the show-cause notice that the penalty mentioned is provisional/tentative. Any omission to specify that the penalty proposed is only provisional or tentative will vitiate the entire proceedings.

10. The wordings in the show-cause notice should not give any indication that the disciplinary authority has already made up his mind in regard to the findings as well as the punishment. It should

be noted that if there is any such indication, the issue of a show-cause notice becomes just an empty formality and the entire proceedings get vitiated.

11. The delinquent employee in his reply to the show-cause notice is entitled to contend, among others —

(*i*) that the enquiry at which the findings have been arrived at, is vitiated by a breach of the principles of natural justice ;

(*ii*) that the findings are not supported by the evidence in the proceedings ;

(*iii*) that the evidence against him is not worthy of credence ;

(*iv*) that he is not guilty of any misconduct to merit any punishment at all ;

(*v*) that the punishment proposed cannot properly be awarded on the findings arrived at, that is to say, the charges proved do not require the particular punishment proposed to be awarded.

12. The disciplinary authorities should take care to ensure that while issuing the show-cause notice, reasonable time, is given to the delinquent employee to show-cause to the notice. Any failure to give reasonable time will amount to a deprivation of reasonable opportunity and therefore the period by which the delinquent, should be required to show cause to the notice, should be adequate, having regard to the complexity and magnitude of the case, the volume of evidence involved, the gravity of the charges, the nature of the defence and other attendant factors.

13. On receipt of the reply from the delinquent employee showing cause to the notice issued to him, the disciplinary authority should examine the points raised therein, *vis-a-vis,* the evidence and the findings of the inquiring authority, properly examine the merits and then make his final orders.

[Circular No. 14 -- M.S.E.B. -- S.O.(L) 31/71-72 Dated 3-6-1971].

ANNEXURE 'A'

No.................   Dated.......................

Show-Cause Notice

Departmental Enquiry against.............................

...

(now under suspension).

READ :

1. Order No................dated.....................of the Superintending Engineer (Electrical)..............................Circle appointing the Executive Engineer (Electrical).....................Division as inquiring authority for conducting departmental inquiry against.................

2. Report No,..............dated.......................of the Executive

Engineer (Electrical),...............Division submitting the records of the enquiry with his findings.

WHEREAS in my Order No ....,dated.................the Executive Engineer (Electrical),..............Division, was under sub-rule (2) of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, empowered to frame definite charges against you and to hold an enquiry and submit his report with his findings ;

AND WHEREAS in pursuance thereto, the Executive Engineer (Electrical),.................Division, hereinafter, referred to as the inquiring authority framed the following charges and held a regular enqniry ;

1. That you.......................(now under suspension) while functioning as Cashier in the Office of the Executive Engineer (Electrical), Bangalore Division, during the period between 12-9-1970 and 3-2-1971, collected on 2-1-1971 from the employees, *viz.*, 'A', 'B' and 'C' Rs. 10/- (Ten) each towards the recoupment of the excess travelling allowances paid to the said employees and thereafter, committed grave official misconduct in that you misappropriated the said amount of Rs. 30/-.

2. That you.........................(now under suspension while functioning as Cashier in the Office of the executive Engineer (Electrical), Bangalore Division, during the period between 12-9-1970 and 3-2-1971 committed on 3-2-1971 grave official misconductin that you when called upon to account for the said amount of Rs. 30/-

collected from 'A', 'B' and 'C' as described in Charge No. 1 lost your temper, threw away the Cash Book and left the chembers of the Executive Engineer challenging him and shouting that you had seen many Executive Engineers, thereby conducting yourself in an insubordinate and indisciplined manner.

3. That you..........................(now under suspension) while functioning as Cashier in the Office of the executive Engineer (Electrical), Bangalore Division, from 12-9-1970 have committed grave misconduct in that you have remained unathorisedly absent from your duties as Cashier from 4-2-1971.

AND WHEREAS on the conclusion of the said enquiry, the inquiring authority has held that all the three aforesaid charges have been proved.

AND WHEREAS on a careful examination of the entire departmental enquiry records, the findings of the inquiring authority and the evidence on record, I have come to the provisional conclusion that you are guilty of the said charges ;

AND WHEREAS for the charges so held proved, I have come to the provisional conclusion that the penalty of dismissal from service should be imposed on you ;

NOW, THEREFORE, I do hereby direct you to show-cause direct to me in writing within fifteen days from the date of the receipt of this notice why action as aforesaid should not be taken against you.

A copy of the report of the inquiring authority containing his findings, is hereto annexed.

Superintending Engineer (Electrical)

..................................Circle

To

Shri................................(now under suspension),

....

....

Through............................

....

Copy to :............................

for causing service of the original show-cause notice and the report of the inquiring authority, on........................ under acknowledgement with date, on the duplicate copy which should be returned to this office early.

[Circular No. 14/71-72—*M.S.E.B.—S.O. (L),* 31/71-72, *dated* 3-6-1971*]*.

ANNEXURE 'B'

No.....................   Dated.....................

SHOW-CAUSE NOTICE

Departmental Enquiry against...................................

....

(now under suspension).

READ :

1. Order No ....dated..................of the Superintending Ecgineer (Electrical) ....Circle appointing the Executive Engineer (Electrical),.....................Division, as inquiring authority for conducting departmental enquiry against ....

2. Report No..................dated..................of the Executive Engineer (Electrical)..............................Division, submitting the records of the enquiry with his findings.

WHEREAS in my Order No..................dated..................the Executive Engineer (Electrical),.....................Division, was under Sub-rule (2) of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, empowered to frame definite charges against you and to hold an enquiry and submit his report with his findings ;

AND WHEREAS in pursuance thereto, the Executive Engineer (Electrical),.........................Division, hereinafter, referred to as the inquiring authority framed the following charges and held a regular enquiry ;

1. That you..........................(now under suspension) while functioning as Cashier in the Office of the Executive Engineer (Electrical), Bangalore Division, during the period between 12-9-1970 and 3-2-1971 collected on 2-1-1971 from rhe employees Rs. 10/- (Ten) each towards the recoupment of the excess travelling allowances paid to the said employees and, thereafter, committed grave official misconduct in that you misappropriated the said amount of Rs. 30-

2. That you .... (now under suspension) while functioning as Cashier in the Office of the Executive Engineer (Electrical), Bangalore Division, during the period between 12-9-1970 and 3-2-1971 committed on 3-2-1971 grave official misconduct in that you when called upon to account for the said amount of Rs. 30/– collected from 'A', 'B' and 'C' as described in Charge No. 1, lost your temper, threw away the Cash Book and left the chambers of the Executive Engineer, challenging him and shouting that you had seen many Executive Engineers, thereby conducting yourself in an insubordinate and indisciplined manner.

3. That you................. ....(now under suspension) while functioning as Cashier in the Office of the Executive Engineer (Electrical), Bangalore Division, from 12–9–1970 have committed grave misconduct in that you have remained unauthorisedly absent from your duties as Cashier from 4–2–1971.

AND WHEREAS on the conclusion of the enquiry, the inquiring authority has held that Charges 1 and 3 afore described have been proved and Charge No. 2 has not been proved ;

AND WHEREAS on a careful examination of the entire departmantal enquiry records, the findings of the inquiring authority and the evidence on record, I agree with his findings on Charges 1 and 3 and for the reasons set out in the accompanying record, disagree with his finding on Charge No. 2 and provisionally hold that the three charges have been proved ;

AND WHEREAS for the charges so held proved, I have come to the provisional conclusion that the penalty of dismissal from service should be imposed on you ;

NOW, THEREFORE, I do hereby direct you to show cause direct to me in writing within fifteen days from the date of the

receipt of the notice, why action as aforesaid should not be taken against you.

A copy of the report of the inquiring authority containing his findings and a copy of the record of my reasons for my disagreement with him, in regard to his finding on Charge No. 2, are hereto annexed.

Superintending Engineer (Electrical),
.................................Circle.

RECORD OF REASONS FOR DISAGREEMENT WITH THE FINDING OF THE INQUIRING AUTHORITY ON CHARGE NO. 2

The inquiring authority has in his report reached the conclusion that Charge No. 2 has not been established. The only reason advanced by him to disbelieve, the evidence of the witnesses is that if as stated by them the delinquent employee had thrown away the Cash Book, the Cash Book should have been torn and as the Cash Book which was produced as a material object was found to have not been torn or damaged in the slightest manner, the entire evidence relating to the charge is rendered incredible. The reasoning adopted by the inquiring authority to disbelieve the evidence of the witnesses relating to this charge does not commend itself to me. There is no evidence of the quantum of force with which the Cash Book was thrown and in the absence of that evidence the possibility of the Cash Book not having been torn or damaged when it was thrown cannot be excluded. The evidence of the Executive Engineer is attacked on the ground that it is tainted and interested but it has been amply corroborated by the evidence of 'D' and 'E' who happened to be present at the time. The questions in the cross-examination of these two witnesses are just shots in the dark leaving their testimony unimpaired. No motive is suggested by the delinquent employee to show that they have been deposing

falsely but far from that, he has admitted their presence in the chambers of the Executive Engineer at that relevant time. Their evidence proves that the delinquent conducted himself in the manner described in Charge No. 2 I, therefore, accept their evidence, disagree with the inquiring authority and hold that Charge No. 2 has also been proved.

Superintending Engineer (Electrical),

.... Circle.

To

........................(now under suspension)

....

Through ....

Copy to :..............................

for causing service of the original show-cause notice with the copy of the report of the inquiring authority and the copy of the record of reasons for disagreement, on the delinquent employee under acknowledgement with the date on the duplicate copy which should be returned to this office early.

[Circular No. 14 — M.S.E.B. — S.O. (L), 31/71-72, dated 3-6-1971].

Arrangement and forwardal of records of inquiry in disciplinary proceedings — to appellate authorities for disposal of appeals — instructions issued.

1. The records of every disciplinary proceeding conducted under Rule 11 of the Karnataka Civil Services (Classification, Control

and Appeal) Rules, 1957, should, before being sent to the appellate authority whenever called for, be arranged in four files, *viz.*, (1) File 'A', (2) File 'B', (3) File 'C', and (4) File 'D'.

2. File 'A' should contain the following records arranged in the order in which they are set out below :

(*i*) Order sheet in which the day-to-day proceedings of the enquiry are indicated.

(*ii*) Charges framed and served.

(*iii*) Written statement of the delinquent employee.

(*iv*) Pleas to the charges read and explained.

(*v*) Depositions of witnesses in support of the charges.

(*vi*) Statement of the delinquent employee including his written statement if any filed before the commencement of the examination of the defence witnesses.

(*vii*) Depositions of defence witnesses.

(*viii*) Final statement of the delinquent employee including his written statement, if any.

(*ix*) Report of the inquiring authority recording his findings on each of the charges.

(*x*) Show-cause notice issued and served.

(*xi*) Reply to the show-cause notice.

(*xii*) Final orders of the disciplinary authority.

4 File 'B' should contain :—

(i) Exhibits in support of the charges which would have been marked in red ink as Ex. P1, Ex. P2, Ex. P3, etc.

(ii) Exhibits on behalf of the delinquent employee which would have been marked as Ex. D1, Ex. D2, Ex. D3, etc.

(iii) Exhibits which the inquiring officer has chosen to mark them in the interests of justice and which would have been marked as Ex. C1, Ex. C2, Ex. C3, etc.

5. File 'C' should contain all miscellaneous papers including applications made by the deliquent employee, orders passed thereon, notices issued to the delinquent employee and witnesses and orders including those served on them, endorsement if served — all duly arranged chronologically maintaining the sequence of dates.

6. File 'D' should contain the records of the preliminary enquiry. If any document in these records has been taken out and marked either as a prosecution or a defence or the inquiring authority's exhibit, a slip of paper indicating that it has been removed and marked as an exhibit, should be inserted at the appropriate place in the records.

7. Each of these files should be page numbered with a pherist of the contents at the facing.

8. When an inquiring authority has to send the records of the enquiry to the disciplinary authority and when a disciplinary authority has to send the records to the appellate authority, he should

invariably ensure that the records are arranged in the files in the manner indicated above and then sent.

[Circular No. 11 — M.S.E.B. — S.O (L) 11/71-72, dated 1-5-1971].

Departmental enquiry under Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, proposal to take action with a statement of allegations — how it should be prepared.

1. In Circular Nos. 8 and 9, detailed instructions as to how charges should be formulated and how a charge-sheet should be drawn up, when a departmental enquiry is undertaken by a disciplinary authority or when another authority is ordered by the former to conduct a departmental enquiry, under the provisions of Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

2. The distinction between Rule 11 and Rule 12 of the Rules should be clearly understood. A "proposal to take action" envisaged in Rule 12 is different from and should not be confused with a "charge" or "charge-sheet" contemplated in Rule 11.

3. When, having due regard to the acts of misconduct committed by an employee, as disclosed either in the report of the preliminary enquiry or in the documentary and other evidence already available, the disciplinary authority considers that only a minor penalty is merited if those acts of misconduct are ultimately held proved, he should proceed to take action under Rule 12 of the Rules by drawing up a statement of allegations and a proposal to take action.

4. While a charge-sheet drawn up under Rule 11 should not

indicate any penalty for the acts of misconduct described in the charges yet to be proved, a proposal to take action under Rule 12 of the Rules should also indicate the proposed penalty.

5. If in a "proposal to take action" drawn up under Rule 12 of the Rules, the penalty proposed is not indicated, the delinquent employee who is required to make a representation on that proposal, will have no opportunity to make a representation on the penalty and, thereby, the enquiry to that extent may not conform to the well accepted principles of natural justice.

6. Every proposal to take action under Rule 12 of the Rules and the statement of allegations on which that proposal is based, should be drawn up by the disciplinary authority.

7. A model form indicating how a proposal to take action and how a statement of allegations should be drawn up under Rule 12 of the Rules is hereto annexed and it should be adopted with appropriate modifications, according to the circumstances of each case.

[Circular No. 10 -- M.S.E.B. — S.O.(L) 7/71-72 Dated 1-5-1971].

No.................. Office of the Superintending Engineer,

(Electrical,................. Circle.

Dated : ....

Proposal to take action against 'X' First Division Clerk................under Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

You 'X' First Division Clerk have been working in this office since 12-4-1969. In this Office Memo No.......... dated........... you had been directed to proceed to the Office of the Executive Engineer Electrical, Bangalore Division, and assist the auditor Sri..........................in auditing the accounts of that office. That memo was served on you on 2-1-1970. In response, thereto, you had to report yourself to the auditor on 4-1-1970. The auditor has reported that you failed to report yourself for duty and that for want of assistance the auditing of the accounts had been delayed. On his report you were again directed in this office Memo No............... dated.......................that you should unfailingly report yourself to the auditor by 15-1-1970. The memo had been entrusted to 'Y' for being delivered to you under your acknowledgement. When 'Y' tendered the memo to you for receiving it, and giving an acknowledgement, you refused to receive the memo. Subsequently 'Y' returned the said memo to this office with his report that you refused to recevie it stating that you were not willing to go to the office of the Executive Engineer and assist the a uditor as it would affect your health which was failing. When the first memo was served on you, you never made any representation that your health had failed or was failing and you would not be able to assist the auditor. Your subsequent statement putting forward this execuse appears to be an after thought and is, therefore, unacceptable. On account of your evasion as aforesaid, the auditing of the accounts of the Office of the Executive Engineer was delayed.

The afore mentioned allegations disclose that you have committed acts of misconduct as under :

(*i*) Disobedience of orders issued in this office Memos No. (*i*) ....dated.................. ; (*ii*) ...., dated ....

(*ii*) Refusal to receive Memo No............ . , dated.............. tendered by 'Y'.

For the above-mentioned acts of misconduct committed by you it is proposed to withhold your increment falling due, for a period of six months, the penalty, however, not affecting your future increments.

You are, therefore, hereby given an opportunity under Rule 12(1) (*a*) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, to make in this behalf any representation which you may wish to make.

Your representation should be sent direct to me within fifteen days from the date of the receipt of this statement of allegations and the proposal to take action against you as aforesaid. In case, you fail to put in your representation by the aforesaid date, the under-signed may proceed to make orders on the basis that you have no representation to make in this behalf.

Superintending Engineer,

(Electrical) ....Circle,

To

....

First Division Clerk,

Office of the Superintending Engineer,

(Electrical), ...Circle.

[Circular No. 10 — M.S.E.B. — S,O.(L), 7/71-72, dated 1-5-1971].

Appeals in departmental enquiries conducted under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 – Reasons to be adduced while disposing of appeals — Appellate orders should be speaking orders.

1. Appeals against original orders of punishments have sometimes been dismissed by the appellate authority by cryptic orders by merely mentioning that the cases were carefully examined and that there were no reasons to differ from or interfere with the orders of the disciplinary authorities. The disposal of appeals by such cryptic orders does not conform to the requirements of the said Rules and the principles of natural justice

2. Attention is drawn to the pronouncement of the High Court of Mysore in the case -- V.C. Clifford *vs.* Government of India and others -- 1966(2), *Mysore Law Journal* 70. The High Court has observed :--

> "It seems to us that it is quite necessary that the order passed by the Quasi-judicial Tribunal should contain in itself the necessary material to assure the superior courts that the Tribunal has satisfied the requirements of the relevant provisions pertaining to the exercise of its jurisdiction whether appellate or otherwise."

3. The relevant provision governing the jurisdiction of an appellate authority and his functions, is Rule 25 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board, according to which the appellate authority should consider.

(*a*) Whether the procedure prescribed in the Rules has been

complied with and if not whether such non-compliance has resulted in violation of any provisions of the constitution or in a failure of justice;

(*b*) Whether the findings are justified;

(*c*) Whether the penalty imposed is excessive, adequate or inadequate, etc.

4. In this connection attention is also drawn to the pronouncements of the High Court of Mysore in the cases.

(*i*) V. J. Fernandes *vs.* State of Mysore -- Writ Petition No. 846/62.

(*ii*) B. S. Kulkarni *vs.* State of Mysore -- Writ Petition No. 446/62.

(*iii*) Mohin Ahmed *vs* State of Mysore -- Writ Petition No. 469.

5. In the light of the observations in the aforesaid pronouncements and the requirements of Rule 25 of the said Rules, the appellate authorities should take note that while dealing with an appeal in a disciplinary proceeding, they perform a quasi-judicial function and, therefore, their mere subjective satisfaction about the correctness or otherwise of disciplinary orders is not by itself sufficient but they are bound to consider the grounds urged in the appeal memo and to set out clearly in the appellate orders, their reasons for arriving at any particular conclusion.

6. The order of an appellate authroity in an appeal against a disciplinary order, should be *a speaking order.*

[Circular No. 45 -- *M.S.E.B.* — *S.O (L)* 139/71-72, *dated* 27-11-1971*).*

Departmental enquiry — personal hearing — Rules of natural justice do not require personal hearing to be given at the appellate stage.

1. The questions whether, when an appeal against a disciplinary order is preferred to an appellate authority and the appellant has made therein a request for a personal hearing, the appellate authority should give a personal hearing and whether the appellant has a right to demand that personal hearing have been examined.

2. In Board Circular No. 45, instructions have been issued as to how an order in an appeal should be drawn and what points the appellate authority should consider, while disposing of an appeal.

3. There is no provision in the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board, vesting in an appellant, a statutory right to demand from an appellate authority a personal hearing in regard to his appeal.

4. The rules of natural justice do not require that there should be personal hearing at all stages, namely, appeals, revisions, etc. Attention in this connection is drawn to Prafulla Kumar Mazumdar *vs.* Inspector-General of Police, West Bengal and others — A.I.R. 1967, Calcutta 321.

5. The High Court of Calcutta has in the said case held :—

"So far as the rules of natural justice are concerned the fundamental proposition is that a man should not be condemned unheard. The question is whether this means that he should be repeatedly heard at every stage of the proceedings. It is not even disputed that at the first stage he is to be heard and given every opportunity to defend himself. But once the proceedings have terminated in what may be called the original proceedings, subsequent stages like appeals, or revisions are in most cases governed by rules and regulations which are framed or according to practice. Upon the question as to whether a personal hearing is essential in these later stages, we have now the authority of the Supreme Court which says that the matter will be governed by the Rules but *so far as the rules of natural justice are concerned they do not necessarily require that there should be repeated hearings at all stages, namely, appeals or revisions, etc.* Usually, at the stage of appeal or revision the matter is decided on the record. What is urged is that this is entirely illegal and that in every case and at every stage of the proceeding, a person has the right to be heard personally. This is a position in law which has been negatived by the Supreme Court. Our attention is drawn to a Bench decision of this Court in Bhagatram Baika *vs.* Prabirendra Mohan Tagore-60, Cal. W.N. 1 (A.I.R. 1956, Calcutta 357). In that case, what had happened was that the petitioner held a plot of land in Monza Dhakuria in the suburbs of Calcutta. He made an application under Section 72 of the West Bengal Non-Agricultural Tenancy Act, 1949, for the conversion of the land into a tenancy to which the provisions of the Act would apply. That application was dismissed and the dismissal was upheld by Commissioner. Thereafter an application was made to this court. One of the points taken was that the Commissioner should have given personal hearing although the Act did not require what a hearing should be given. Chakravarti, C. J., held that where an appeal had been provided for in law, natural justice demanded that the appellant should be given a hearing before the appeal was

dismissed, whether or not there was a statutory direction in that behalf. The case cited by the learned Chief Justice particularly the Supreme Court decision in Sangram Singh *vs.* Election Tribunal Kotal—(1955), S.C.A. 545, A.I.R. 1956, S.C. 425 dealt with proceedings in a Court of Law. It is not clear whether the learned Chief Justice was confining his dicta to the case of proceeding in a Court of Law. It appears that finally the learned Chief Justice did not grant any relief to that applicant. However, if it was intended to lay down a principle that rules or no rules, the rules of natural justice require that in every proceeding whether in a Court of Law or not a personal hearing should be given at all stages appellate revisional or otherwise, then it must be held that this decision has been over ruled by the Supreme Court in F. N. Roy's case — A.I.R. 1957, S.C. 648. I think however, that the learned Chief Justice was confining himself to the proceedings in a Court of Law. Be that as it may, so far as the circumstances of the present case are concerned, it appears to be completely covered by the Supreme Court decision in F. N. Roy's case A.I.R. 1957, S.C. 648. We must, therefore, hold that neither the regulation nor the rules of justice require a fresh personal hearing to be given at the appellate stage."

6. It is, therefore, clear from the two judicial pronouncements — (*i*) A.I.R. 1957, S.C. 648 and (*ii*) A.I.R. 1967, Calcutta 321. that —

(*i*) a delinquent employee who has preferred an appeal against the order of a disciplinary authority, has no statutory right to demand a personal hearing from an appellate authority, there being no provision to that effect in the Civil Services (Classification, Control and Appeal) Rules as adopted by the Board.

(*ii*) he has equally no right to demand such personal hearing under the Rules of natural justice.

(*iii*) it is, however, open to an appellate authority to grant such personal hearing only in the exercise of his discretion.

(*iv*) any refusal by the appellate authority to grant such personal hearing does not vitiate the appellate proceedings.

[Circular No. 58 — *M.S.E.B. — S.O. (L),* 168/71-72, *dated* 22-12-1971*].*

Departmental enquiries — imposition of a minor penalty in an enquiry following the procedure laid down for major penalty — violation of a rule prescribed for major penalty but requirements of rules for minor penalty met—whether the minor penalty can be upheld.

It is sometimes contended that when after following the procedure laid down in Rule 11 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, a minor penalty is imposed, the penalty so imposed is illegal if there is a violation of any of the provisions of Rule 11, even though the requirements of Rule 12 which lay down the procedure to be followed when a minor penalty is proposed to be imposed, are satisfied.

1. Attention is drawn to Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, as adopted by the Board. All that is necessary under the said rule is that the employee

should be informed in writing of the proposal to take action and of the allegations on which action is proposed to be taken against him and then given an opportunity to make any representation against the same.

2. When an enquiry is started following the procedure laid down for the imposition of a major penalty (*vide* Rule 11) but ultimately an order is made imposing a minor penalty, the order is not vitiated on the ground of any violation of any of the rules of procedure governing such major penalty *provided, however, it is shown that the requirements of the rule governing minor penalties* (vide *Rule 12*) *have been met with.*

3. Attention in this connection is drawn to G. Lakshman Singh *vs*. State of Mysore--1965(2). *Mysore Law Journal* 728, wherein, the High Court have laid down what has been stated in the preceding paragraph.

4. In appeals arising out of the category described in Paragraph 2, the appellate authorities should while disposing of the appeals, bear in mind the principle enunciated in said Paragraph 2 of this circular.

[Circular No. 47 — M.S.E.B. — S.O.(L) 141/71-72 Dated 26-11-1971].

Regular Departmental Enquiry not necessary when a penalty is proposed to be imposed on an employee on the ground of conduct which has led to his conviction on a Criminal Charge--Scope of Rule 14(1) *of the Karnataka Civil Services (Classification Control and Appeal) Rules,* 1957, *as adopted by the Board.*

1. Attention is drawn to Sub-rule (1) of Rule 14 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 as adopted by the Board.

2. According to the said Sub-rule, a regular departmental enquiry either under Rule 11 or under Rule 12 of the said Rules is not necessary when a penalty is proposed to be imposed on an employee *on the ground of conduct which has led to his conviction on a criminal charge.*

3. The exact meaning and scope of the phrase "on the ground of conduct which has led to his conviction on a Criminal Charge" should be clearly understood. As held by the High Court of Mysore in Sattappa *vs.* State--Writ Petition No. 1440/1961, it is not the conviction on a criminal charge which should be the ground for the penalty to be imposed but it is delinquent employee's CONDUCT which has led to his conviction on a criminal charge which should be the ground for the departmental penalty.

4. The "ground of conduct" referred to in the Sub-rule refers to the conviction on a criminal charge either before or after the appointment of the employee in the Board Service.

5. Therefore, if after the appointment of an employee, it transpires that before his appointment his conduct has resulted in his conviction on a criminal charge, it is permissible to impose on him a penalty under Sub-rule (*i*) of Rule 14 without holding a regular departmental enquiry under Rule 11 or under Rule 12.

6. The world 'charge' in the Sub-rule contemplates some accusation and not merely a charge in the technical sense of the Code of Criminal Procedure and the words "led to his conviction

on a criminal charge'' only mean a criminal charge which has finally resulted in the conviction of an employee proceeded against in a criminal proceeding which includes a trial and/or appeal or revision, if any, as the case may be.

7. The disciplinary authorities in the Board should take due note of the above points and while making any orders under Sub-rule (1) of Rule 14, should clearly mention the ''ground of conduct'' as the misconduct (to be described) resulting in conviction on a criminal charge and not merely mention in their final order that ''delinquent employee has been convicted on a criminal charge and is, therefore, dismissed, etc.''

[Circular No. 40 — M.S.E.B. — S.O.(L), 127/71-72, dated 10-11-1971.]

Exact scope and meaning of the words 'Criminal Charge' appearing in Rule 14(1) *of the Karnataka Civil Services (Classification, Control and Appeal) Rules,* 1957.

1. In Board Circular No. 40, it has been explained that when a penalty is proposed to be imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge a regular departmental enquiry is not necessary.

2. 'Conviction on a criminal charge' envisaged in Rule 14(1) of the Karnataka Civil Services (Cassification, Control and Appeal) Rules, 1957, *includes a conviction under any law* which provides punishment for an offence whether by fine or imprisonment.

Attention in this connection is drawn to A.I.R. 1966, Andhra-Pradesh 72.

3. For the purposes of Rule 14(1) of the said Rules, no distinction can be made between crimes involving moral *turpitude* and other crimes. Attention in this connection is drawn to (*i*) Venkatarama *vs.* Province of Madras -- A I.R. 1946, Madras 375, (*ii*) Durga Singh *vs.* State of Punjab -- A.I.R. 1957, Punjab 97, and (*iii*) Jagadendra *vs.* Inspector-General of Police -- A.I.R. 1959, Assam 134. Therefore, if an employee is convicted of a crime which does not involve moral turpitude, action can be taken under Rule 14(1) of the Rules.

[*Circular No,* 42 -- *M.S.E.B.* -- *S.O.(L),* 136/71-72, *dated* 26-11-1971]

Departmental action -- whether can be taken against an employee who is convicted but released under Section 3 after admonition or under Section 4 on probation or of good conduct -- whether Section 12 of the Act, acts as a bar.

1. The question whether in view of the removal of disqualification attaching to a conviction, provided for in Section 12 of the Probation of Offenders Act, 1953, an employee of the Board convicted but released on admonition ~~report~~ under Section 3 or on probation of good conduct, under Section 4 of the said Act, departmental action can be taken against him has been examined with reference to judicial pronouncements.

2. Attention is drawn to Sections 3, 4 and 12 of the Probation of Offenders Act.

3. While Section 3, provides for the release of a person convicted of an offence specified therein after due admonition and Section 4, for the release of a person convicted of an offence referred to therein on probation of good conduct, Section 12 which provides for the removal of disqualification attaching to convictions has laid down :

> "Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification if any attaching to a conviction of an offence under such law; provided that nothing in this Section shall apply to a person who after his release under Section 4 is subsequently sentenced for the original offence."

4. In Akella Satyanarayana Murthy *vs.* Zonal Manager—A.I.R. 1969, Andhra Pradesh 371, the High Court of Andhra Pradesh while dealing with the scope of Section 12 of the Probation of Offenders Act, has laid down that the said Section has in its view only automatic disqualifications following from a conviction and not an obliteration of the misconduct of the offical concerned and the disciplinary authority is, therefore, not precluded from proceeding against an employee—departmentally.

5. Attention in this connection is also drawn to :

(*i*) R Kumaraswamy Aiyar *vs.* Commissioner. Thiruvanna Malai Municipality — (1956), 2 *Madras Law Journal* 562 ; 1957 Cr. L.J. 255.

(*ii*) Embara *vs.* Chairman, Madras Port Trust — (1963). 1 *Labour Law Journal* 49.

In both these cases, the High Court has taken a similar view.

6. It is, therefore, clear that after a Board employee is

convicted of an offence but released either after admonition under Section 3 or on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, departmental action against him for the misconduct which has resulted in his conviction, is quite competent and can be undertaken and Section 12 of the said Act does not operate as a bar for that departmental action.

[Circular No. 52 -- *M.S.E.B. — S.O (L)* 156/71-72, *dated* 9-12-1971*]*.

Conviction recorded by competent court on criminal charge—until setaside in appeal or revision—such conviction remains effective—such conviction can be made the basis of a penalty under Rule 14 (1) of the Karnataka Civil Services (Classification, Control and Appeal) Rules as adopted by the Board, without holding a regular departmental enquiry.

1. It is sometimes maintained that the *conviction* on a criminal charge referred to in Sub-rule (1) of Rule 14 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, as adopted by the Board is only a conviction confirmed on the termination of all judicial proceedings by way of appeal or revision against that conviction and, therefore, a penalty under Rule 14(1) of the Rules cannot be imposed on the basis of a conviction on a criminal charge, when an appeal against that conviction is pending. Any such view does not appear to be correct.

2. Attention in this connection is drawn to T. R. Subramanyam *vs.* State — 1970, *Criminal Law Journal* 1185 Dealing with Proviso (*a*) to Article 311 of the Constitution, the High Court of Madras has held :—

"The question now raised is whether the word 'conviction' which occurs in Proviso (*a*) refers to conviction only by a

trial court or whether it should be taken as a conviction confirmed by the appellate court or the court of revision as the case may be. It is contended that the authorities can take action contemplated under Clause (2) of Article 311 only after all proceedings are terminated by way of appeal or revision in respect of a conviction. In other words it is stated that the authorities should wait to take action under the said Clause till all the proceedings are terminated. There is no substance in this contention. The conviction referred to in Proviso (*a*) is a conviction recorded by a competent court of law on a criminal charge. The trial court trying a person on a criminal charge is competent to record a conviction if the charge is proved. Once a conviction is recorded by a competent court, it becomes final unless the statutory remedies provided to the person convicted are taken by him *and* such convictions are set aside.

. . .

'Conviction' begins to operate as soon as it is recorded. It subsists till it is set aside by an Appellate Court or a Court of Revision. What is contemplated in Proviso (*a*) to Article 311(2) is a subsisting conviction or a conviction in force. In an appeal or revision against a conviction, the conviction is not suspended. It is only the sentence or order in consequence of such conviction which is suspended. Even when an appeal or revision is pending the conviction is alive and it does not cease to exist. Under Section 425(1) Criminal Procedure Code, the Appellate Court may suspend the execution of the sentence or order pending an appeal against conviction. Similarly, under Section 438 of the Code, the Sessions Judge or the District Magistrate while exercising the powers of revision and while a report of recommendation for reduction or alteration of sentence or order is made to the High Court, can suspend the execution of sentence or order as the case may be. It is Clear from these provisions that the conviction is not suspended while the appeal or revision is pending. I am,

therefore, of the view that once the conviction is recorded by a competent Court of Law on a criminal charge and until such conviction is set aside either on appeal or revision, such conviction remains effective and can be made the basis of dismissal, removal or reduction in rank."

3. The disciplinary authorities should therefore note that --

(*i*) the conviction referred to in Rule 14(1) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, is only a conviction recorded by a competent Court of Law on a criminal charge.

(*ii*) Such conviction is to be treated as final until it is set aside.

(*iii*) Such conviction begins to operate as soon as it is recorded.

(*iv*) Such conviction subsists until it is set aside by an Appellate or Revisional Court.

(*v*) In an appeal or revision against such conviction it is the sentence which is suspended pending disposal of the appeal or revision, and

(*vi*) Such conviction, is, therefore, alive even when an appeal or revision is pending.

[*Circular No.* 43 -- *M.S.E.B.* -- *S.O.(L),* 137/71-72, *dated* 26-11-1971].

Continuing after retirement a departmental enquiry instituted against a Board employee while he was in service--Rule 171 *of the Karnataka State Electricity Board Employees' Service Regulations.*

1. In Paragraph 30 of Circular No. 13, instructions have been issued that all departmental enquiries should be concluded expeditiously, care being taken to avoid all dilateriness.

2. When a departmental enquiry is instituted against a Board employee due to retirement within a short time, it is the special responsibility of inquiring authority to ensure that the enquiry is expeditiously concluded, before the employee retires, if necessary by giving priority over other enquiries on his file. In all such cases he should avoid long adjournments, conclude the enquiry with utmost expedition and forward the records with his report promptly to the disciplinary authority so that the latter has sufficient time at his disposal to make his final orders, before the employee retires.

3. As regards departmental enquiries which, for any compelling reasons, cannot be concluded before the delinquent employee retires from service, attention is drawn to Rule 171 of the Karnataka State Electricity Board Employees' Service Regulations which *inter-alia* permits the continuance after the retirement of a delinquent employee, a departmental enquiry instituted against him, before his retirement.

4. In every case in which, a departmental enquiry instituted against a Board employee while in service, cannot for unavoidable reasons, be concluded before his retirement and is required to be continued after his retirement, the inquiring authority should, just before the Board employee retires make a clear order that the departmental enquiry would under Rule 171 of the Karnataka State Electricity Board Employees' Service Regulations, be continued after retirement and concluded.

5. A copy of that order should be delivered to the Board employee under his dated acknowledgement and the acknowledged copy should be filed in the records, making a note in the order sheet to that effect.

6. After the order so made is served on the delinquent employee, the enquiry should be continued and concluded by the inquiring authority, in the same manner, as if the delinquent employee had continued to be in service.

[Circular No, 19 — M.S.E.B. — S.O.(L), 48/71-72, dated 17-6-1971]

Expeditious disposal of departmental enquiries — particularly against employees under suspension.

1. Departmental enquiries instituted against the Board employees under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, as adopted by the Board should be expedited with the required promptitude. Inexcusable delays would not be heartening.

2. Every departmental enquiry instituted against an employee of the Board either under Rule 11 or under Rule 12 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, should be promptly completed, by posting the enquiry at short intervals. Long adjournments and adjournments on exiguous grounds, should be avoided.

3. If for any compelling reasons, long adjournments are granted or there are unavoidable delays in completing the enquiry, those reasons should be noted in the order sheet required to be maintained when it is proposed to conduct an enquiry under Rule 11.

4. Priority should be given to enquiries, where the employees involved are under suspension.

5 An employee under suspension pending departmental

enquiry has a right to demand that the charges if any should be framed within a reasonable time and the enquiry also completed within a reasonable time. Such a demand flows out of a distinct and clear principle of natural justice.

6. Any failure to do so, vests in an employee a right to demand cancellation of suspension and reinstatement in service.

7. Attention in this connection is drawn to State of Madras *vs.* K. A. Joseph—(1969), 11 *Madras Law Journal* 242. Dealing with a case of an officer placed under suspension and against whom no charges had been framed although he had been under suspension for more than ten months, the High Court of Madras has held—

> "In our view, the learned judge (Kailasam, J.) had every justification to make an interim order in C.M.P. 17995 of 1968 in Writ Petition No. 4637 of 1968 cancelling the suspension of the concerned officer under the circumstances. It is suffcient for us to observe that a period of nearly ten months had elapsed since the officer was first placed under suspension, and that on an earlier representation, the court directed that charges should be framed within three months and that if that was not done the petitioner could approach the court again, for redress. After an expiry of a further period of six months the petitioner approached the learned judge for redress and the outcome is the order from which the Writ Appeal is sought to be filed.
>
> Quite apart from the broad principle that we have reiterated so often in the past, that this court will not ordinarily interfere, by way of appeal, from the exercise of an interlocutory discretion by a learned judge of this court, by virtue of his jurisdiction under Article 226 of the Constitution, there is a graver and more basic principle involved

upon which this writ appeal has to be dismissed. *If the argument of the learned Government Pleader is to be accepted by us, it would imply that there is no principle of natural justice under which the executive could be inhibited from indefinitely placing an affier in the agony and disability of suspension from his office, while the question of charges is being adumbrated in a most leisurely fashion and years might lapse before a decision is taken. On the contrary, in our view, there is a very clear and distinct principle of natural justice, that an officer is entitled to ask, if he is suspended from his office because of grave averments or grave reports of misconduct that the matter should be investigated with reasonable diligence and that charges should be framed within a reasonable period of time.* If such a principle were not to be recognised it would imply that the executive is being vested with a total, arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. We cannot accept this nor is any such claim supported by any precedent or authority.

Under the circumstances, the writ appeal is dismissed. The learned judge observed that the officer "will be allowed to resume his post". The learned Government Pleader submits that there may be great difficulty in permitting the officer to re-assume duties in the very post when the performance of those duties by him in the past had led to the imputation of grave irregularities. We are unable to see any real difficulty in the matter. We clarify the position by stating that it is open to the Government to permit the officer to resume duty in that identical post or any post of equal grade and emoluments which may be available for making an order of resumption of duty."

8. The disciplinary and inquiring authorities in the Board, should, keeping in view the aforesaid observations of the Madras High Court, ensure that in the enquiries they conduct, the charges

are framed promptly, avoiding all avoidable delay and the enquiries completed expeditiously specially in cases where employees are placed under suspension.

[Circular No. 41 — *M.S.E.B.* — *S.O.* *(L),* 132/71-72, *dated* 17-11-1971*].*

Suspension of a Board employee on leave — when takes effect. ....

1. Attention is drawn to Rule 10 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, as adopted by the Board (*vide* Board Order No. B.L.O.—97/67-68, dated 18-8-1967) which provides for placing a Board employee under suspension when a disciplinary proceeding against him is either contemplated or pending or when a case against him in respect of any criminal offence is under investigation or trial.

2. The question as to when an order of suspension takes effect when a Board employee suspended is on leave including leave preparatory to retirement sometimes arises and it is contended that suspension in such cases does not take effect until the order of suspension is actually served on the employee. Such contentions are untenable.

3. Attention in this connection is drawn to State of Punjab *vs.* Khemi Ram—A.I.R. 1970, Supreme Court 214. While considering the question whether communicating an order of suspension should be taken to mean its actual receipt by the individual suspended the Supreme Court has held:

> "The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date the respondent

was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'Communicate' is to impart, confer or transmit information (*Cf. Shorter Oxford English Dictionary*, Volume I, page 352). As already stated, telegrams dated July 31, and August 2, 1958 were despatched to the respondent at the address given by him where communication by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August, 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31, and August 2, 1958, *i.e.*, before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority and, therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view once an order is issued and it is sent out to the concerned Government servant, it must be held to have communicated to him no matter when he actually received it. (underlying is mine). We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of "communication" it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an

order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus may get away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless thle provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal may perhaps become necessary because of the consequences which the decision in A.I.R. 1966 S.C. 313 (Supreme Court) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of doing any act or passing any order and such act or order being challenged as invalid."

4. It should, therefore, be noted, that in the case of a Board employee on leave (including on leave preparatory to retirement) an order placing him under suspension pending enquiry against him takes effect from the date on which it is made and sent out for service, and it would be immaterial when he actually received it or whether or not he received it.

[*Circular No.* 20 -- *M.S.E.B.* -- *S.O.(L),* 47/71-72, *dated* 9-6-1971.]

Dismissal of an employee on the conclusion of a departmental enquiry -- cannot be given retrospective effect -- when takes effect.

1. The question whether a dismissal of an employee on the conclusion of a departmental enquiry in which the charges framed against him are held proved, can be given retrospective effect has been examined.

2. In Board Circular No. 20, dated 9th June, 1971, it has been pointed out that in the case of a Board employee on leave (including on leave preparatory to retirement), an order placing him under suspension pending enquiry against him, takes effect from the date on which it is made and sent out for service and it would be immaterial when he actually receives it or whether or not he has received it (*vide* State of Punjab *vs.* Khemi Ram— A.I.R. 1970, S.C. 214).

3. As regards dismissal, attention is drawn—

(*i*) R. Jeevaratnam *vs.* State of Madras -- A.I.R. 1966 S.C. 951.

(*ii*) Ramakanta Mohaty *vs.* Divisional Forest Officer-- A.I.R. 1970, Orissa 49.

(*iii*) Devendra *vs.* State of Bihar--A I.R. 1955, Patna 186; and

(*iv*) State of punjab *vs* Amar Singh -- A.I.R. 1966, S.C. 1318.

4. These pronouncements make it clear that --

(*i*) an order dismissing an employee cannot be given retrospective effect ;

(*ii*) when an employee is suspended pending enquiry and is subsequently dismissed with effect from the date of his suspension, the order in so far as it relates to retrospective effect is illegal and inoperative ;

(*iii*) an order of dismissal or discharge can be given effect to, only from the date of the order and not from any earlier date ;

(*iv*) "Date of order" underlined in (*iii*) above, means the date when the order is communicated to the employee or otherwise published.

5. It should, therefore, be noted that whenever an order of dismissal is made, the order takes effect when it is either communicated to the employee or is otherwise published and that an order of dismissal should not be made with retrospective effect.

[Circular No. 46- - *M.S.E.B. -- S.O.(L),* 140/71-72, *dated* 26-11-1971.*]*

Compulsory retirement under Note 2 to Rule 214 of the Karnataka Electricity Board Employees' Service Regulations-Issue of Show-Cause Notice before such retirement not necessary.

1. The question whether, when an employee of the Karnataka State Electricity Board is proposed to be compulsorily retired under the provisions of Note 2 to Rule 214 of the Karnataka Electricity Board Employees' Service Regulations, a Show-Cause Notice to the employee to show cause why he should not be retired under the said note should be issued, has been examined.

2. Note 2 to Rule 214 of the Karnataka Electricity Board Employees' Service Regulations reads--

> "The Board may in special cases require any employee to retire at any time after he has completed 25 years qualifying service or on attaining 50 years of age, when such retirement is considered necessary in the Board interest provided that the appropriate authority shall give in this behalf a notice in writing to the employee at least three months before the date on which he is required to retire."

3. The said note corresponds to Note 1 to Rule 285 of the Karnataka Civil Services Rules

4. In the case of Shankaranarayana Shetty *vs.* State of Mysore in Writ Petitions Nos. 4277; 4256 and 4257 reported in the short notes in (1971), 1 *Mysore Law Journal* 31, the High Court of Mysore has held :—

> "Compulsory retirement made under Note 1 to Rule 285 of the Mysore Civil Services Rules is not a penalty or punishment. Therefore, the Government servant sought to be retired under the said provision cannot complain that he had not been heard or given an opportunity to show cause against the retirement before the order is made, that the power conferred by the said provision on the Government is an absolute power subject only to the condition that it should be exercised *bonafide* in public interest and that, therefore, the only scope for judicial review of such an order is an examination of the question whether it has been made *bonafide or malafide*. The word '*malafide*' does not of course mean what may be described as morally or ethically blame-worthy. The legal concept of *malafides* that applies to cases of this nature is that the exercise of the power in question is vitiated by collateral considerations or arbitrariness meaning whimsical or unsupported by any stable reason."

5. Dealing with Rule 56 (*j*) of the Fundamental Rules, which is similar to Note 2 of Rule 214 of the Karnataka Electricity Board Employees' Service Regulations, the Supreme Court in the case of Union of India *vs.* J. N. Sinha and another A.I.R. 1971, S.C. 40, has held that before compulsorily retiring an official under the said Rule 56 (*j*), it is not necessary to issue a show-cause notice giving him an opportunity to show cause against that retirement.

6. The High Court of Madras in the case of P. Shankar Rao *vs.* Union of India (1971), I *Madras Law Journal 302,* has held that no such show-cause notice is necessary before compulsorily retiring a person under Rule 16 (3) of the All India Services (Death-*cum*-Retirement Benefits) Rules, 1958, which corresponds to Note 2 to Rule 214 of the Karnataka Electricity Board Employees' Service Regulations.

7. Applying the ratio laid down in the said cases, it should be noted that :—

(*i*) when an employee of the Board is proposed to be compulsorily retired under Note 2 to Rule 214 of the Karnataka Electricity Board Employees' Service Regulations it is not necessary to give him a prior show-cause notice calling upon to show cause against such retirement ;

(*ii*) such compulsory retirement under the said note is not a penalty ;

(*iii*) the notice referred to in the said note is not a show-cause notice but only a three months prior notice intimating him that he would be retired on the expiry of that period of three months.

(*iv*) the power conferred on the Board to compulsorily retire a Board employee is an absolute power.

(*v*) that absolute power is subject to only one condition namely, that it should be exercised *bonafide,* in the Board interest ;

(*vi*) the scope of judicial review of such orders of compulsory retirement is limited to the extent of finding out whether the order is made *bonafide* or *malafide* ;

(vii) the concept of '*malafides*' that apply to cases of this nature is that the exercise of the power is vitiated by collateral considerations or arbitrariness, meaning whimsical or unsupported by any stable reason.

[Circular No. 22 — M.S.E.B. — S.O. (L), 54/71-72. dated 6-7-1971].

Enquiry into the correct date of birth of an employee—refixation of date of birth retirement on such refixation—whether a penalty, etc.

1. The questions whether *(i)* a compulsory retirement on superannuation according to the result of an enquiry into the correctness of the date of birth of an employee amounts to a penalty; *(ii)* such enquiry into the correctness of the date of birth, preceding the order of retirement amounts to a disciplinary enquiry, and *(iii)* the power of the Board to hold an enquiry into the correctness of the date of birth of an employee comes to an end when the employee retires, have been examined with reference to the Service Rules and Judicial Pronouncements.

2. Attention in this connection is drawn to R. S. Kallolimath *vs.* State of Mysore—1970 (2), *Mysore Law Journrl* 432.

3. The High Court of Mysore, has in the said case held—

"To a case, where an order of Government redetermining the date of birth of a Government servant and directing him to retire from service is set aside on the ground that it was invalid for lack of opportunity to the Government servant before Government concluded its enquiry as to correct date

of birth, the principle of Rule 99 of the Karnataka Civil Services Rules would be applicable. The calculation of the correct amount of pay and allowances due to the Government servant necessarily involves fixation of the correct date of the Government servant's birth A compulsory retirement upon superannuation according to the result of an enquiry into the correctness of the date of birth of a Government servant is not a penalty nor could the preceding enquiry be regarded as a disciplinary enquiry–A.I.R. 1967, S.C. 1269 relied on. One of the tests for determining the nature of the enquiry would be the object with which the enquiry is instituted, the power of the Government to hold an enquiry in to the correctness of the date of birth of the Government servant does not come to an end on the retirement of the Government Servant–(1963), 1 *Mysore Law Journal* 80."

4. Applying the ratio laid down in the three pronouncements, *viz.*, (*i*) A.I.R. 1967, S.C. 1269, (*ii*) (1963) 1 *Mysore Law Journal* 30, and (*iii*) 1970 (2) *Mysore Law Journal* 432, it is clear that–

(*i*) a compulsory retirement on superannuation according to the result of an enquiry into the correctness of the date of birth of an employee does not amount to a penalty ;

(*ii*) the enquiry into the correctness of the date of birth, preceding the order of retirement does not amount to a departmental enquiry ; and

(*iii*) the power of the Board to hold an enquiry into the correctness of the date of birth of an employee does not come to an end when the employee retires.

[Circular No. 48 -- M.S.E.B. — S.O. (L) 147/71, *dated* 26-11-1971].

Order of confirmation or promotion of an employee, erroneously interpreting Rules or contrary to Rules —whether the order can be rescinded or revised when the mistake comes to notice.

1. It is sometimes contended that once an employee is either promoted or confirmed, that promotion or confirmation cannot be cancelled or revised, even if it is subsequently found that such promotion or confirmation was ordered by a mistake or by an erroneous interpretation of the relevant rules or in contravention of those rules and any such cancellation or revision would amount to a penalty. Such contentions are untenable.

2. In this connection attention is drawn to Sunderlal *vs.* State of Punjab - A.I R. 1970, P. & H. 241. The High Court has therein held :—

> "........... If owing to some *bonafide* mistake the Government has taken a decision regarding the confirmation of an officer, it can certainly revise its decision at a subsequent stage when the mistake comes to its notice The mistake can be corrected and it cannot be said that it should be allowed to perpetuate even when the same is discovered. The consequent reduction of the officer could not amount to reduction in rank and attract the applicability of Article 311 of the Constitution, Such a reduction is the necessary result of any routine administrative decision. It is only when an officer brings his case within the perview of Article 311 of the Constitution that he can attract the legality of any order passed by the Government which might adversely affect his career in Government service. Such a case does not come within the four corners of Article 311 of the Constitution. In the instant case, the Government after having misinterpreted the Rules, had given war service concessions to the petitioners. Subse-

quently, they realised their mistake and withdrew those benefits with the result that the seniority of the petitioners was affected. The Government, in my opinion could correct the error and such a decision would not come within the ambit of Article 311 of the Constitution.

3. Attention is also drawn to—

(*i*) M. Kamalamma *vs.* State of Mysore-A.I.R. 1960. Mysore 225

(*ii*) G. K. Sindha *vs.* Collector-A.I.R. 1956, All. 152.

(*iii*) Devasahayam *vs.* State of Madras - A.I.R. 1959, Madras 1.

(*iv*) A.I.R. 1963, S.C.

According to these pronouncements :-

(1) An advantage gained in violation of Rules can be taken away and there arises no cause of action.

(2) Where a person is appointed to a higher post and promotion is made under a wrong application of Rules, the setting aside of such promotion and ordering fresh selection under the proper rules cannot be called a reduction in rank; and

(3) It does not amount to a reduction in rank if a person who attains a benefit in contravention of Rules, loses that benefit when that contravention is set right.

(4) Applying the principles enunciated in the said cases, it is clear, that where by a mistake or an erroneous and in-

correct construction of the provisions of any rule or in contravention of any rules, a Board employee is either confirmed or promoted or his seniority determined, that confirmation, promotion or seniority can be cancelled or revised, immediately on the discovery of that mistake or erroneous and incorrect construction, or contravention.

(5) Any such cancellation or revision does not amount to the imposition of a penalty.

[Circular No. 50 — *M.S.E.B. — S.O. (L),* 154/71-72, *dated* 4-12-1971*]*.

Next below Rule - Rule 34 of the Karnataka Electricity Board Employees' Service Regulations —Principles explained.

1. It is sometimes contended, that if an employee while on deputation in another department is promoted to officiate in a higher post in that department, while his senior in his parent department has not been so promoted, the employee on his repatriation acquires a preferential claim to promotion over his senior. Such contentions are untenable and clearly opposed to the principles of the 'NEXT BELOW' Rule.

2. Attention in this connection is drawn to Rule 34 of the Karnataka Electricity Board Employees' Service Regulations.

3. Dealing with Rule 60 of the Karnataka Civil Services Rules, which corresponds to Rule 34 of the Karnataka Electricity Board Employees' Service Regulations, the High Court of Mysore, have, in the case of Munivenkatappa *vs.* Commissioner of the Corporation of

the City of Bangalore - Writ Petition No. 1546/64 (*vide* short notes on Page 4 of 1967, *Mysore Law Journal* - issue of January 19, 1967) held :

> "The Principle of the Next Below Rule is that, if a person working in one sphere of employment is deputed to work in another, every advancement which the person immediately next below him in his parent department acquires or secures must also be equally made available to the person who was sent on deputation. *Conversely, it should follow that if a person was senior in the Parent Department to the deputed, he would continue to be senior to him, even when the person deputed returns to the Parent Department whatever might have been the position occupied by him in the Department from which he so returned. On his return, he does not acquire a preferential claim to promotion, unless the person above him is unworthy of promotion for any reason whatsoever.*"

4. The promoting authorities in the Board should take due note of the principles enunciated by the High Court as above.

[*Circular No.* 54- - *M.S.E.B.* -- *S.O.(L),* 160/71-72, *dated* 22-12-1971.]