

## **DEPARTMENTAL INQUIRY AND CONDITION OF GRANT OF PENSION UNDER ARTICLE 351- A OF CIVIL SERVICE REGULATIONS.**

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“**Inquiry**” or “**enquiry**” means an act of asking for information. Clause (2) of Article 311 of the Constitution of India prescribes inquiry for three major punishment, i.e. dismissal, removal and reduction in rank of a member of a civil service of the Union or an all India service or a civil service of a State or the persons who hold a civil post under the Union or State. This is the safeguard providing the guidelines how power under Article 310 of the Constitution of India is to be exercised. It is a mandatory provision. We find its exceptions in the second proviso of clause (2) of Article 311 of the Constitution where there shall be no need for an inquiry. A probationer, who does not have any substantive right to hold the post, is not entitled to the protection under Article 311 of the Constitution of India.

### **Whether Departmental Inquiry includes Preliminary Inquiry.**

“**Inquiry**” in clause (2) of Article 311 of the Constitution of India does not include preliminary inquiry. In **Narayan Dattatraya Ramteerathakhar Versus State of Maharashtra and others, 1997(76) FLR 976**, the Hon’ble Apex Court has held “.....a preliminary enquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance.” Under the Uttarakhand Government Servant(Discipline And Appeal) Rules, 2003, (for short the Uttarakhand Rules), ‘Departmental Inquiry’ means the inquiry conducted after issue of charge-sheet. In **Chiman Lal Shah Versus Union of India, AIR 1964 S.C 1854**, a Constitutional Bench of the Hon’ble Supreme Court has held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India.

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The preliminary inquiry may be useful only to take a prima facie view as to whether there can be some substance in the allegation made against a Government servant which may warrant a regular inquiry. The evidence recorded in preliminary inquiry cannot be used as substantial evidence in regular inquiry. Using such evidence would be violative of the principles of natural justice. If any pre-recorded statements are to be used in evidence the concerned Government servant must be given an opportunity to cross examination the person whose statement has been so recorded. Such a person has to be examined as a witness de novo.

### **Charge-sheet**

A charge-sheet is the root of the departmental inquiry. Therefore, the charge(s) should not be vague but be specific, definite, accurate and precise. It must contain the particulars of time, place of occurrence and the manner in which the incident alleged is to have taken place. The language of a charge-sheet must be simple. The proposed documentary evidences and the name of proposed witnesses shall be mentioned in the charge-sheet. Under the Uttarakhand Rules, the charge-sheet must be signed by the Disciplinary Authority. Appointing authority of the concerned Government servant shall be his Disciplinary Authority. Under sub-rule (7) and (8) of Rule-7 of Uttarakhand Rules and subject to the sub-rule-(6) and sub-rule-(7) of the said Rule the Disciplinary Authority may itself inquire into the charge(S) or if seems necessary may appoint an Authority subordinate to him according to sub-rule (8). According the clause (4) of Rule-7 of Uttarakhand Rules the charge-sheet shall be served on the charged Government servant personally or by registered post at the address mentioned in the official records and in case the charge-sheet could not be served in aforesaid manner, the same shall be served by publication in a daily news paper having wide circulation. The delinquent shall also be informed that in case he fails to submit his written statement in the specified date it will be presumed that he has no explanation to offer and the matter shall proceed ex-parte.

It is the well established principle that **affirmanti non neganti incumbit probatio**. It means that the burden of proof lies upon him who affirms, not upon him who denies. Therefore, the Inquiry Officer shall proceed first to call and record the oral evidence of the witnesses proposed to prove the charge-sheet and after given opportunity to cross

examine the witnesses, the Inquiry Officer shall give opportunity to the delinquent to produce his evidence.

In other words, in a departmental inquiry the principles of natural justice have to be complied with. The proper opportunity must be given to the delinquent to furnish written statement, copies of documents relied upon should be provided to the delinquent, in case the documents are voluminous, permission to be granted to inspect the voluminous documents, opportunity to cross examination and to produce his documents and oral evidence. After completion of inquiry, the Inquiry Officer shall submit its report to the Disciplinary Authority. The finding of the Inquiry Officer should be self-contained and based on the evidence produced by the parties. The Inquiry Officer should not recommend penalty(s).

As per Rule 9(1) of the Uttarakhand Rules, if the Disciplinary Authority is not agree with the reasons given by the Inquiry Officer, it would be open to the Disciplinary Authority to hold further inquiry in accordance with the provisions of Rule 7 and Rule 9(2) shows that if the Disciplinary Authority disagrees with the findings of the Inquiry Officer on any of the articles of Charge, he shall record his findings with reasons. Rule 9 (3) is the exonerated provision in case the charges are not proved. The principles of natural justice, incorporated in sub rule (4) of Rule 9 of Uttarakhand Rules, requires the authority which has to take a final decision and can impose a penalty, to give an opportunity to the charged Government servant to file a representation before the Disciplinary Authority, if he so desires within a reasonable specified time.

In the case of **Yoginath D. Bagde Versus State of Maharashtra and another (1999) 7 SCC 739** the Hon'ble Supreme Court has held that the inquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the 'right to be heard' would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

### **Doctrine of proportionality**

In case penalty is imposed on the delinquent in departmental inquiry doctrine of proportionality attracts. The penalty imposed should not be shockingly disproportionate with the gravity of misconduct. After passing the reasoned order imposing one or more penalty, the Disciplinary Authority shall communicate the same to the delinquent.

### **Departmental Inquiry and Criminal Trial**

The departmental inquiry is distinctly different from the purpose behind prosecution and the standard of proof in a disciplinary proceedings and that in a criminal trial is different. Therefore, there is no legal bar for both proceedings to go on simultaneously. The ground for stay of disciplinary inquiry may be an advisable course in cases where the criminal charge against the delinquent is grave and continuance of the disciplinary inquiry is likely to prejudice his defence before the criminal court. Gravity of the charge is, however, not by itself enough to determine the question unless the charge involves complicated question of law and fact. There can be no strait-jacket formula as to in which case the disciplinary proceedings are to be stayed. If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental inquiry till the conclusion of the criminal case as held by the Hon'ble Apex Court in **Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd. and Another, MANU/SC/0225/1999, in H PCL Versus Sarvesh Berry (2005) 10 SCC 471 and in the Judgment passed on January 21, 2014 in Civil Appeal Nos.- 763-768 of 2014 M/S Stanzen Toyotetsu India P. Ltd. Versus Girish V. and others.**

Pension is a constitutional right as provided in Article 300A of the Constitution of India since right to receive pension is treated as right to property and the payment of it does not depend upon the discretion of the Government. It is governed by the rules. The right of pension cannot be taken away without the due process of law. A retired person cannot be deprived of his pension without authority of law. The executive instruction are not having statutory character, therefore, on the basis of executive instruction even a part of pension cannot be withhold.

It is also important to note that good conduct is an implied condition of every grant of a pension. Article 351A of Civil Service Regulations provides subject to its proviso that the Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to government by misconduct or negligence, during his service, including service rendered on re-employment after retirement;

The proviso of Article 351A requires that such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, (i) shall not be instituted save with the sanction of the Governor, (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and (iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made. The proviso further requires that judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with above mentioned sub clause-(ii) and the Public Service Commission shall be consulted before final orders are passed.

The explanation of Article 351A of the Regulations refers that for the purposes of this article (a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or, if the officer has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court and in the case of civil proceedings on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

The Civil Service Regulations, originally, had been published by the Government of India on May 1, 1889. The Regulations as adopted and applicable in Uttar Pradesh are published. The 'Regulations' are law, therefore, under the provisions of Section-86 of the Uttar Pradesh Reorganisation Act, 2000 the Regulations are applicable in the State of Uttarakhand.

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