

**REPORT OF THE COMMITTEE OF EXPERTS
ON
DISCIPLINARY & VIGILANCE INQUIRIES**

JULY, 2010

**DEPARTMENT OF PERSONNEL & TRAINING
GOVERNMENT OF INDIA**

REPORT OF THE COMMITTEE OF EXPERTS

On 12 May 2010, the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India issued a notification appointing a **Committee of Experts** to review the procedure of **Disciplinary/Vigilance Inquiries** and recommend measures for their expeditious disposal.

2. **The Committee was given a period of two months to make its recommendations.** A summary of the Report of the Committee is at Annexure.

3. The Committee comprised the following :

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| (i) | P.C.Hota,

former Chairman of Union
Public Service Commission | - | Chairman |
| (ii) | Arvind Varma

Former Secretary,
Department of Personnel & Training,
Government of India | - | Member |
| (iii) | P.Shankar
Former Central Vigilance
Commissioner
Government of India | - | Member |

4. **As a Committee, we met at New Delhi only.** In our deliberations, we received substantial help and assistance from the following officers of the Department of Personnel & Training:-

- (i) Shantanu Consul, Secretary
- (ii) Dr. S.K.Sarkar, Additional Secretary
- (iii) Alok Kumar, Joint Secretary(Vigilance)
- (iv) C.B.Paliwal, Joint Secretary(Establishment)
- (v) V.K.Velukutty, Deputy Secretary(Vigilance)

5. We called on the **Minister of State in the Ministry of Personnel, Public**

Grievances and Pensions and the Cabinet Secretary to Government of India

to discuss the issues for expeditious disposal of Disciplinary/Vigilance Inquiries.

We also met some officers of the Government of India and officers of a few

State Governments at New Delhi to get the benefit of their experience.

6. We have noted that right from the time of the **Government of India Act**

1919, there has been provision for Disciplinary Inquiry under the **Civil**

Service(Control, Classification and Appeal) Rules 1920. The Government of

India Act 1935, which replaced the Act of 1919, also provided for Disciplinary

Inquiry against delinquent Government Servants. **The Constitution of India has also provided for Disciplinary Inquiries largely on the model of such Inquiries under the Government of India Act, 1935.**

7. We have noted that the provisions of **Section 96(B)** of the **Government of India Act 1919, Section 240 of the Government of India Act 1935**, the provisions in **Articles 309, 310 and 311 of the Constitution** and the relevant Service Rules such as the Civil Services(Classification, Control and Appeal) Rules 1920, modified in 1930 and further modified in 1957, and the **latest Central Civil Services(Classification, Control and Appeal) Rules 1965 framed under Article 309 of the Constitution**, have been the subject of scrutiny of the higher judiciary including the **Privy Council, the Federal Court and the Supreme Court.**

8. After commencement of the Constitution **on 26 January 1950**, different facets of Article 311 of the Constitution – particularly what constitutes

“reasonable opportunity” for a delinquent Government Servant as contained in **Article 311(2)** – have been the subject of scrutiny of the **Supreme Court**, which has laid down **principles and parameters** in this regard.

9. From time to time, the Government of India has also issued **executive instructions to further streamline the procedure** for Disciplinary Inquiries in conformity with judgements of the Supreme Court. **Nevertheless, there continue to be instances of inordinate delay in the disposal of such Disciplinary Inquiries.**

10. A Survey by the Indian Institute of Public Administration, New Delhi reported the following findings about the **percentage of delay in disposal of Disciplinary Inquiries** at different levels:

(i) Administrative Departments - **69%**

(The reference is obviously to the time taken by the Administrative Department/Ministry after misconduct of the delinquent Government Servant

came to official notice and the Department/Ministry conducted a preliminary inquiry and if such Inquiry indicated commission of any offence, sent the case for investigation according to law. If after due investigation, the case was sent back to the Department/Ministry for initiating a Disciplinary Inquiry **inter alia**, because evidence during investigation was not sufficient for a charge sheet under Section 173 of the Code of Criminal Procedure, 1973, the Department/Ministry framed Articles of Charge for a major penalty Inquiry on the basis of available evidence. If the delinquent Government Servant denied the charges, the Disciplinary Authority appointed an Inquiry Officer to conduct the Inquiry against the Delinquent Government servant.)

(ii) Inquiry Officers in Disciplinary Inquiries - **17%**

(This has obvious reference to the time taken by Inquiry Officers to record evidence of witnesses of both the Presenting Officers on behalf of the Disciplinary Authorities and the delinquent Government Servants on their own

behalf. The time taken by Inquiry Officers also includes time taken by them to submit their Reports of Inquiry to the Disciplinary Authorities.)

(iii) Central Vigilance Commission (CVC) - 9%

(This obviously includes time taken by the CVC to give the **first stage** and the **second stage advice** to the Departments/Ministries after due scrutiny of the preliminary Inquiry Report for the **first stage advice** and the records of the Disciplinary Inquiries for the **second stage advice**.)

(iv) Union Public Service Commission (UPSC) - 5%

(This has obvious reference to cases of Disciplinary Inquiries referred to the UPSC under Article 320(3)(c) of the Constitution, which stipulates that the UPSC shall be consulted “on all disciplinary matters affecting a person serving in a civil capacity including memorials and petitions in such matters.”)

(v) It is clarified that a State Government, in respect of Government Servants appointed by the State, is required to consult the State Public Service

Commission and only in cases where imposition of a minor penalty is proposed on any officer of the All-India Services working in connection with the affairs of a State, the State Government is required to consult the UPSC before imposing the minor penalty under the All-India Services(Discipline and Appeal) Rules 1969.

11. Before we deal with what steps could be taken to eliminate the inordinate delay by various Agencies in processing and conducting a Disciplinary Inquiry, we would like to give a **historical perspective** of **Disciplinary Inquiries** against delinquent government servants.

12. During the period of the **East India Company**, a person in employment of the Company could be removed from service of the company by the **Court of Directors**. Provision to this effect was contained in the **Charter Act 1793** and the **Charter Act 1833**.

13. The **Government of India Act 1858** vested the administration of **British India in the Crown which** henceforth had the power of appointment and dismissal of a Crown servant. The Act empowered the **Secretary of State-in-Council** to frame **Regulations** for the Crown servants in India.

14. For the first time, the Government of India Act 1919 provided that, subject to provisions of the Act and the Rules framed thereunder, every person holding a **civil post** in British India holds it during the “**pleasure of His Majesty**” and may not be dismissed from service by an Authority lower in rank than the Authority which appointed him.

15. The **Government of India Act 1919** also provided for establishment of a **Public Service Commission** of India, which was set up on the 1st of October 1926.

16. As mentioned earlier in this Report, a set of Rules was framed under the Government of India Act 1919 called the **Civil Services (Classification, Control and Appeal) Rules 1920**. For the first time, the 1920 Rules provided for **“a properly recorded Departmental Inquiry”**

(ii) The 1920 Rules is a precursor to the Central Civil Services (Classification, Control and Appeal) Rules 1965 framed under Article 309 of the Constitution. The 1965 Rules govern Disciplinary Inquiries relating to persons holding civil posts or in Civil Service of the Government of India.

17. For the All-India Services i.e. the Indian Administrative Service, the Indian Police Service and the Indian Forest Service, the **All India Services (Discipline and Appeal) Rules 1969**, framed under the All-India Services Act 1951, regulate **Disciplinary Inquiries**. All-India Services officers, whether serving in connection with the affairs of a State or on deputation to the Central Government or other Agencies, are governed by the All-India

Services(Discipline & Appeal) Rules 1969. **The Railway Servants who are under the Central Government, are governed by the Railway Servants (Discipline & Appeal) Rules, 1968.**

18. The Civil Services(Classification, Control and Appeal) Rules 1920 were replaced by a new set of Rules called the Civil Services(Classification, Control and Appeal) Rules 1930. The 1930 Rules continued in force even after the Government of India Act 1935 and the commencement of the Constitution on 26 January 1950. The Central Civil Services(Classification, Control and Appeal) Rules 1957 were replaced by the Central Civil Services(Classification, Control and Appeal) Rules 1965 which, as mentioned earlier, are in force at present.

19. The Government of India Act 1935 contained the following **two provisions of the earlier Government of India Act 1919 :**

(i) Every person holding a civil post under the Government holds it “**during the pleasure of the Crown**”.

(ii) No person holding a civil post in the central or provincial Government can be dismissed by an Authority subordinate to that by which he was appointed.

20. The **Government of India Act 1935** also went a step further and provided that no civil servant or person holding a civil post can be **dismissed from service** or **reduced in rank** until he has been given a **reasonable opportunity** of showing cause against the penalty proposed to be imposed on him. The stipulation "reasonable opportunity" to show cause was not applicable

(i) if a person holding a civil post or in the Civil Service is either dismissed or reduced in rank on ground of conduct which has led to his conviction on a criminal charge or ,

(ii) where the Authority empowered to dismiss or reduce him in rank is satisfied for reasons to be recorded in writing that it would not be reasonably

practicable to hold an inquiry and give the delinquent government servant a reasonable opportunity to show cause against the Articles of Charge served on him.

21. As mentioned earlier, **the Constitution of India in regard to provisions for the Services under the Union or a State has been modelled on the Government of India Act 1935.**

22. A major departure from the Government of India Act 1935 is that the Constitution of India provided, under the second proviso to Article 311(2) at sub-clause(c), that an opportunity of being heard in respect of the charges shall not be given to a delinquent government servant if the President or the Governor, as the case may be, is satisfied that it is not expedient to hold an **Inquiry in the interest of security of the State. There was no such provision in the Government of India Act 1935.**

23. There was also no provision analogous to Clause (3) of Article 311 of the Constitution in the Government of India Act 1935 that if a question arose whether it would be reasonably practicable to hold a Disciplinary Inquiry, the decision thereon of the Authority competent to dismiss, remove or reduce the Government Servant in rank shall be final.

24. Article 311(2) of the Constitution, as it **was originally enacted**, stipulated as follows :

“No such person as aforesaid shall be dismissed or removed from service or reduced in rank until he has been given a **reasonable opportunity** of showing cause against action proposed to be taken in regard to him.”

25. By the **Constitution (Fifteenth Amendment) Act 1963**, Clause(2) of Article 311 was amended as follows :

“No such person as aforesaid shall be dismissed, removed or reduced in rank except after an Inquiry in which he has been informed of charges

against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that when it is proposed after such Inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of evidence adduced during such Inquiry and it shall not be necessary to give such person **any opportunity of making representation against the penalty proposed.**"

26. **By the Constitution(Forty Second Amendment) Act 1976** - which came into effect from the 1st of January 1977 – the **right of the delinquent Government Servant to represent against the proposed penalty was deleted.**

27. Even though, **for the first time**, it was laid down by the **Supreme Court** in **Union of India versus H.C.Goel (AIR 1964 SC 364)** that "**reasonable opportunity**" envisaged in Article 311(2) of the Constitution made it obligatory for the Disciplinary Authority to furnish **a copy of the Report of Inquiry** to the

delinquent Government Servant with the views of the Disciplinary Authority if such Authority disagreed with the findings of the Inquiry Officer, it was not until the judgement of the **Supreme Court** in **Union of India versus Md Ramzan Khan (AIR 1991 SC 471)** that it became obligatory for the Disciplinary Authority to furnish a copy of the Report of Inquiry with the observations of the Disciplinary Authority, if any, to the delinquent Government Servant to enable him to represent against the findings of the Inquiry Officer and the observations of the Disciplinary Authority. The mandatory requirement to furnish a copy of the Report of Inquiry to the delinquent Government Servant was enforced after **20 November 1991** – the date of the judgement in Md Ramzan Khan's case(supra).

28. Under the existing instructions, the Disciplinary Authority is required to consider the representation of the delinquent Government Servant before it could impose on him any of the penalties under the relevant Service Rules.

29. In view of the pronouncements of the Supreme Court on the scope and ambit of “reasonable opportunity” in Article 311(2) of the Constitution, including the judgement in **Khem Chand versus Union of India(AIR 1958 SC 300)** which is a **locus classicus** on the subject, “reasonable opportunity” in Article 311(2) comprises the following:-

- (i) Service of the Articles of Charge on the delinquent Government Servant with the imputations in support thereof and the list of witnesses and documents in support of the Acts of charge;
- (ii) An opportunity to the delinquent Government Servant to deny the alleged misconduct, as contained in the Articles of Charge, and establish his innocence;
- (iii) An opportunity to the delinquent Government Servant to defend himself by cross-examining the witnesses of the Presenting Officer and an opportunity to examine himself and his own witnesses in defence;

(iv) An opportunity to get copies of the relevant documents on which the Articles of Charge are based. The copies of the documents must be in a language which the **delinquent Government Servant understands**.

(v) An opportunity to get a copy of the Report of Inquiry (with the comments of the Disciplinary Authority if the Disciplinary Authority disagrees with any findings of the Inquiry Officer in his Report of Inquiry) so that the delinquent Government Servant could represent against the findings of the Inquiry Officer or the observations of the Disciplinary Authority. In other words, the delinquent Government Servant will get an opportunity to point out how the Inquiry Officer has either arrived at a wrong finding or the Disciplinary Authority has made any wrong observations in the Disagreement Note.

30. As held by the Supreme Court in **Managing Director ECIL versus B. Karunakar(AIR 1994 SC 1074)** - there could be **glaring errors and omissions** in a Report of Inquiry or the Report may have been based on **no evidence** or

rendered in disregard to or by **overlooking evidence**. If the Report of Inquiry, with the Disagreement Note, if any, of the Disciplinary Authority, is not made available to the delinquent Government Servant, the crucial Report on the basis of which the Disciplinary Authority imposes a suitable penalty, never comes to be known to the delinquent Government Servant. The result is that such Government Servant gets no opportunity to point out errors and omissions, if any, and to disabuse the mind of the Disciplinary Authority before he is pronounced guilty. The Supreme Court, therefore, held that non-supply of a copy of the Report of Inquiry to the delinquent Government Servant was a violation of the **principle of Natural Justice** and a denial of “**reasonable opportunity**” to the delinquent Government Servant to defend himself.

31. We now propose to deal with some issues connected with Disciplinary Inquiries against Governments Servants. Parliament has enacted a law viz. **The Departmental Inquiries (Enforcement of Attendance of Witnesses and**

Production of Documents) Act 1972 to facilitate smooth disposal of

Disciplinary Inquiries where witnesses – ordinarily those witnesses who are not

under the administrative control of the Disciplinary Authority – are called by

the Inquiry Officer to depose during the hearing and where documents – not

in the custody of the Disciplinary Authority – are required to be produced to

either prove a charge against a delinquent Government Servant by the

Presenting Officer or to disprove a charge when such document is sought to

be produced before the Inquiry Officer by the delinquent Government Servant.

At present, for each Departmental Inquiry, **the Central Government has only**

powers to issue a Notification under the Act of 1972 empowering an Inquiry

Officer to enforce attendance of witnesses or ensure production of

documents. **A separate Notification in each case of a Departmental Inquiry**

empowering an Inquiry Officer under the Act of 1972 is a time-taking process

and does not serve any useful purpose. We, therefore, recommend that the

Act of 1972 be amended to authorize any Inquiry Officer to exercise powers of enforcement of attendance of witnesses and production of documents during pendency of any Disciplinary Inquiry. In the alternative, the feasibility of achieving the same objective through a suitable provision in the relevant Service Rules may also be examined and, if found feasible, put into effect.

32. We noted that sometimes, a delinquent Government Servant prays for adjournment of hearings in a Disciplinary Inquiry on a false pretext. It was argued that to check such abuse the Service Rules be amended to provide for a maximum number of **three adjournments** in the entire course of hearing before an Inquiry Officer.

33. We have not been able to persuade ourselves to accept this line of argument. In our view, fixing the maximum number of adjournments in the course of a hearing of a Disciplinary Inquiry will put an unnecessary fetter on the bonafide exercise of power by an Inquiry Officer to grant adjournment of

hearing in suitable cases. We are not aware of any provision in a civil or a criminal law which limits exercise of bonafide discretion of a Court of Law to grant adjournments of hearing either on the **plea of the prosecution or prayer of the accused in a criminal case or on the petition of the plaintiff and the request of the respondent in a Civil Suit. An Inquiry Officer** in a Disciplinary Inquiry is a **quasi-judicial authority**. The principles of Natural Justice – which are nothing more than **“fair play in action”** – require that an Inquiry Officer has to be a **fair-minded person without bias or pre-conceived notion**. Such a person is presumed to exercise his discretion judiciously. We reiterate that an Inquiry Officer – though appointed by a Disciplinary Authority – must act fairly lest his orders be set aside as being arbitrary and in violation of Article 14 of the Constitution. As held by the Supreme Court in **Maneka Gandhi versus Union of India (AIR 1978 SC 497)** even executive action, to be lawful, must be **just, fair and reasonable** and not arbitrary or fanciful.

34. In many Departments/Ministries, there may not be adequate number of officers who are thorough with the Service Rules and the executive instructions regulating Disciplinary Inquiries. We recommend that to make up the shortage of competent Inquiry Officers, every Head of Office/Head of the Department may have **a list of names and addresses of retired officers** who have a reputation for integrity and who are well-versed with the Service Rules and the instructions in regard to Disciplinary Inquiries. Once the panel of Inquiry Officers is finalized, the Disciplinary Authority may appoint any one out of the panel of names of retired officers as the Inquiry Officer. It must be ensured that a retired officer appointed as an Inquiry Officer should have been in a higher grade, when he retired on superannuation, than the delinquent Government Servant facing the Disciplinary Inquiry.

35. As far as practicable, an Inquiry Officer should conduct the hearing on a **day-to-day basis to complete the Inquiry expeditiously**. Each Inquiry Officer

should be required to maintain an **order sheet** to record proceedings of the Inquiry on the day of Inquiry and other relevant matters. If the Inquiry cannot be conducted on a day-to-day basis, the Inquiry Officer should record in the order sheet the reasons why the Inquiry could not be held on a day-to-day basis. The Inquiry Officer should also mention in the order sheet the next date of Inquiry and other relevant matters. The order sheet is also required to record the order of the Inquiry Officer if an adjournment of hearing is sought by either the Presenting Officer or the delinquent Government Servant.

36(a) There are **Commissioners for Departmental Inquiries** (CDIs) under the CVC to function as whole-time Inquiry Officers of Departmental Inquiries against senior Government Servants. These CDIs, who belong to different Group A Services under the Central Government, are on deputation to the CVC under the Central Staffing Scheme. Once a CDI is transferred out of the CVC on expiry of his period of deputation or otherwise, it takes time for appointment

of his successor as the Inquiry Officer. To eliminate such delay it would be expedient to designate CDIs under the CVC in a numerical or alphabetical manner, viz., CDI-I, CDI-II or CDI-A, CDI-B and so on. Under such an arrangement, Departmental Inquiries could be entrusted to CDI-I or CDI-II with the stipulation that CDI-II will take over if CDI-I is no longer available to conduct the Inquiry due to his transfer or other reasons. If such an innovative practice is introduced in the order of appointment of CDIs as Inquiry Officer in a particular Inquiry, there would be no need for fresh order of the Disciplinary Authority for appointment of the successor CDI as the Inquiry Officer in the same Inquiry. By the proposed change in procedure, continuity would be far better maintained in pending Departmental Inquiries and also loss of valuable time prevented.

(b) As a CDI gets adequate experience in conducting a Disciplinary Inquiry, it is in the public interest that he should be allowed a longer tenure in the CVC

than at present. In our view, a CDI should not be subject to the normal rule of deputation applicable for a Central Government Servant. We, however, would leave it to the Department of Personnel and Training to fix the normal period of deputation of a CDI keeping in view our recommendation that a CDI should stay for a sufficiently long period in the CVC.

37(a) We are of the view that **the fees paid to the Inquiry Officers,** as at present, are **not adequate compensation** for the **arduous nature of work** in a Disciplinary Inquiry. We have noted that an Inquiry Officer who is a serving officer conducts a Departmental Inquiry in addition to his duties and **not many serving officers are willing to function as Inquiry Officers.** We recommend that if a serving officer is appointed as an Inquiry Officer he may be granted an honorarium ranging from **Rupees Five Thousand to Rupees Ten Thousand** per case. At present a serving officer gets only an honorarium of Rs.3000/- per case if he works as an Inquiry Officer in addition to his duties.

(b) In case of a retired officer, appointed as an Inquiry Officer, the honorarium may vary from **Rupees Fifteen Thousand to Rupees Seventy Five Thousand per case**. We have recommended substantially higher honorarium than the present honorarium of Rs.9750 for each case for a retired officer appointed as an Inquiry Officer. Such officers would be of different grades ranging from retired Section Officers or officers of equivalent rank to retired Secretaries to the Government of India or officers of equivalent rank.

(c) It would not be out of place to mention that Central Government Public Sector Undertakings pay substantial per diem sitting fee to retired senior functionaries from the higher judiciary and retired high-ranking Government Servants acting as Arbitrators or Conciliators under the Arbitration and Conciliation Act 1996. Besides, a per diem transport allowance as well as board and lodging in star hotels are also provided.

(d) A retired officer who is appointed as an Inquiry Officer may also get a consolidated **transport allowance of Rupees Fifteen Thousand to Rupees Forty Thousand per case** so that he is not out-of-pocket. In cases where assistance of a steno-typist is not given to a retired officer appointed as an Inquiry officer, the Disciplinary Authority may sanction upto Rs.30,000 as an allowance per case for stenographic assistance depending on the volume of paper work in the case. If either a serving or a retired officer does not complete the Disciplinary Inquiry within the time-frame recommended by us, the Disciplinary Authority may reduce the amount of honorarium and allowances as per his discretion.

(e) **We recommend that in the matter of payment of honorarium and allowances to serving and retired officers appointed as Inquiry Officers, the decision of the Disciplinary Authority shall be final and he need not seek any**

other approval for payment of honorarium once the scale of honorarium is fixed by the Department of Personnel and Training, Government of India.

38. It was brought to our notice that delayed payment or virtual non-payment of the 'prosecution' witness is a serious contributor to the delay in disposal of criminal cases and Departmental Inquiries. It appears to us that the problem can be tackled in the following manner :

(a) If the witness is a serving Government Servant, the expenses would, as usual, be borne by the Department/Organisation that disburses his salary.

(b) In case the witness is a retired Government Servant and he is appearing as a witness for the CBI, the expenses of travel and accommodation would, in the first instance, be borne by the CBI and subsequently adjusted between the CBI and the Department concerned.

(c) In case the witness is a retired Government Servant and is appearing before the CDI in a Departmental Inquiry, the expenses would be borne, in the

first instance, by the CVC and subsequently be adjusted with the Department/Organisation concerned.

(d) In all other cases involving payment of the expenses to witnesses who are retired Government Servants, these would be borne by the Department that appointed the Inquiry Officer, ensuring that, as far as possible, the payment is made upon completion of the testimony and not delayed unduly.

39. We reiterate that the effort to secure speedy disposal of Disciplinary Inquiries – both pending ones and those that will arise in future – requires the availability of Inquiry Officers who have the background, time and willingness to take up the task. This availability has to be met not only at Delhi but at a large number of locations in the country, keeping in view the spread of senior Government Servants under the Government of India. The following steps can be considered in this regard:

(a) In the metropolitan cities, State Capitals and some major cities such as Nagpur, Kanpur, Pune, Kochi and Vizag, which are not State Capitals, the Department of Personnel & Training, Government of India may undertake preparation of a panel of retired officers of competence and reputation for integrity, fairness and objectivity to be appointed as Inquiry Officers or as Presenting Officers.

(b) For other major cities in the country, the various Departments/Ministries should prepare similar panels of retired officers. The Central Board of Direct Taxes, for example, could have a panel for places with large presence of senior officers while the Department of Posts could have a panel where the Post Masters General are located. Other Organisations and Departments of the Central Government may act also in a similar manner to prepare panels of names of retired Officers to act as Inquiry Officers or Presenting Officers.

(c) We also reiterate that the panels thus prepared should desirably comprise officers of varying levels of seniority in order that inquiries pertaining to different grades of delinquent Government Servants could be entrusted to them.

40. In our opinion, if panels of names of persons with their former designations and address are available for appointment as Inquiry Officers/Presenting Officers and the Inquiry Officers/Presenting Officers are paid honorarium, transport allowance and secretarial allowance on the scale recommended by us, this would be **a big step to expedite Disciplinary Inquiries, which at present are proceeding sluggishly.**

41. We also recommend that the Department of Personnel and Training, Government of India could consider giving suitable publicity to this exercise so that competent retired officers with experience of conducting Disciplinary

Inquiries come forward for empanellment as Inquiry Officers/Presenting Officers.

42. We also recommend an honorarium of **Rupees Five Thousand to Rupees Ten Thousand** for a Serving Officer who is a **Presenting Officer** for each case of Disciplinary Inquiry. **The nature of work of a Presenting Officer is also arduous.** In complicated cases, where a number of documents have to be presented and a number of witnesses have to be examined, the honorarium to the Presenting Officer may be increased by the Disciplinary Authority to Rupees Ten Thousand, which is the maximum amount of honorarium for a Presenting Officer recommended by us. Where necessary, a suitable retired officer, who worked in a Department/Ministry before retirement, may be appointed as the Presenting Officer in a Disciplinary Inquiry of the concerned Department/Ministry, as he is expected to be familiar with the work of the Department/Ministry. If a retired officer is appointed as the Presenting

Officer, he may be granted an honorarium ranging from 15,000/- to 25,000/- per Disciplinary Inquiry. Appointment of competent retired officers as Presenting Officers is recommended by us as far as possible since **servicing officers are sometimes transferred during pendency of a Disciplinary Inquiry, causing a lot of dislocation and delay in the Inquiry.**

43. A Presenting Officer, who is usually from the Head of Office or the Head of the Department where the delinquent Government Servant is working or was working, has to be thorough with the facts of the case so that he can unravel the truth and try to ensure that the findings of the Inquiry Officer are in favour of the Department/Ministry and against the delinquent Government Servant. We have noted that because of lack of adequate preparation on the part of Presenting Officers, a number of delinquent Government Servants have escaped penalties which they otherwise deserved for their misconduct.

44. In our opinion, there should be **no embargo on the number of cases** in which a serving or retired officer can be an Inquiry Officer or a Presenting Officer and the **matter be best left to the discretion of the Disciplinary Authority**. As the entire exercise in a Disciplinary Inquiry is to achieve expeditious disposal, the Disciplinary Authority should be given full powers to appoint anyone in the panel of names as an Inquiry Officer or a Presenting Officer and to fix the honorarium and other allowances within the limits recommended by us. As mentioned earlier, the number of cases an Inquiry Officer or a Presenting Officer can handle at a time may be left to the discretion of the Disciplinary Authority. We may, however, observe that it would be difficult for a retired officer to be the Inquiry Officer or a Presenting Officer in more than **three Disciplinary Inquiries at a time**.

45. **Article 311(2)** of the Constitution stipulates that a delinquent Government Servant would be given **reasonable opportunity** to be heard in

respect of the Articles of Charge against him before the Competent Authority can impose the penalty of dismissal or removal from service or reduction in rank. **Article 311(2) does not stipulate any detailed Inquiry by appointment of an Inquiry Officer if the Disciplinary Authority, on facts of the case, decides to impose a minor penalty.** We do not see any justification for a detailed Inquiry if the Disciplinary Authority decides on the basis of the nature of the charges and facts of the case that a suitable minor penalty will meet the ends of justice. Under the Service Rules, in a minor penalty Disciplinary Inquiry, the Articles of Charge have to be served on a delinquent Government Servant, who is required to furnish his explanation within the stipulated period. The Disciplinary Authority has to consider the explanation of the delinquent Government Servant before imposing any minor penalty. In our view, this procedure is adequate to meet the requirements of the Rule of **audi alteram partem**(Right of being heard), **which is a vital principle of Natural Justice.**

Moreover, as laid down by the Supreme Court in **A.K.Kraipak versus Union of India (AIR 1970 SC 150)** if a statute expressly or by necessary implication omits the application of the Rules of Natural Justice, the statute will not be invalidated for such omission. In the judgement on **Chairman Board of Mining Examiners versus Ramjee (AIR 1977 SC 1965)** it was held that **Natural Justice is no unruly horse, no lurking land mine nor a judicial cure-all.** In view of the totality of facts and the law on the subject, we recommend that **if the Disciplinary Authority decides to impose a minor penalty, he can do so in a minor penalty Disciplinary Inquiry on the basis of explanation of the delinquent Government Servant to the Articles of Charge and no elaborate Inquiry, envisaged in the Service Rules as at present, should be necessary.**

Our recommendation, if accepted, would require an amendment of the Service Rules only.

46. In our view, a **minor penalty Disciplinary Inquiry** can be concluded within a maximum period of **sixty days** from the date of service of the Articles of Charge. We have elsewhere observed that in a minor penalty Disciplinary Inquiry, there is no constitutional stipulation of conducting a detailed inquiry as envisaged in Article 311(2) of the Constitution. We have also recommended that the **UPSC need not be consulted before imposition of any one of the minor penalties and the UPSC needs to be consulted only at the appellate stage for such penalties. We clarify that in so far as officers of the All-India Services serving in connection with affairs of a State are concerned, prior consultation with the UPSC, as at present, would continue to be necessary before imposition of any of the minor penalties by the State Government. If our recommendation is accepted, as already mentioned,** all minor penalty Inquiries against officers of the Group A and B categories under the Central Government including offices of the All-India Services on Central deputation

can be concluded within a maximum period of **sixty days** from the date of service of the Articles of Charge. **In our opinion, a minor penalty swiftly but judiciously imposed by a Disciplinary Authority is much more effective than a major penalty imposed after years spent on a protracted Inquiry.**

47(a) We have, in this Report, adopted the approach that for the officers of the All-India Services serving in connection with affairs of the Union, a minor penalty can be imposed without consultation with the UPSC whereas prior consultation with the UPSC would continue to be necessary in respect of such officers serving in connection with affairs of a State. This approach may, on the face of it, appear to be discriminatory. Our recommendation in this regard, however, is based on careful appreciation of the situation prevailing in the country. The All-India Services, particularly the Indian Administrative Service and the Indian Police Service, are a very important arm of the Government in any State for the implementation of development programmes, for

maintenance of law and order and for policy formulation. In this context, we have noted that in the Government of India, institutions and procedural arrangements are in place to prevent any harassment or vindictive action and to ensure objectivity in the exercise undergone while awarding penalties. For one, there is the CVC, a high-powered, statutory body since the year 2003 whose advice is obtained in disciplinary matters having vigilance angle. Secondly, a disciplinary matter of an All-India Service officer serving any of the Departments/Ministries of the Government of India, would, in so far as the award of a minor penalty is concerned, be processed and decided by the Department of Personnel and Training, whose Minister-in-charge is the Prime Minister himself.

(b) Therefore, we feel that until such time as Statutory Vigilance Commissions on the lines of the CVC come into existence in all the States, the dispensation proposed by us, viz., prior consultation with the UPSC before

imposition of a minor penalty on officers belonging to the All-India Services and serving in connection with affairs of a State should continue to operate.

(We have, of course, elsewhere stated that the Government of India should use its good offices to ensure the establishment of Vigilance Commissions in the States on the lines of the Central Vigilance Commission.)

48. For **major penalty Inquiries** as envisaged in Article 311(2) of the Constitution, where the Inquiry Officer has to do a detailed inquiry into the Articles of Charge by examination of witnesses both of the Presenting Officer and of the delinquent Government Servant and where relevant documents have to be examined/exhibited for a just decision in the case, the maximum time could be **twelve months** from the date of service of the Articles of Charge before the case records are referred to the UPSC for advice under Article 320(3)(c) of the Constitution. Hopefully, if the UPSC takes a maximum period of five to six months to give its considered advice, the Disciplinary Inquiry for a

major penalty can be concluded within a maximum period of **eighteen months** from the date of service of Articles of Charge on the delinquent Government Servant till the date of the final order by the Disciplinary Authority, after consultation with the UPSC. (Elsewhere in this Report, we have recommended that the **CVC's second stage advice may be dispensed** with because of reasons mentioned by us. We would like to leave it to the best judgement of the UPSC to devise methods for reducing the time taken by it in rendering its advice under Article 320(3) (c) of the Constitution.)

49. At present, matters concerning Disciplinary Inquiries against Government Servants of Group A and Group B categories of the Central Government and officers of the All-India Services working on central deputation are put up to the Minister-in-charge of the Department/Ministry for orders. (It is clarified that for officers of the All-India Services serving in connection with the affairs of a State, the State Government is competent to

initiate any major or minor penalty Disciplinary Inquiry but the State Government is competent to impose only a minor penalty on an All-India Service Officer serving in connection with affairs of a State and for imposing any major penalty on such an officer, the State Government has to submit the case to the Central Government in the appropriate Department/Ministry, which is the Cadre Controlling Authority of the All-India Service Officers.)

Broadly stated, the steps for which at present **order of the Minister-in-charge as the Disciplinary Authority is sought are as follows:**

(i) To initiate a Disciplinary Inquiry and for order whether the contemplated Inquiry would be a **major penalty or a minor penalty Inquiry.**

(ii) To consider explanation of the delinquent Government Servant to the Articles of Charge to decide whether the Inquiry would be closed because of the satisfactory explanation of the Government Servant or whether the Inquiry

would proceed as the explanation of the Government Servant is either not satisfactory or the Government Servant has denied the Articles of Charge.

(iii) To appoint an Inquiry Officer.

(iv) For observations on the Report of Inquiry before a copy of the Report of Inquiry along with Disagreement Note, if any, of the Minister-in-charge as the Disciplinary Authority, is sent to the delinquent Government Servant to enable him to submit his representation on findings in the Report of Inquiry and the Disagreement Note.

(v) For final order of the Minister-in-charge as the Disciplinary Authority whether the delinquent Government Servant is to be exonerated or penalised and the quantum of penalty to be imposed on him after consultation with the CVC and the UPSC.

50. We submit that, in the modern setting, where, at the highest level, the Political Executive is increasingly concerning itself with matters of policy,

implementation of the policy and the relevant programmes - and the recently introduced scheme of **Results Framework Document (RFD)** and allied issues - perhaps a time has come for the **Minister-in-charge as the Disciplinary Authority to be spared the avoidable burden of routine matters such as Disciplinary Inquiries**. Adoption of our suggestion in this regard would also eliminate the delay inevitable in burdening the Minister-in-charge in a Disciplinary Inquiry. Elsewhere in this Report, we have recommended that the Minister-in-charge should be the Disciplinary Authority in case of officers of the level of Additional Secretary and Secretary to Government of India and officers of equivalent rank apart from continuing to act as the Appellate Authority for all other Presidential appointees.

51(a) At present, the **CCS(CCA) Rules** and the **All-India Services Rules** provide that for all **Group A Officers** and some Group B officers under the Central Government and for **officers of the All-India Services, the President is the**

Appointing Authority. The Rules also provide that the President may, by general or special order, and subject to such conditions as he may specify, **delegate to any other Authority** the power to make such appointment. **The aforesaid power of the President, as the Appointing Authority, has been delegated to the Minister-in-charge. The power of the President as the Disciplinary Authority has also been delegated to the Minister-in-charge.**

(b) In so far as **Group B Officers of the Central Government** are concerned, the President is the Appointing and the Disciplinary Authority in respect of certain senior posts in the Central Secretariat Service, the Central Secretariat Stenographic Service and the Central Secretariat Official Language Service. In respect of other Group B Officers under the Central Government, the President is neither the Appointing nor the Disciplinary Authority. For officers of Group B in the Central Government, in respect of whom the President is the Appointing

and the Disciplinary Authority, the powers have been already delegated to the Minister-in-charge.

(c) Under the existing delegation of powers, a Disciplinary Authority under the relevant Service Rules, who is competent to impose any one of the minor penalties on a Government Servant may also initiate a major penalty Disciplinary Inquiry against such Government Servant for imposition of any of the major penalties, including dismissal or removal from service or reduction in rank.

(d) The stipulation in Article 311(1) of the Constitution is that a person, who is holding a civil post or is a member of a Civil Service of the Union or a State or a Member of the All-India Services, cannot be dismissed or removed from service by an Authority subordinate to that by which he was appointed. Therefore, in cases of officers of the Group A and specified Group B categories in the Central Government, where the President is the Appointing Authority, if

the major penalty of dismissal or removal from service is to be imposed, the case has to be submitted to the Minister-in-charge, who has the delegated powers of the President.

52. In view of our suggestion that the Political Executive at the highest level of Minister-in-charge should no longer be burdened with routine matters such as Disciplinary Inquiries, we make the following suggestions for consideration :

(i) The Minister-in-charge shall exercise the delegated powers of the President in regard to Appointing Authority and Disciplinary Authority of an Additional Secretary and a Secretary to the Government of India.

(ii) All matters relating to powers of the Appointing Authority and powers of the Disciplinary Authority in respect of all Group A and Group B Government servants under the Central Government, including the members of the All-India Services, may be delegated to the Secretary of the Department/Ministry by the President. In respect of members of the All-India Service known as the Indian

Administrative Service, the Secretary to Government of India in the Department of Personnel & Training would be the Appointing Authority.

Similarly, in respect of members of the All-India Service known as the Indian

Police Service, the Secretary to the Government of India in the Ministry of

Home Affairs would be the Appointing Authority and for members of the All-

India Service known as the Indian Forest Service, the Secretary to the

Government of India in the Ministry of Environment and Forests would be the

Appointing Authority. All matters relating to Powers of the

Appellate/Disciplinary Authority in respect of Group A and Group B

Government Servants under the Central Government including members of

the All-India Services may be delegated to the Secretary to the Government of

India of the Department/Ministry by the President. Where, however, the

disciplinary action relates to imposition of a major penalty, such

Appellate/Disciplinary Authorities shall exercise the powers with the

concurrence of the Secretary to the Government of India in the Department of Personnel and Training. In the event of disagreement between the Secretary, Department of Personnel and Training and the Secretary of the Administrative Department/Ministry, the former shall co-opt one more Secretary to the Government of India for the Committee of three Secretaries to take a final decision in the matter.

(iii) The powers of an Appellate Authority in relation to penalties imposed by a Secretary to the Government of India in a Department/Ministry should continue to remain with the Minister-in-charge, who will continue to exercise the delegated powers of the President in this regard.

(iv) We recommend no change in respect of the Authority at present competent to exercise the powers of revision of an order of penalty on a Government Servant of Group A and Group B categories under the Central Government and officers of the All-India Services. We also recommend no

change of the Authority competent to review the order of penalty already imposed at any stage subsequent to imposition of a penalty.

(v) **An amendment of the Service Rules to provide for a new Appointing Authority would take effect prospectively.**

(vi) The Service Rules can be, however, amended, not necessarily prospectively, to provide for any change of a Disciplinary Authority of a Government Servant who is employed in civil capacities under the Union or a State.

53. We have noted that a Disciplinary Inquiry involving lack of integrity or corrupt practice on the part of a delinquent Government Servant is sent to the CVC at two stages, viz., **for the first stage advice** as to whether evidence collected during the preliminary inquiry merits either a major or a minor penalty Disciplinary Inquiry. After conclusion of the major or minor penalty Disciplinary Inquiry, the case records are again referred to the CVC for the

second stage advice as to the **suitable penalty** to be imposed on the delinquent Government Servant on the basis of charges held to be partly or fully proved.

54. **We recommend that the CVC need be consulted for the first stage advice only** and need not be **consulted for the second stage advice**. Those who do not want any modification in the present arrangement of a two-stage advice by the CVC argue that because of reference to the CVC at two stages as at present, the CVC has been able to effectively exercise control over corrupt practices by the Central Government Servants including officers of the All India Services working on deputation with the Government of India and also in connection with affairs of a state.

55. We have noted that a copy of the second stage advice of the CVC has to be furnished to the delinquent Government Servant in view of the judgement of the Supreme Court in **State Bank of India versus D.C. Aggarwal (AIR 1993 SC**

1197). In other words, furnishing a copy of the second stage advice of the CVC to the delinquent Government Servant is mandatory to enable a delinquent Government Servant to get “reasonable opportunity” to be heard in respect of the Articles of Charge.

56. Under the Service Rules, a copy of the advice of the UPSC, in a reference made to it under Article 320(3)(c), **has to be furnished to the delinquent Government Servant as a requirement of “reasonable opportunity”.**

57. There have been **instances where the second stage advice of the CVC has been at variance with the advice of the UPSC** in case of the **same Disciplinary Inquiry**. Such variation in the advice of the two Commissions viz., the CVC and the UPSC on the same Disciplinary Inquiry is often taken advantage of by the delinquent Government Servant. The lawyers of the delinquent Government Servant argue before Courts that there is no unanimity of opinion between the UPSC and the CVC whether their client is

guilty or not and hence the client deserves exoneration in the Inquiry. Taking an overall view of the matter, we feel that no great harm would be caused if the **second stage advice of the CVC is dispensed with** while retaining the present arrangement for the **CVC's first stage advice**. As a matter of fact, after the CVC has given the first stage advice that facts of a case justify a major penalty Inquiry, the Inquiry proceeds with the Inquiry Officer examining witnesses and documents and submitting his Report to the Disciplinary Authority. **If the charge of lack of integrity is proved, the UPSC invariably advises either dismissal or removal from service and the Disciplinary Authority also would not be able to impose a more lenient penalty if the charge of lack of integrity or corrupt practice has been proved. Moreover, even though the CVC is the highest Agency to monitor integrity of Central Government servants and officers of the All India Services, it cannot be denied that the primary responsibility to enforce honesty and integrity among**

Government Servants is that of the **Department/Ministry**. Moreover, the Vigilance Officer/Chief Vigilance Officer of the Department/Ministry, who functions under the dual control of the Department/Ministry and the CVC, is physically located in the Department/Ministry. He can be trusted to guide the Disciplinary Authority in the matter of imposition of the appropriate major penalty of dismissal or removal from service if the charge of lack of integrity or corrupt practice is proved against a delinquent Government Servant.

Moreover, after the **Notification dated 11 October 2000** of the **Department of Personnel and Training, Government of India** making the penalty of dismissal or removal from service mandatory in Disciplinary Inquiry involving lack of integrity or corrupt practice, we are of the view that **the second stage advice of the CVC may not be necessary and need not be mandatory**. However, where the Disciplinary Authority chooses not to accept the findings of the Inquiry Officer holding that all or any of the Articles of Charge against the

delinquent Government Servant have been proved, it may be prescribed that the matter be referred to the CVC for the second stage advice with clearly recorded reasons for such disagreement. Our expectation is that the number of such cases would be relatively small. **We do not recommend dispensing with second stage advice of the CVC in cases of the Central Public Sector Undertakings and the Nationalized Banks as in such cases reference to the UPSC under Article 320(3)(c) is not a stipulated requirement. We have noted that** our recommendation in this regard is the same as that of an earlier Committee appointed in the year 2000 by the Department of Personnel & Training, Government of India.

58. We reiterate that the CVC needs to be consulted by the Department/Ministry only for the first stage advice so that, right from the beginning, a Disciplinary Inquiry gets its proper orientation either as a major penalty or as a minor penalty Inquiry. And once the CVC decides at the first

stage advice for a major penalty Inquiry, if any worthwhile evidence adduced during the Inquiry establishes the charge of lack of integrity or corrupt practice, the delinquent Government Servant has to be dismissed or removed from service by the Disciplinary Authority in view of the Notification dated 11 October 2000 of the Department of Personnel and Training, Government of India referred to in this Report.

59. Elsewhere in this Report, we have recommended that prior consultation with the UPSC under Article 320(3)(c) may be dispensed with in case of imposition of any minor penalty on a Central Government Servant of Group A and B and for officers of the All-India Services(except for officers of the All-India Services serving in connection with affairs of a State where prior consultation with the UPSC would continue to be necessary for imposition of a minor penalty). We, however, reiterate that the UPSC must be consulted at the **appellate stage** in case of imposition of minor penalties where prior

consultation with the UPSC has been dispensed with as per our recommendation. In **Tulsiram Patel versus Union of India (AIR 1985 SC 1416)**, the Supreme Court have held that even in case of imposition of the major penalty of dismissal or removal from service or reduction in rank, the Competent Authority can impose the penalty without any inquiry on the ground that it is not reasonably practicable to hold an Inquiry and the aggrieved Government Servant can get adequate protection at the **appellate stage** under the Service Rules, **where the UPSC has to be consulted. In other words, even the Supreme Court have not insisted upon prior consultation with the UPSC under Article 320(3) (C)** in specific circumstances of major penalties.

60. **The UPSC has rightly pointed out** in its note to the Department of Personnel and Training, Government of India that Article 320(3)(c) **is not only about the penalty to be imposed** but is also about the **confidence a honest**

Government Servant has that **to impose on him any penalty, however minor,**

a Constitutional Authority such as the UPSC has to be first consulted. We see

the force of argument of the UPSC but we may observe that one has to look at

the present scenario where cases of advice in disciplinary matters under Article

320(3)(c) have increased manifold. At present, every year, the UPSC gets about

800 to 900 Disciplinary Inquiry cases for advice and in view of **the very**

thorough scrutiny the UPSC makes in each Disciplinary Case, it has become

difficult to get advice from the UPSC even in cases of minor penalty Disciplinary

Inquiries before at least a period of five to six months has elapsed from the

date of reference. Keeping in view the objective of ensuring that minor

penalties are awarded expeditiously to delinquent Government Servants and

also leaving the UPSC to have more time to concentrate on major penalty

disciplinary matters and render their advice in a shorter time-frame than at

present, we reiterate our recommendation that in disciplinary matters relating

to minor penalties prior consultation with the UPSC may not be required under Article 320(3)(c) of the Constitution except for officers of the All-India Services serving in connection with affairs of a state.

61. The UPSC has informed the Department of Personnel and Training, Government of India that, at present, in as many as **40% cases of Disciplinary Inquiries** referred to the UPSC for advice under Article 320(3)(c) of the Constitution, the case records are deficient in terms of the requisite information wanted by the UPSC as per the “**check list**” circulated by it to all Departments/ Ministries **and also put on its website**. If the case records do not have the requisite information as per the “check list”, at present the UPSC returns the records to the Department/Ministry for rectification of the deficiencies. This causes **avoidable delay** in the Department/Ministry getting timely advice from the UPSC.

62. If the Departments/Ministries are **serious about expeditious disposal of Disciplinary Inquiries**, they have to take care of such routine matters. We recommend that before the case records in a Disciplinary Inquiry are sent to the UPSC for advice under Article 320(3)(c) of the Constitution, **the Joint Secretary/Director/Deputy Secretary in charge of Establishment matters in the concerned Department/Ministry must give a certificate in writing** that the case records are being sent to the UPSC for advice after complying with all items in the standard “check list” by the Department/Ministry. If the certificate of the Joint Secretary/Director/Deputy Secretary in the Department/Ministry is found to be defective as all items in the standard “check list” have not been complied with before furnishing the certificate and the certificate has been issued in a slipshod manner, **a minor penalty Disciplinary Inquiry shall be initiated against the delinquent Joint Secretary/Director/Deputy Secretary of the Department/Ministry.** Such a stipulation is most likely to ensure the

correctness of the certificate of the Department/Ministry and will eliminate unnecessary delay in getting advice of the UPSC.

63. The deficiencies pointed out above arises among other things, from the lack of strong and effective vigilance divisions in the Departments/Ministries.

Currently, one of the Joint Secretaries in the Department/Ministry is designated as the Chief Vigilance Officer who has to undertake vigilance functions in addition to his official duties. This results in lack of proper follow-up of vigilance-related matters including preliminary inquiries, preparation of proposals for seeking the first stage advice of the CVC, and other related issues. In our view, Government may consider appointing full-time CVOs in Departments/Ministries. It may not be necessary to have full-time CVOs in all Departments/Ministries and there could be CVOs in charge of more than one Department/Ministry with Vigilance Divisions headed by full-time Deputy Secretaries in the individual Departments/Ministries. We are of the view that

appointment of full-time CVOs would ensure proper attention to vigilance matters and improve the quality of proposals forwarded to the CVC/UPSC. This would in turn enable the CVC/the UPSC to cut down significantly the time taken to render their advice. Apart from improving the quality of proposals to initiate disciplinary action against the delinquent Government Servants, the full-time CVOs will also enable better handling of complaints against the Government Servants. It is significant to note that a very high percentage of disciplinary cases originate from complaints of misuse/abuse of power and corruption. Better handling and quick investigation of complaints will lead to better detection of such improprieties and deterrent action against the erring Government Servants.

64. We have received a suggestion that to reduce the pendency of the large number of Disciplinary Inquiries, it would be expedient in the public interest to introduce the concept of **“plea bargaining”** by delinquent Government

Servants. Under the proposed scheme of “**plea bargaining**”, such Government Servants on whom Articles of Charge have been served, may be informed that if he opts for presenting a plea in this regard and admits the Articles of Charge, he would be given a comparatively lenient penalty. We clarify that if plea bargain is accepted the Disciplinary Authority need not appoint an Inquiry Officer to inquire into the charges.

65. “**Plea bargaining**” started in **Criminal Courts in USA**. Following the recommendation of the **Malimath Committee**, the Government of India accepted “**plea bargaining**” in criminal trials and in the year 2005 has amended the **Code of Criminal Procedure 1973** to introduce “**plea bargaining**” for offences where the **maximum punishment is imprisonment upto seven years only**. We could not have access to reliable data as to how “**plea bargaining**” has worked in practice in criminal trials in India. It does not, however, appear as if “**plea bargaining**” has resulted in drastic reduction of the huge backlog of

pending criminal cases in trial courts in the country. We are, however, conscious that criminal cases pending in Courts of India are far too many and the backlog of pendency of such cases in Courts is rather colossal.

Pendency/backlog in Disciplinary Inquiries may not be as heavy or colossal.

Taking an overall view of the matter, we recommend introduction of **“plea**

bargaining” provided **in no case** will it be made available to a delinquent

Government Servant charged with **lack of integrity or corrupt practice**. A

delinquent Government Servant facing charge of misconduct for lack of

integrity and corrupt practice, if held as proved, should be either removed or

dismissed from service as per the existing instructions and weeded out of the

system, **where he has been as lethal as a cancerous growth**. Removal of

corrupt Government Servants has also been recommended in **State of**

Rajasthan versus B.R.Meena(AIR 1997 SC 13), where the Supreme Court held

that the administrative machinery should be kept unsullied by removing

corrupt officials through appropriate proceedings under the law. We have also mentioned elsewhere in this Report that as per the Notification of the Department of Personnel & Training, Government of India of October, 2000, in proven cases of lack of integrity or corrupt practice by a Government Servant, the penalty must be either dismissal or removal from service.

66. **“Plea bargaining” can be introduced in Disciplinary Inquiries except for charges of lack of integrity or corrupt practice through appropriate Executive Instructions** and amendment of the Service Rules is not required to introduce the scheme. Further, to eliminate any possibility of error of judgement in matters of ‘plea bargaining’, the Disciplinary Authority may be suitably advised by a **Committee of senior officers of appropriate rank** before a ‘plea-bargain’ of a delinquent Government Servant is accepted by the Disciplinary Authority.

67. Under this arrangement of “plea bargaining”, a delinquent Government Servant on whom Articles of Charge for major penalty Inquiry have been

served could be given the opportunity to admit the charges on the understanding that if he admits the Articles of Charge, a penalty other than any major penalty would be imposed on him. Certain other features of this system of plea bargaining need to be spelt out as follows:

(a) The delinquent Government Servant would have to admit the charges **entirely, categorically and unconditionally**, clarifying also **that he cannot and will not go back on this admission subsequently.**

(b) All cases where a request for a plea bargain is received should be examined by a panel of three officers constituted by the Head of Department or the Secretary to the Government of India concerned. This mechanism seems desirable in order that **a single officer is not hesitant** about dealing with a plea bargain, apart from ruling out instances of alleged or actual collusion.

68. It was suggested to us that the penalty of **compulsory retirement from service** on the basis of a major penalty Disciplinary Inquiry may be dispensed

with as a penalty and may be deleted from the list of major penalties in the Service Rules. The argument in favour of this proposal is that a delinquent Government Servant who is compulsorily retired as a measure of penalty, does not feel the sting of the penalty as he is allowed to enjoy his monthly pension and the admissible gratuity.

69. We agree that the major penalty of compulsory retirement from service, as it exists at present in the Service Rules, **may not be a stiff penalty in view of the admissibility of full post-retirement benefits.** If the penalty were to be suitably modified to include not only compulsory retirement but also, in appropriate cases, forfeiture of gratuity and a cut in monthly pension subject to a minimum of 10% and a maximum of 50%, the penalty will acquire a lot of teeth. **We, therefore, recommend that compulsory retirement as a major penalty be retained in the existing list of major penalties with a cut in pension and forfeiture of gratuity as recommended by us.**

70. At present, the Service Rules provide for the following minor and major penalties :

Minor Penalties

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused by him to the government by negligence or breach of orders.
- (iii)(a) Reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

(N.B.: The minor penalty at (iii)(a) was introduced by the Notification of the Department of Personnel and Training dated 23 August 2004).

(iv) Withholding of increments of pay.

(NB: We suggest necessary modification in this minor penalty following the recommendation of the Sixth Central Pay Commission for introduction of a pay band with grade pay.)

Major Penalties

(v) Save as provided for in Clause (iii)(a) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether, on the expiry of such period, the reduction will or will not have the effect of postponing future increments of his pay;

(NB: This major penalty is also required to be modified suitably pursuant to introduction of pay band with grade pay for a post).

(vi) Reduction to lower time-scale of pay or grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time-scale of pay, grade, post or service from which he has been reduced, with

or without further directions regarding conditions of restoration to the grade, post or service from which the government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

(NB: The language of this major penalty will also undergo modification pursuant to introduction of pay band and grade pay for a post after acceptance of recommendations of the Sixth Central Pay Commission.

(vii) Compulsory retirement;

(NB: We have proposed retention of this major penalty with a minimum of 10% and maximum of 50% cut in pension and admissible gratuity in appropriate cases.)

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

(ix) Dismissal from service, which shall ordinarily be a disqualification for future employment under the Government.

Provided that in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance

from any person of any gratification, other than legal remuneration as a motive or reward for doing or forbearing to do any official act, is established, **the penalty shall be either removal or dismissal from service.**

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

71. The Service Rules also provide that in the following category of cases, termination of service will not be considered as a penalty :

(i) termination of service of a probationer in accordance with the Rules governing probationers;

(ii) termination of service of a temporary government servant in accordance with sub-rule(1) of **Rule 5 of the Central Civil Services(Temporary Service)**

Rules 1965;

(iii) termination of service of a Government Servant, employed under an agreement, in accordance with the terms of contract of such agreement.

72. We have observations to make on some of the **minor penalties such as**

(iii)(a) above introduced by a Notification on 23 August 2004, which is as

follows :

“reduction to a lower post or time-scale or to a lower stage in time-scale of pay by one stage for a period not exceeding three years without cumulative effect and not affecting his pension.”

73. The Constitution provides in Article 311 that reduction in rank is one of

the three penalties – the two other being removal or dismissal from service -

which can be imposed only after an Inquiry as envisaged under Article 311(2).

In the relevant **Service Rules, dismissal or removal from service and reduction in rank are called major penalties.**

74. In view of the clear constitutional stipulation as aforesaid, **the minor**

penalty at (iii)(a) introduced in August 2004, may not be able to stand judicial

scrutiny as a minor penalty. It is relevant to mention that reduction in rank can

occur even if a government servant is reduced by one lower stage in the time-scale of pay for a period not exceeding three years as in the minor penalty at (iii)(a) above. In the judgement of the Supreme Court in **Debesh Chandra Das versus Union of India(AIR 1970 SC 77)**, Das, an ICS officer, who was a Secretary to the Government of India was repatriated to his state cadre of Assam. As Secretary to the Government, Das was getting a salary of Rs.4000 p.m. On reversion to the State of Assam, he got a Chief Secretary's pay of Rs.3500 p.m. The Supreme Court held that repatriation of Das to his cadre where he got a pay of Rs.3500 p.m., **meant that Das was reduced in rank** just because he lost an amount of Rs.500 p.m. as pay even though he was getting the maximum pay of Rs.3500 p.m. admissible to the Chief Secretary of the State of Assam, the highest ranking civil servant in the State.

75. In view of the **ticklish legal implication of a minor penalty as in (iii)(a) above**, Government may like to consider and decide whether the aforesaid

penalty can be retained as a minor penalty. In our opinion, (iii)(a) above cannot be retained as a minor penalty as **it has the attributes of the major penalty of reduction in rank.**

76. **“Withholding of his promotion”** is one of the **minor penalties** in the Service Rules. In our experience, it is very seldom imposed on delinquent Government Servants. It is to be noted that a Government Servant, however senior he may be in terms of length of service, **has no vested right to hold a promotion post. He has only a right to be considered for promotion in a fair manner.** It is our view that periodic opportunities for promotion to higher posts is a **powerful incentive** for better performance by any Government Servant. If this valuable right is denied to an eligible Government Servant, such denial will be hit by **Article 16 of the Constitution**, which guarantees equality of opportunity in employment under the State.

77. At present, the penalty of withholding promotion – which is a minor penalty – does not specify whether the penalty can be imposed even when the Government Servant is not within the zone of consideration for promotion to the higher post. The Government of India has not yet issued guidelines how this minor penalty, if imposed, will operate in practice. Taking an overall view of the matter, we recommend that the minor penalty of withholding of promotion **can be imposed at any stage of the delinquent Government Servant's career.** It will, however, take effect from the date the Government Servant next below to the delinquent Government Servant in seniority is promoted on regular basis to the higher post. The Departmental Promotion Committee/Selection Committee, which considers the service records of eligible officers to decide regarding suitability of promotion, will consider the records of the delinquent Government Servant, whose promotion has been withheld as a minor penalty and keep his assessment regarding suitability for

promotion in a **“Sealed Cover”**. This **“Sealed Cover”** will be opened on expiry of the period of penalty. If the officer’s assessment in the **“Sealed Cover”** is favourable, he will be promoted to the higher post without loss of inter-se seniority; but he will not get the pay of the promotion post during the period his name was in the **“Sealed Cover”**. In other words, the delinquent Government Servant will get the higher pay of the promotion post prospectively from the date he is promoted after the **“Sealed Cover”** is opened and his assessment by the duly constituted Departmental Promotion Committee or the Selection Committee is found to be favourable.

78. As the penalty of withholding of his promotion for a long period is likely to demotivate an officer in the performance of his duties with dedication and sincerity, we recommend that, in suitable cases, the minor penalty of withholding of promotion can be imposed for **a maximum period of four years.**

79. A Government Servant who has been vested with the penalty of withholding of his promotion will not also be eligible for **ad hoc** or **officiating promotion**.

80. At present, under the Service Rules read with the relevant Pension Rules, **a minor penalty, if imposed while in service, cannot affect the monthly pension or gratuity of the delinquent Government Servant**. Under the Pension Rules, a cut in pension, subject to payment of minimum pension or forfeiture of gratuity in full or in part, is permissible if a Government Servant is held guilty of **“grave misconduct”** and the President authorizes a cut in pension or gratuity. By definition, a minor penalty Disciplinary Inquiry cannot be initiated for a grave misconduct as grave misconduct entails a major penalty Disciplinary Inquiry.

81. We recommend that a minor penalty Disciplinary Inquiry, if not concluded before the Government Servant retires on superannuation, would

be deemed to continue as a minor penalty proceeding even after retirement of the delinquent Government Servant from service on superannuation with the stipulation that in such deemed proceedings, not more than 20 per cent cut can be made in monthly pension and not more than 20 per cent forfeiture can be made in the admissible gratuity. Even though the minor penalty recommended by us would affect monthly pension/admissible gratuity, prior approval of the President should not be necessary for imposition of such a minor penalty. We have recommended such a measure because, when a delinquent Government Servant is close to the age of superannuation, the Disciplinary Authority realises that no minor penalty except the minor penalty of "Censure" can be imposed as any other minor penalty would have an adverse effect on the pension of the delinquent Government Servant.

82. In other words, the underlying purpose of our recommendation is that the Pension Rules should not stand in the way if the delinquent Government

Servant, while in service, committed an act of misconduct which deserved a **stiff minor penalty but which could not be imposed on him** as it would **adversely affect his pension** after retirement from service.

83. We hope that the amendment would help in early disposal of cases where a Disciplinary Authority is feeling hamstrung by the inadequacy of awarding censure as a minor penalty and the non-availability of any other minor penalty that the delinquent Government Servant deserves based on the facts of the case. Besides, our proposal should also act as a deterrent against any officer becoming reckless close to the time of his retirement from service.

84. The Department of Personnel & Training, Government of India has not issued any instructions as to the **period of currency** of the **minor penalty of censure**, the most lenient of minor penalties provided under the Service Rules.

At present, it is left to the Departmental Promotion Committee/Selection Committee to decide whether this minor penalty of censure would be taken

into account while recommending promotion of an eligible officer in the feeder grade. In most of the cases, the Departmental Promotion Committee/the Selection Committee ignores the penalty of censure if the overall assessment of record of service of an eligible officer can justify recommendation for promotion. We feel that while such flexibility has its own advantages, there is need for uniformity and consistency in dealing with the effect of censure on promotion of the officers to the higher grade. Government may consider stipulating in the Service Rules the period of currency of the penalty of censure. We recommend that **the penalty of censure may have a currency of one year only from the date of imposition.**

85(a) We have recommended that major penalties of dismissal, removal from service, compulsory retirement and reduction in rank would act as a disqualification for delinquent Government Servants for further employment under either the Government of India or Government of a State. If our

recommendation is accepted, **no useful purpose would be served by retaining removal from service as one of the major penalties** which, under the existing Service Rules, is not a disqualification for further employment under the Government. As a matter of fact, removal from service of a Government Servant is usually for grave misconduct including corrupt practice and lack of integrity. We are of the view that a delinquent Government Servant, who has been removed from service for such grave misconduct, should not be employed under either the Government of India or Government of a State **as a matter of public policy**. We feel that if delinquent Government Servants are invariably dismissed from service for grave misconduct including corrupt practice and lack of integrity, **it will send the right message** to the rank and file of Government Servants holding civil posts. In view of the aforesaid, **we recommend that removal from service may be deleted from the list of major penalties under the Service Rules.**

(b) Article 311(1) stipulates that removal from service is one of the penalties for which a delinquent Government Servant would face an Inquiry as envisaged in Article 311(2) of the Constitution. **The Courts have held that compulsory retirement from service as a penalty is synonymous with the penalty of removal from service.** Therefore, **the stipulation in Article 311(1) relating to removal from service would not be redundant** as it would come into operation if the penalty of compulsory retirement is imposed on a delinquent Government Servant. But retaining removal from service as a major penalty under the Service Rules would perhaps serve no useful purpose as all Service Rules both under the Government of India or under almost all State Governments provide for compulsory retirement from service as a major penalty.

86. We have noted that in spite of stiff penalties under different Service Rules, including removal or dismissal from service for grave misconduct

involving lack of integrity or corrupt practice, the common perception is that **corruption among Government Servants has been steadily growing**. In the **Corruption Perception Index** published by the **Transparency International**, India is adversely placed, which, sadly, is not consistent with its aspirations to become a super-economic power. The situation is rather grim as, in recent years, a number of officers of the All-India Services, i.e. the Indian Administrative Service, the Indian Police Service and the Indian Forest Service have been either facing trial or have been convicted for corrupt practice. Though different Agencies such as the Central Bureau of Investigation(CBI), the Vigilance Directorates and the Anti-Corruption Bureaux(ACBs) have been trying their best to check corruption, the effect has not been very remarkable. It is common experience that criminal trials of corrupt Government Servants take such a long time that when they are convicted and sentenced, the impact of such conviction and sentence is either lost or dissipated. Moreover, often the

corrupt Government Servant goes on appeal to higher courts, which take their own time to dispose of the matter. **The net result is growing cynicism in the country that for a corrupt government servant, corruption is a low-risk venture.**

87. At present, there is **no legal bar** to start a major penalty Disciplinary Inquiry against a delinquent Government Servant facing prosecution under the **Prevention of Corruption Act 1988**. We have noted that very often the delinquent Government Servant takes the plea before the court that because of the simultaneous Disciplinary Inquiry against him, **he is prejudiced in his defence** in the criminal trial as the charges in the Disciplinary Inquiry are based on the same set of facts.

88. In **Captain M. Paul Antony versus Bharat Gold Mines (AIR 1999 SC 1416)** the **Supreme Court** have laid down the following principles in regard to a Disciplinary Inquiry when a criminal trial is pending on the same charges :

- (i) **Disciplinary Inquiries and criminal cases can proceed simultaneously;**

- (ii) If a Disciplinary Inquiry and a criminal trial are based on identical set of facts and the charge in criminal trial is grave involving complicated questions of law, it would be desirable to stay the Disciplinary Inquiry pending the criminal trial;

- (iii) Whether a criminal charge is grave and whether complicated questions of facts and law are involved in the criminal trial, which is sub-judice, would depend upon the nature of the offence, evidence collected during the investigation and the charge sheet filed in the Criminal Court;

- (iv) Disciplinary Inquiry cannot also be unduly delayed if the criminal trial gets prolonged due to various factors;

- (v) If the criminal trial gets unduly delayed, the Disciplinary Inquiry – even though already stayed pending conclusion of the criminal trial – can be resumed and proceeded with;

(vi) It must, however, be ensured that the right of a Government Servant **to defend himself in the pending trial is not adversely affected because he has to disclose his defence in the Disciplinary Inquiry based on the same facts and evidence as in the pending trial.**

89. The principles expounded in **Captain Paul Antony's case(supra)** has been reiterated by the Supreme Court in **State Bank of India versus R.B.Sharma(AIR 2004 SC 4144).**

90. **There is a consensus of judicial opinion that a Disciplinary Inquiry and a criminal trial can go on simultaneously except when both are based on the same set of facts and evidence.** Admittedly, a criminal case and a Disciplinary Inquiry belong to distinct and different jurisdictional areas. The standard of proof in a criminal trial is **"proof beyond reasonable doubt"** whereas the standard of proof in a Disciplinary Inquiry is **"preponderance of probabilities"**.

But it cannot be denied that if an accused Government Servant takes the plea

that because of a pending Disciplinary Inquiry on the same set of facts, he is likely to be prejudiced in his defence in the trial, the courts **would invariably stay the Disciplinary Inquiry till the criminal trial is over.**

91. **The dilemma facing a Disciplinary Authority is that if a criminal case has been started – and the Disciplinary Authority has no control over the investigation and submission of charge sheet in a criminal case – he cannot serve Articles of Charge upon the delinquent Government Servant on the same set of facts as in the charge sheet in the criminal case against him.**

92. The question is : Would it be reasonable and legally tenable to provide in the relevant Service Rules the imposition of major penalty of dismissal from service **on a delinquent Government Servant who has been charge sheeted under Section 173 of the Code of Criminal Procedure 1973 for an offence under the Prevention of Corruption Act 1988 and the Court has framed charges?** In other words, can we go for a **post-decisional hearing** in such a case

after dismissal from service of the delinquent Government Servant by amendment of Article 311 of the Constitution and the relevant Service Rules?

And one may ask **what better opportunities an accused Government Servant would get for a post-decisional hearing if, after his dismissal from service under the Service Rules, the trial court, which is totally independent and is under the control not of the Government but of the High Court having jurisdiction, tries his case and comes to a finding whether he is to be convicted as guilty or acquitted as innocent of any offence under the Prevention of Corruption Act 1988.**

93. In **Maneka Gandhi versus Union of India(AIR 1978 SC 497)** the Supreme Court held that if **urgent action has to be taken** against a person in the **public interest**, the principle of **“audi alteram partem” (the right of being heard)**, which is a **vital principle of Natural Justice**, can be held as satisfied if a **post-decisional hearing** is given to the person **against whom punitive action has**

been taken in the public interest because of urgency without even hearing him in his defence. In the aforesaid judgement, the Court also held as follows:-

“Natural Justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances”. The Court have quoted foreign judgements to justify post-decisional hearing in suitable cases provided the **post-decisional hearing is on par with a pre-decisional hearing and is not a sham or an empty formality.**

94. In Maneka Gandhi’s case(supra) the Supreme Court also warned that the **“audi alteram partem”** rule is **meant to inject justice into the law** and cannot be applied to defeat justice or to make law **lifeless, absurd, stultifying and self-defeating or plainly contrary to common sense of the situation.**

95. **Against such a backdrop of pronouncements by the Supreme Court and the urgency to get rid of allegedly corrupt Government Servants, we propose**

an amendment to Article 311 of the Constitution to embody this principle of post-decisional hearing after a delinquent Government Servant's dismissal from service under the relevant Service Rules. In other words, the proposed amendment to Article 311 will provide that if a charge sheet under Section 173 of the Code of Criminal Procedure is submitted against a Government Servant for an offence under the Prevention of Corruption Act 1988 and the Court frames charge against the Government Servant as an accused and the President or the Governor, as the case may be, is satisfied that urgent action in the public interest is necessary, the President or the Governor, as the case may be, shall pass an order dismissing the delinquent Government Servant from service under the relevant Service Rules pending the criminal trial.

96. We are of the view that the amendment proposed to Article 311 would be held as **intra vires** because of the following:

(a) The objective of the proposed amendment is **to cover senior Government Servants including members of the All-India Services** who can be removed from service only by orders of the President or the Governor, as the case may be, because the President or the Governor is their Appointing Authority. **It will not cover Government Servants for whom the President or the Governor is neither the Appointing Authority nor the Authority empowered to remove or dismiss them.**

(b) While the removal or dismissal from service under the Service Rules is proposed pending the criminal trial under the Prevention of Corruption Act 1988 after framing of charges, we recommend a further safeguard to the Government Servants from motivated and hasty or ill-considered charges before the Courts in the form of an **independent Advisory Board** which would scrutinize the charge-sheet, the evidence gathered by the investigating agency and representation of the Government Servant against the charge-sheet and

advise the President/Governor **through the CVC** as to whether there is a prima facie case against the Government Servant. **The sanction of prosecution would be based on such advice by the independent Advisory Board. If the Advisory Board considers that the evidence presented by the investigating agency does not merit a charge-sheet in a criminal trial, it may advise the CVC that a major penalty Disciplinary Inquiry** against the Government Servant is warranted in the case. The Advisory Board, in such a contingency, may also advise whether the evidence against the Government Servant, even if it does not merit a criminal case, is adequate to warrant dismissal/removal by the Disciplinary Authority followed by a post-decisional hearing. The CVC, after due consideration of such advice of the Advisory Board, would render its advice to the Disciplinary Authority on the dismissal and prosecution of the Government Servant or for initiation of major penalty Inquiry against him for a post-decisional hearing after he is dismissed from service pending the hearing.

(c) The proposed amendment will empower only the President or the Governor, as the case may be, to pass the order of dismissal from service of the Government Servant pending his trial/post-decisional hearing and would not confer the power of dismissal from service on any functionary other than the President or the Governor.

(d) If the delinquent Government Servant, who is dismissed from service by the President or the Governor, is acquitted in the criminal trial or exonerated in the post-decisional Inquiry, he will be reinstated in service with full service benefits including seniority in service and arrears of pay and allowances.

(e) In appropriate cases, on the advice of the Advisory Board, the CVC may also advise the Department/Ministry neither to file a chargesheet nor to initiate a major penalty Disciplinary Inquiry.

97(a) The composition of the Advisory Boards to advise the CVC and the Government of a State would be different. They may comprise **retired Judges of**

the Supreme Court and retired Judges of the High Courts, retired District Judges (who had tried CBI cases against Government Servants) and retired Secretaries/retired Additional Secretaries/retired Joint Secretaries to the Government of India or officers of equivalent ranks. The Advisory Boards would be constituted with the stipulation that only a former Judge of the Supreme Court would be the **Chairman of the Advisory Board** in respect of the CVC and a **former Judge of a High Court** would be the Chairman of the Advisory Board in case of officers of a State Government of Class I or Class II (other than officers of the All-India Services Service serving in connection with affairs of a State).

(b) The modalities of appointment of Chairman/Members of the Advisory Board for the CVC will be decided by the Department of Personnel and Training, Government of India in consultation with the Chief Justice of India. The General Administration Department/the Appointment Department/the Personnel Department in the State Governments may similarly decide the

modalities of the appointments of Chairman and Members of the Advisory

Boards for State Government Servants of Class I and Class II in consultation

with the Chief Justice of the High Court having jurisdiction. The Advisory

Boards will have a tenure of a minimum period of two years from the date of

their constitution. In appropriate cases, the Department of Personnel and

Training, Government of India or the concerned Department of the State

Government can change the incumbents of the Advisory Boards for reasons to

be recorded in writing after concurrence of the Chief Justice of India or the

Chief Justice of the High Court, as the case may be. The Chairman and Members

of the Advisory Boards will have the same salary and perquisites admissible to

them when they were holding office as Judges of the Supreme Court/High

Courts. The same dispensation will be applicable to retired District Judges who

had tried CBI cases/retired Secretaries, Additional Secretaries and Joint

Secretaries to the Government of India or officers of equivalent rank, who would be members of Advisory Boards.

(c) It is expected that the Advisory Boards would act in a time-bound manner and advise the CVC/State Governments in specific cases within a maximum period of **three weeks of receipt of the representation of the delinquent Government Servant to the copy of the chargesheet sent to him by the Advisory Board.** In our view, constitution of Advisory Boards with high-ranking functionaries is likely to eliminate any possibility of wrong prosecution by the CBI/the Vigilance Directorate/the ACB and Government Servants will have a greater sense of protection. In our view, corruption among Government Servants can be adequately checked if **the genuinely corrupt are penalized swiftly** and **the genuinely honest do not face harassment** only because they took bold decisions in the public interest and did not follow the Rule Book scrupulously.

98. Our proposal for amendment of Article 311 of the Constitution to **dispense with a Disciplinary Inquiry as stipulated in Article 311(2) is not a new concept in the Constitution. Sub-clauses (a), (b) & (c) of the second proviso to Article 311(2) provide for it.** A Disciplinary Inquiry as stipulated in Article 311(2) can be dispensed with on grounds of **security of the State** as provided in sub-clause(c) above, if the President or the Governor is satisfied that such Inquiry can be dispensed with. Though it is not provided for in the Constitution, in the case of removal or dismissal from service of a Government Servant under the Central Government including an All-India Service Officer without Inquiry on grounds of security of the State, a **high-level Committee** under the **Chairmanship of the Union Home Secretary** makes the recommendation in case of the delinquent Government Servant. **But for dispensing with Disciplinary Inquiry following a conviction in a criminal court as in sub-clause (a) above, and for dispensing with an Inquiry for the reason**

that it is not reasonably practicable to hold the Inquiry as contained in sub-clause (b) above, the Authority competent to dismiss or remove a Government Servant or reduce him in rank (who may not be the President or the Governor) is fully empowered to dismiss/remove/reduce in rank a delinquent Government Servant without Inquiry. In other words, for dispensing with an Inquiry under sub-clauses (a) and (b) of the second proviso to Article 311(2), even the satisfaction of the President or the Governor is not necessary in cases where the President or the Governor is not the Appointing Authority.

99. Moreover, at present, if a question arises whether it is reasonably practicable to hold a Disciplinary Inquiry, the decision of the Authority empowered to dismiss, remove or reduce in rank the Government Servant shall be final as stipulated in Clause (3) of Article 311 of the Constitution. In such a case also, the satisfaction of the President or Governor, as the case

may be, is not a pre-requisite as neither of the two high constitutional functionaries is the **Appointing Authority of the delinquent Government Servant.**

100. Our Constitution is a pragmatic document. The framers of the Constitution had provided for **Preventive Detention of a person on specified grounds** even during peace time whereas **all major democratic countries** in the world have taken recourse **to preventive detention as a war measure only.**

101. In our view, if today **the framers of the Constitution were to meet again in a Constituent Assembly, they would surely make provision for removal or dismissal from service under the relevant Service Rules of a corrupt Government Servant facing criminal trial for offence under the Prevention of Corruption Act 1988 or facing a major penalty Disciplinary Inquiry for allegations constituting the same offence** as in recent years, corruption

among Government Servants has **become endemic** and has **been eroding the confidence of the common man in governance.**

102. It was pointed out to us that the proposed amendment of Article 311 to remove or dismiss a Government Servant pending criminal trial or pending post-decisional hearing is likely to cause serious prejudice to the delinquent Government Servant **in his defence** as the Government Servant removed or dismissed from service would not be entitled to any **subsistence allowance** which would have been otherwise admissible to him while under suspension pending criminal trial/major penalty Inquiry. **We recommend that the Government of India/a State Government may consider payment of compassionate monthly allowance at par with monthly subsistence allowance during suspension from service. We have noted that under the existing Pension rules, there is a provision for payment of compassionate monthly allowance even to a dismissed Government Servant. Such monthly**

compassionate allowance is not less than the monthly subsistence allowance payable to a Government Servant during suspension from service.

103. **We are of the view that the amendment to Article 311 of the Constitution proposed by us will be welcomed by the media, the Political Executive, the honest Government Servants and also by the vast mass of common people of the country who at present see no light at the end of the tunnel of increasing corrupt practice.**

104. At present, Government Servants can be prosecuted without sanction under Section 19 of the Prevention of Corruption Act 1988 once they have retired from service. However, under Section 197 of the Code of Criminal Procedure 1973, sanction is required for retired Government Servants who were appointees of the President or the Governor. We feel that the Prevention of Corruption Act 1988 should be amended to mandate prior sanction for prosecution of Government Servants even after their retirement bringing it on

par with the sanction of prosecution of Government Servants under Section 197 of the Code of Criminal Procedure 1973. This would ensure that Government Servants while in service act boldly and without fear of harassment after retirement from service for bonafide performance of official duties while in service.

105. As far as the sanction under Section 197 of Code of Criminal Procedure 1973 is concerned, there is a distinction between a Government Servant serving directly under the Government in a Department/Ministry and a Government Servant on deputation to Government controlled organizations. At present the protection of sanction is not available to the Government Servant on deputation to a Co-operative Society or other similar Organisations.

We consider this as unfair since the Government Servant posted to such organizations on deputation is very much discharging official duties at the behest of the Competent Authority of the Organisation to which he has been

on deputation. We recommend that Section 197 of the Code of Criminal Procedure 1973 may also be amended to extend the requirement of sanction for prosecution to the Government Servants on deputation to Government-owned or Government controlled organizations also. This recommendation is not to be viewed as insulating such Government Servants from penal action for corruption but rather as a protection against misinformed criminal action for official acts done by them in good faith.

106. The Advisory Boards recommended by us are distinct from the institutional arrangement set up by the CVC in consultation with the Reserve Bank of India to advise the CBI on guidelines to decide the malafides or otherwise in the conduct of Bank officials in specific instances referred to it.

This body of Banking experts advises the CBI **prior to** the registration of preliminary enquiries and protects Bank officials from harassment when normally prudent commercial decisions go wrong due to circumstances beyond

their control. The extension of such an arrangement, which is purely informal and advisory to the CBI in case of officers of the Public Sector Undertakings and Departments such as Income-Tax, Customs and Excise and the Railways, is a matter for consideration of the CVC/Government.

107. The Constitution of Advisory Boards presided over by former judges of the Supreme Court/High Court, as recommended by us, would also streamline the process for obtaining sanction of prosecution by the investigating agencies under Section 19 of the Prevention of Corruption Act 1988. At present, there is considerable delay in according sanction or refusing to accord sanction by the competent authorities. The processing of requests for sanction of prosecution through the Advisory Boards would facilitate issue/denial of sanction in a time-bound manner and all requests for sanction of prosecution could be disposed of by a Department/Ministry **in a period of three months at the most.**

108. In the course of our deliberations, we examined the issue of sanction of prosecution under the Prevention of Corruption Act 1988 pending with different Departments/Ministries for long periods. Elsewhere in this Report, we have already discussed different issues regarding sanction for prosecution under the Prevention of Corruption Act 1988. Regarding the cases pending at present for sanction of prosecution, we suggest that the Departments/Ministries should dispose of by 30 November 2010 all pending cases after recording speaking orders in each case. In the event of any case for sanction of prosecution not getting disposed of by the Department/Ministry by the aforesaid deadline of 30 November 2010, a Committee chaired by the Secretary, Department of Personnel & Training, Government of India as provided for in the Office Memorandum of the Department of Personnel & Training dated 06 November 2006 may meet and finalize the issue of sanction

of prosecution through a speaking order after obtaining the order of the Prime Minister as the Minister-in-charge.

109. Data furnished to us shows that, in respect of the All India Services, the problem of delay in the course of and in final decisions in Disciplinary Inquiries is far more serious in the States than in the Government of India. In other words, far more cases initiated by the States against the All-India Service Officers are pending disposal than those initiated by the Central Government. While we are not attempting here an analysis of the causes of delay, the fact remains that there is need for improving the position. To this end, we feel that the step most likely to achieve desirable results is effective monitoring by the Department of Personnel and Training, Government of India for IAS officers serving in connection with affairs of a state, by the Ministry of Home Affairs for the IPS officers serving in connection with affairs of a state and by the Ministry of Environment and Forests for officers of the Indian Forest Service serving in

connection with affairs of a state. Where necessary, the Department/Ministry concerned of the Government of India and the State Government should be associated with the task of monitoring of progress of pending Disciplinary Inquiries. Each case of a Disciplinary Inquiry needs to be gone into in detail to identify the factors causing delay in decision-making with a view to finding easy and practicable answers rather than indulging in fault-finding and correspondence. For example, if a Disciplinary Inquiry is getting delayed owing to delay in furnishing of copies to the charged officer of documents available with different authorities at various locations, the organizations having custody of the relevant documents can be called together at one place when the documents can be inspected by the charged officer and photocopies furnished to him. (It would be useful to obtain, at the appropriate stage, from the charged officer in writing a confirmation to the effect that he has inspected/obtained copies of all the documents that he is in need of.) The

important things during such monitoring exercises, we wish to reiterate, would be in-depth analysis, frank discussions, a positive approach to removal of bottlenecks and fixing of deadlines for review of progress. We are confident that such an approach would result in an improved picture in this regard and

Disciplinary Inquiry cases against the officers of the All-India Services serving in connection with affairs of a State, which are making either no progress or making very slow progress, would start getting expedited.

110. **We have come across instances where due to long pendency of either criminal cases or Disciplinary Inquiries, a Government Servant does not get his legitimate chance for deputation or promotion. In some cases, the Government Servant also suffers the ignominy of being under suspension for a long period. During pendency of an investigation by the CBI/the Vigilance Directorate/the ACB on charges of corrupt practice, the Government Servant is also denied his chance for deputation or promotion.**

111. **There is provision for periodic review of the order of suspension of a Government Servant but we could not lay our hands on any Instruction for such periodic review in cases pending investigation by the CBI/the Vigilance Directorate/the ACB.**

112. **We could not have access to data as to how many officers in Government of India are at present denied deputation/promotion because of criminal cases under investigation, because of pendency of Disciplinary Inquiries or because criminal cases against them are sub-judice.**

113. In our view, the Government of India, which is a model employer, should review the present instructions regarding denial of deputation or promotion to such officers even though there is a "Sealed Cover" procedure for such officers as approved in the **judgement of the Supreme Court in Union of India versus K.V.Janakiraman(AIR 1991 SC 2010).**

114. An important point to be noted is that the aforesaid judgement in **Janakiraman's case(supra)** stipulates that **"sealed cover"** procedure is to be adopted after submission of charge sheet and not before it. The existing instructions of the Government of India are, however, different. Even when a criminal case is pending investigation or a Disciplinary Inquiry is contemplated against a Government Servant he does not get the **"integrity certificate"** from the Department/Ministry and consequently he cannot be considered for promotion – a situation not envisaged by the Supreme Court in **Janakiraman's case(supra)**.

115. Whereas we whole-heartedly endorse the action of the Government to **penalize and punish delinquent Government Servants**, it may be considered whether an appropriate mechanism can be put in place in the following cases by modification of the existing instructions:

(i) **Where a criminal case is under investigation, if the charge sheet under Section 173 of the Code of Criminal Procedure 1973 is not filed in a court of law of competent jurisdiction within a period of one year from the date of the F.I.R. under Section 154 of the Code of Criminal Procedure 1973, the officer may be considered for promotion/deputation unless the Disciplinary Authority, on review of his case, decides to deny deputation/promotion to such officer during pendency of investigation on **grounds to be recorded in writing**. We recommend that if the investigation gets delayed beyond one year from the date of the FIR, the case may be reviewed again at periodic intervals of six months to decide whether to give him clearance for deputation/promotion.**

(ii) A similar course of action may be taken if a pending Disciplinary Inquiry is not over within **eighteen months** of the date of service of

Articles of Charge on a delinquent officer in a major penalty Disciplinary Inquiry or within **two months** of the date of service of Articles of Charge in a minor penalty Disciplinary Inquiry.

(iii) We recommend that **the officer should not be considered for deputation/promotion until the final disposal of the pending criminal case against him under the Prevention of Corruption Act 1988 or the final disposal of a pending minor/major penalty Disciplinary Inquiry against him if the Articles of Charge have been served on him and the stipulated period of two months or eighteen months, as aforesaid, or any other extended period, is not over.**

116(a) We have noted that in a few cases even after orders of the competent Authority have been obtained to initiate Preliminary Inquiry into the allegations, no action has been taken to either frame or serve the Articles of Charge on the delinquent Government Servant in a Disciplinary Inquiry even

after a lapse of two or three years. Such a state of affairs is unfair to the Government Servant concerned as his integrity certificate is withheld due to lack of 'vigilance clearance'.

(b) We recommend that in all such cases as of now, where Disciplinary Inquiry has been under contemplation for more than one year, the Disciplinary Authority should take a final decision by 31 December 2010, whether he would like to go ahead with the Disciplinary Inquiry or close the Inquiry under contemplation. If the Disciplinary Authority wants to go ahead with the Disciplinary Inquiry, the Articles of Charge in such pending cases must be served on the delinquent Government Servant not later than 31 January 2011.

In appropriate cases, if the Disciplinary Inquiry under contemplation is not initiated, the matter should be closed on the orders of the Disciplinary Authority by 31 October 2010.

117. It was stressed before us that when high ranking officers of the Central Government/officers of the All-India Services are charged with corrupt practice/lack of integrity, public interest mandates that they must be penalized swiftly. We recommend that a panel of names of retired Secretaries to the Government of India or officers of equivalent rank be prepared by the Department of Personnel and Training, and any major penalty inquiry against a high-ranking delinquent Central Government Servant/delinquent officer of the All-India Services serving under the Central Government or in connection with affairs of a state, be entrusted to a member of such a panel to facilitate fast-track disposal. In our view, such a panel of retired Secretaries to Government of India/officers of equivalent rank would ensure ready availability of Inquiry Officers who have a reputation for integrity and competence to inquire into allegations of corrupt practice against high-ranking Government

officials/officers of the All-India Services, whether serving under the Central Government or serving in connection with affairs of a state.

118. It was brought to our notice that at present, if the Central Government does not accept the advice of the UPSC in any disciplinary matter concerning any officer of the Indian Administrative Service, the Central Secretariat Service or the Central Secretariat Stenographers' Service, the matter has to be placed before the high-level Committee of Secretaries for consideration. Thereafter, orders of the Prime Minister, as the Minister-in-charge, are obtained to disagree with the advice of the UPSC. This dispensation ensures that any specific case of disagreement with the UPSC in a disciplinary matter is discussed in the first instance in the Committee of Secretaries before it is submitted to the Prime Minister as the Minister-in-charge for orders. We feel that while this is a good practice, it will, by its very nature, involve some delay in the disposal of the particular case. The balance of advantage, however, lies

in continuing with this practice. Further, taking an overall view of the matter, we feel that the practice of the Committee of Secretaries considering an item of disagreement with the advice of the UPSC in a disciplinary matter may not be limited to only cases of such Government officers whose Cadre Controlling Authority is the Department of Personnel & Training, Government of India but should be extended to officers of all Departments and Ministries of the rank of Joint Secretary and above. We are recommending such a course of action since the considered advice of the high-level Committee of Secretaries in a disciplinary matter should be available to the Minister-in-charge in cases pertaining to all senior officers in different Departments/Ministries. **Our recommendation will also reinforce confidence among the senior Government Servants** that no motivated disagreement with the advice of the UPSC can harm their legitimate service prospects unless the Committee of Secretaries – **the highest collegium of the Permanent Executive** – considers

the disciplinary matter whenever the Department/Ministry wants to disagree with advice of the UPSC.

119. In our view, the approach we have recommended would be fair to the delinquent Government Servants under the Government of India. In the long run, if the Government is perceived to be just and fair, the Government Servants will have **self-esteem, which is vital for efficient performance of public service**. To elaborate, fairness in Government is essential even to ensure that the vast powers of the modern state are not abused. **“Fairness” has no set form or procedure** and Government should not be allergic to the appropriate application of the above approach where the facts of a case warrant giving such relief to a Government Servant facing an uncertain future because of the pendency of Disciplinary Inquiry or investigation by the CBI/the Vigilance Directorate/the ACB.

120. While we are concerned that delinquency on the part of Government Servants should be dealt with effectively and quickly, we are also aware of the danger of abuse of the process by Disciplinary Authorities to punish subordinates who stand up against wrong action by the superiors. We may argue that such cases of abuse of power by the Disciplinary Authority are rather rare but, in our experience, cannot be completely ruled out. While rendering the first stage advice, if the CVC considers or has reason to believe that the proposal to initiate a Disciplinary Inquiry is totally baseless, he may advise punitive action against the Disciplinary Authority. This would ensure that there is responsible exercise of power by the Disciplinary Authority and witch-hunting of honest Government Servants would be prevented.

121. We understand the CVC is formulating a **Standard Operating Procedure(SOP) governing preliminary investigation by the Vigilance Agencies** which would not only simplify and expedite a Disciplinary Inquiry but

also make it objective, fair and just. The allegedly delinquent official in this procedure will be given ample opportunity to peruse the documents being relied upon against him **as also to explain his point of view. This will also ensure that no honest official is harassed, for extraneous reasons, by baseless disciplinary action.** We hope the proposed SOP will be brought into force soon by the CVC.

122. Our terms of reference relate to Governments Servants working for the Government of India. We have, however, deliberated also on matters relating to officers of the All-India Services serving in connection with the affairs of a State and feel it necessary to make certain recommendations in respect of them. In going into these matters, we have kept in view the objectives with which the All-India Services were established, the unique role of these Services in the governance of the country and the high expectations from the officers of these Services in matters of efficiency, fairness and probity. It has also to be

remembered that, among the three All-India Services, the Indian Administrative Service(IAS) and the Indian Police Service(IPS) have been designed to hold posts at senior and crucial levels both in the Central Government and in the State Governments. Officers of the IAS discharge the responsibilities of crucial posts such as Collector and District Magistrates, Secretaries to the Government and Heads of Departments, while IPS officers do so at important positions like District Superintendents of Police, Zonal Inspectors-General of Police and Directors-General of Intelligence/Police in the States. At the Centre, officers of the IAS operate at senior and crucial levels such as Joint Secretary, Additional Secretary and, of course, Secretary to the Government of India, while officers of the IPS head the vital paramilitary forces of the Central Government, apart from organizations like the Central Bureau of Investigation, the Intelligence Bureau, the Research & Analysis Wing and others. Owing to the close operational relations that these Services are

required to have with the higher political executive of the State and the Central Governments, it would not be an exaggeration to say that, in the common man's perception, IAS/IPS officers are almost synonymous with Government.

123. It is in the background of the prevailing situation that we have felt the need to deal with two trends clearly discernible in several states. One of these is the tendency to browbeat members of the All-India Services through motivated action, including frequent transfers, transfers to posts which do not normally warrant posting of an officer of his seniority, suspension and initiation of Disciplinary Inquiries without adequate basis. Through such steps, State Governments humiliate and harass several officers of these Services, in effect warning others what can happen to them unless they, too, toe the line. This does lead to several officers opting for the easy way-out by turning collaborators or by acquiescing in wrongful actions of the powers that be. That this set of circumstances seriously sullies the image and standing of the All

India Services in the public eye can hardly be denied, leading also to the consequence that the All-India Services are no longer the ambition for a large number of youngsters with brilliant academic records. It does not require a very fertile imagination to conclude that this state of affairs significantly impairs the capability of the Government to provide good governance.

124. While certain decisions of the Central Government in the recent years, pertaining to suspension of All-India Service officers by State Governments, and the amended Rule, which mandates prior approval of the Central Government for suspension of the Chief Secretary, the Director-General of Police and the Principal Chief Conservator of Forests of a State Government, have introduced a measure of protection to the officers of the All-India Services, there is need to do much more because the large proportion of the All-India Services Officers serving in connection with affairs of a state feel quite let down by the inability of the Central Government to protect their interests

effectively. Apart from constitutional factors, we are conscious also of the limitations and constraints that are a necessary feature of the coalition era politics that prevails in most parts of the country but compels us to flag this important issue for intervention at some stage by the Government of India.

125. In this situation, one measure that could go a long way in boosting the morale of members of the All-India Services in the States and in protecting the interests of upright officers would be the **establishment in the States of statutory Vigilance Commissions on the lines of the Central Vigilance Commission**. There are, undoubtedly, Vigilance Commissions and Directorates of Vigilance in many States but nowhere do they enjoy the pre-eminence and decisive role that are a hallmark of the **Central Vigilance Commission, which became a statutory body in 2003**. The Government of India would be well advised to prevail upon all the States in this regard because we feel that the establishment of statutory State Vigilance Commissions by Acts of State

Legislatures will impart considerable objectivity and prevent malafide and whimsical actions against officers of the State Government/officers of the All-India Services serving in connection with affairs of a State.

126. The other trend that has attracted our attention is the increasing number of instances where **members of the All-India Services are found in possession of mind-boggling sums of money** and of **equally mind-boggling assets totally disproportionate to their known sources of income**. While this unfortunate situation is commonly perceived to be the result of **an unholy alliance between the unscrupulous and powerful political elements in the State Government on the one hand and, on the other, of similar elements within the All-India Services**, it would not be untrue to aver that the delays that occur in bringing such delinquent officials to justice contribute significantly to a somewhat alarming state of affairs.

127. As mentioned above, owing to the close operational link between some of the members of the All-India Services and some high ranking political functionaries in the State, the above situation leads the common man to conclude that the entire Government is corrupt and does not have public good as its goal or priority. While we are here concerned more with the undesirable consequences of this situation for the All-India Services, the continued prevalence of this perception is not at all conducive to promoting respect for Government, thus undermining the very fabric of State.

128. Adding to the sad scenario is the unfortunate experience that not all State Governments act promptly and decisively in instances of obvious and gross corruption, including abuse and misuse of authority by members of the All-India Services serving in connection with affairs of a State. Thus, an impression gains ground that the corrupt elements in the All-India Services are able to invariably have their way and nothing really can be done to penalize

them. Under these circumstances, there is strong need for the Central Government – **that is where the buck does and has to stop** – to find ways of stepping in and taking action against delinquent officers of the All-India Services serving in connection with affairs of a State. Quite clearly, the existing Rules do not provide for such a course in our federal set-up. This is also because the expectation has been that Governments of States would act with a full sense of responsibility and in the public interest, instead of encouraging the corrupt through acts of omission and commission. Therefore, the time has come for putting in place wide-ranging provisions – extraordinary as they may be - that empower the Central Government to step in and take action warranted in the circumstances. While devising and putting in place the full gamut of provisions required for dealing with the rather alarming situation in several States would obviously take time, a beginning needs to be made to provide for cases where a member of the All-India Services serving in

connection with the affairs of a State is found, in the course of operations of Central Government agencies like the Central Board of Direct Taxes, the Central Board of Excise and Customs, the Directorate of Enforcement, the Directorate of Revenue Intelligence, the Narcotics Control Bureau and others, to be heavily on the wrong side of the law. In such cases, the Government of India would be competent - notwithstanding the current stipulation in the Rules that in such a case only the State Government has the legal authority - to initiate Disciplinary Inquiry on the basis of the report and findings of one or more of the aforesaid Central agencies. This would require an appropriate amendment in the All-India Services (Discipline and Appeal) Rules, 1969. While strongly commending such a course, we would like also to emphasise that the current situation in this regard warrants urgent action.

129. We now propose to deal with a **suitable Monitoring Agency** to ensure that our recommendation regarding time limit of disposal of different

categories of Disciplinary Inquiries is adhered to. We have noted that **at present no consolidated database of pending Disciplinary Inquiries** exists in the Central Government and no apex Monitoring Agency is in place to review the progress of disposal of Disciplinary Inquiries in all Departments/Ministries.

130. We propose that for all minor and major penalty Disciplinary Inquiries against senior Government Servants, the monitoring of the Disciplinary cases would be entrusted to a **Monitoring Cell to be set up in the Department of Personnel and Training, Government of India**. If the Disciplinary Authority exceeds the maximum time recommended by us for disposal of a Disciplinary Inquiry, the Secretary/Additional Secretary of the Department of Personnel and Training, with the help of the Monitoring Cell, will identify such defaulters and write demi-officially to his counterpart in the Department/Ministry of Government of India under which the defaulting Disciplinary Authority is working. To save time, a copy of the D.O. letter of the Secretary/Additional

Secretary of the Department of Personnel and Training, would be directly endorsed to the Disciplinary Authority. If within 90 days of the receipt of the D.O. letter, the Disciplinary Inquiry is not disposed of finally, the Secretary of the Department of Personnel and Training will bring the facts of the case to the **notice of the Cabinet Secretary for appropriate action against the defaulting official/the Disciplinary Authority.**

131. We also recommend that for **each Department/Ministry**, there could be a **Monitoring Cell** to review the progress of all Disciplinary Inquiries. The Secretary of the Department/Ministry may take such steps as deemed fit to **galvanise the Disciplinary Authorities** under him to dispose of the Disciplinary Inquiries within the time frame recommended by us.

132. We recommend that **a separate column may be incorporated in the Annual Performance Appraisal Report(APAR)** regarding the number of inquiries handled by an officer reported upon and the number of Inquiries in

which an officer has acted as the Presenting Officer. In the self-assessment report, the officers reported upon will indicate his performance – both in terms of **quantity** and **quality** – in disposal of Disciplinary Inquiry cases or his role as a Presenting Officer in such cases. The Reporting and Reviewing Officers will comment on this particular aspect of self-appraisal.

133(a)The **CVC has issued** detailed guidelines in its **letter dated 02 January 2009** for timely disposal of Disciplinary Inquiries. The guidelines contain clear instructions regarding maximum time to be taken by different officials at different stages of a Disciplinary Inquiry. We quote the following extract from the letter of the CVC :

“In normal circumstances the conclusion of Disciplinary Inquiries should be received within a time frame of two years - from the date of inception to the stage of issue of final orders. Undue delay in

completion of Disciplinary Proceedings would reflect adversely against Disciplinary Authorities”

- (b) In view of our recommendations regarding the maximum time to be taken for minor and major penalty Disciplinary Inquiry, the CVC may like to issue revised guidelines.**

134. We have noted that the preponderant tendency among Disciplinary Authorities has been to adopt a safe course and initiate major penalty Disciplinary Inquiries irrespective of the facts of a case/nature of misconduct. This approach is born out of the desire to be not accused of being soft and partial towards the delinquent Government Servant. There have been many instances where after long-drawn-out major penalty Disciplinary Inquiries, the Disciplinary Authority actually awards one of the minor penalties. This means that a lot of time, often running into years, has been spent in doing something that could have been completed in a few months, if a minor penalty Inquiry

had been initiated right at the beginning. The award of penalties to a delinquent Government Servant is intended not just to have retribution visit him for a misconduct; its purpose is also to make the Government Servant act and behave better and more responsibly in future. A long-drawn out major penalty Inquiry where, at the end, a minor penalty is imposed, does not serve the desired purpose.

135(a) We have noted that even after approval of the Disciplinary Authority to initiate a Disciplinary Inquiry, a lot of time is taken by the Department/Ministry to frame the Articles of Charge against a delinquent Government Servant.

(b) We recommend that to eliminate delays in framing the Articles of Charge, the official file submitted to the Disciplinary Authority to initiate a Departmental Inquiry must have **a copy of the draft Articles of Charge along with the imputations in support and a list of witnesses and documents.** Such

action before approval of the Disciplinary Authority is obtained to initiate a Departmental Inquiry against a delinquent Government Servant, would ensure **timely framing and service of the Articles of Charge**. We also recommend that when **a case is sent to the CVC for its first stage advice, the Articles of Charge, complete in all respects, must be submitted to the CVC.**

136. We have noted that a large number of cases pertaining to Government Servants of Group A and Group B categories under the Central Government and also of officers of the All-India Services are pending with the respective Disciplinary Authorities for taking a decision on the Reports of Inquiry prior to reference to the CVC and the UPSC for advice and, in some cases, even after advice of the CVC and the UPSC has been received. We may submit that focussed attention needs to be bestowed on passing appropriate orders on the pending Reports of Inquiry. We suggest that the Disciplinary Authorities may

decide all such pending Disciplinary Inquiry cases by **31 December 2010 at the latest.**

137. At present, there are **a few Handbooks for Inquiry Officers and Disciplinary Authorities.** These Handbooks are not official publications but have been written by different authors with knowledge of Service Law. In our view, most of these Handbooks need to be updated. We recommend that the **Institute of Secretariat Training and Management(ISTM) under the Department of Personnel and Training, Government of India** will bring out an **updated Handbook incorporating the latest Service Laws, the statutory notifications and the Executive Instructions.** The need for updating the Handbooks is felt because the latest case laws and instructions are often not included in them. To give an example, most of the Handbooks stipulate that if a Government Servant has submitted a false certificate of educational qualification, or a false caste certificate, and the matter comes to notice, he

will be subjected to a major penalty Disciplinary Inquiry as envisaged in the Service Rules. We have noted that as per the judgement of the Supreme Court in **R. Viswanath Pillai versus State of Kerala (AIR 2004 SC 1469)** Disciplinary Inquiry in such a case **is not** necessary and some of the Handbooks are giving **misleading legal** advice in this regard. We have noted that in the above case of **R.Viswanath Pillai(Supra)**, an IPS officer who had put in **27 years of service** **was dismissed from service** as the Scrutiny Committee appointed by the Government of Kerala pursuant to the judgement of the Supreme Court in **Kumari Madhuri Patil versus Additional Commissioner(AIR 1995 SC 95)** held that at the time of entry into the State Police Service in **1977**, R. Viswanath Pillai had submitted a false caste certificate that he belonged to the Scheduled Caste. Pillai was dismissed from service on the basis of the findings of the Scrutiny Committee set up by the Government of Kerala before whom he had full opportunity to disprove that his caste certificate was a false one. **In R.**

Viswanath Pillai's case(Supra) the Court held that no Departmental Inquiry under the All-India Services(Discipline and Appeal) Rules was required before Pillai's dismissal from service and the Court upheld the order of dismissal even though he had put in 27 years of service.

138. By way of an epilogue, we may point out that a Government Servant in India has important constitutional protection. **The core concept of such protection is fairness in action or fair treatment of a Government Servant.**

Neither the President nor the Governor can pass any whimsical or arbitrary order against a Government Servant because of such protection. A Government Servant duly appointed to the post or a service in a permanent capacity has the requisite stability in service and cannot be dismissed or removed or reduced in rank arbitrarily because of protection under Article 311(2) of the Constitution. Certain other statutory rules also give Government Servants adequate protection in terms of salary and other conditions of

service. The Courts will not interfere, however, if the Government imposes a suitable penalty on a Government Servant by following the procedure laid down in the relevant Service Rules. The Supreme Court held in **Tata Cellular versus Union of India (AIR 1996 SC 11)** that the Administrative Tribunals, the High Courts and the Supreme Court are not the Appellate Authority against the decision of the Competent Authority in Government who has imposed a suitable penalty on a delinquent Government Servant. The Tribunals and the Courts can, however, subject the order of the Competent Authority in Government to Judicial Review on grounds only of **illegality, procedural impropriety and irrationality within the meaning of the Wednesbury principle of unreasonableness**. They can also subject an order of the Competent Authority to Judicial Review on ground of proportionality but they cannot substitute their own opinion in the matter of penalty imposed by the Competent Authority, as such a step would be an encroachment of the

Judiciary on the powers of the Executive. But if a Competent Authority decides, in bonafide exercise of power, to penalize a Government Servant in a Disciplinary Inquiry, Government has the full plentiude of power, as Public Policy mandates that a delinquent Government Servant must suffer the consequences of his delinquency. The Supreme Court have even held in **P.Balakotiah versus Union of India(AIR 1958 SC 232)** that when a Competent Authority in Government passes an order which is within its competence, the order cannot be faulted merely because it is passed by him under a wrong provision of the Rules if it can be shown to be within its power under any other Rule. In other words, the validity of an order of the Competent Authority in Government has to be judged on its contents and its substance and not on its form.

139. **The tragedy with the public service in India**, of late, has been that in the absence of periodical **crack-down on corruption** by resort to Draconian

measures, the Government Servants do **nothing without a bribe**; a still bigger tragedy would be, however, if, after such crack-down, **they simply do nothing and play safe**. The challenge to practitioners of public administration in the country at the higher levels is to provide a sense of confidence to members of the public service that bona fide acts of theirs, including acts of omission and commission in standing upto undue pressure, would not entail unsavoury consequences for them; at the same time, to convey that delinquent acts of omission and commission sans bona fide would result in prompt and suitable punishment. It is our hope that some of our recommendations will help achieve this objective.

140. **We were appointed to suggest measures for expeditious disposal of Disciplinary/Vigilance Inquiries. In view of the urgency to submit our recommendations/Report, we have worked hard to adhere to the time limit for submission of our Report. We may like to go on record that one of the**

purposes of any punitive action against a Government Servant is to vindicate the public policy that misconduct would be penalized and, in case of grave misconduct involving lack of integrity, the appropriate penalty will be removal or dismissal from service. Whereas we are aware of the need for different penalties in the Rule Book classified as major and minor penalties, it will be difficult to recommend any precise penalty for any specific misconduct. This is because each case of Disciplinary Inquiry is based on its own facts. We, however, reiterate that the categories of the Government Servants we have dealt with in this Report constitute a major segment of the intelligentsia of the country. Authorities on Public Administration and eminent Civil Servants are of the view that such Government Servants cannot be expected to be fully committed to the task of nation-building if their self-

esteem is corroded by stultifying rules, draconian procedures, demoralizing searches without meaningful seizure, undeserving sanction for prosecution or disproportionate punishments and deliberate humiliation. To put it briefly, for Government Servants to work with full sense of dedication, checks and balances must be built into the Government machinery and a just Political Executive, which is not only fair but is also perceived to be fair, is a vital requirement for a Republic where the Rule of Law is meant to be supreme.

141. In the ultimate analysis, by faith and fairness alone can the foundations of a fully-dedicated public service be built and such a service will help make India a major player in the world.

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DEPARTMENT OF
PERSONNEL & TRAINING
GOVERNMENT OF INDIA

P.C.HOTA
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FORMER
CENTRAL VIGILANCE
COMMISSIONER

PLACE : NEW DELHI
DATE : 14/07/2010

SUMMARY OF THE REPORT OF THE COMMITTEE OF EXPERTS

1. Constitution of the Committee of Experts and its composition.

(Para 1, 3)

2. A brief historical perspective of Disciplinary Inquiries before and after commencement of the Constitution.

(Para 6,7,8,12,13,14,15,16,17,18,19,20,21, 22, 23)

3. Report of a Survey conducted by the Indian Institute of Public Administration, New Delhi about periods of delay in disposal of Disciplinary Inquiries.

(Para 10)

4. Article 311 of the Constitution and the 15th and the 42nd Amendments thereof.

(Para 24, 25, 26)

5. Scope and ambit of 'reasonable opportunity' in Article 311(2) of the Constitution.

(Para 27, 28, 29, 30)

6. The Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972.

(Para 31)

7. Procedure of Disciplinary Inquiries.

(Para 32, 33, 35)

8. Panel of names of Inquiry Officers/Presenting Officers and fees to be paid to them.

(Para 34, 37, 39, 40, 41, 42, 43)

9. Payment to witnesses in Departmental Inquiries.

(Para 38)

10. Limit on number of cases of Disciplinary Inquiries by an Inquiry Officer/Presenting Officer.

(Para 44)

11. Procedure for minor penalty Disciplinary Inquiries.

(Para 45)

12. Time-limit for completion of minor penalty Disciplinary Inquiries.

(Para 46)

13. Time-limit for completion of major penalty Disciplinary Inquiries.

(Para 47)

14. Stages at which matters pertaining to a Disciplinary Inquiry have to be submitted to the Minister-in-charge as at present.

(Para 49)

15. Proposal to dispense with approval of the Minister-in-charge in certain stages of Disciplinary Inquiries.

(Para 50, 52)

16. Secretary to the Government of India in the Department/Ministry to be the Appointing Authority for officers including officers of the All-India Services.

(Para 52)

17. Stages at which the Central Vigilance Commission has to be consulted in case of Disciplinary Inquiries and dispensing with the second stage advice of the Central Vigilance Commission.

(Para 53, 54)

18. Prior consultation with the UPSC under Article 320(3)(c) of the Constitution.

(Para 59, 60)

19. Submission of case records relating to Disciplinary Inquiries to the UPSC after full compliance of items in the "checklist".

(Para 61, 62)

20. Proposed re-organisation of the Vigilance Organisations in Departments/Ministries.

(Para 63)

21. Plea-bargain in major penalty Disciplinary Inquiries.

(Para 64, 65, 66, 67)

22. Retention of the existing major penalty of compulsory retirement from service.

(Para 68, 69)

23. Existing minor and major penalties under different Service Rules.

(Para 70)

24. Cases where termination of service will not be considered as a penalty.

(Para 71)

25. Observations on some of the minor and major penalties under the Service Rules.

(Para 72, 74, 75, 76, 77, 78, 79)

26. Proposal for minor penalties to include a cut in pension/gratuity in appropriate cases.

(Para 80, 81, 82, 83)

27. Period of currency of the minor penalty of censure.

(Para 84)

28. Cases where imposition of a major penalty on a Government Servant to be considered as a disqualification for employment under the Government of India/State Governments.

(Para 85)

29. Proposal to amend Article 311 of the Constitution to dismiss a Government Servant from service on charges of corrupt practice as defined in the Prevention of Corruption Act 1988.

(Para 86, 87, 88, 89, 90, 91, 92, 93, 94, 95)

30. Reasons why the proposed amendment to Article 311 would be intra-vires.

(Para 96)

31. Dispensing with Disciplinary Inquiry before a major penalty is imposed not a new concept in the Constitution.

(Para 98, 99)

32. Grant of compassionate monthly allowance to a dismissed Government Servant.

(Para 102)

33. Proposal for amendment to Section 19 of the Prevention of Corruption Act, 1988.

(Para 104)

34. Proposal for amendment to Section 197 of the Code of Criminal Procedure 1973.

(Para 105)

35. Proposal to accord sanction for prosecution in cases pending for such sanction by a specified deadline.

(Para 108)

36. Proposal for expeditious disposal of pending Disciplinary Inquiries against officers of the All-India Services serving in connection with the affairs of a State.

(Para 109)

37. Proposal to give relief to Government Servants in case of long pendency of Criminal Cases/Disciplinary Inquiries.

(Para 110, 111, 112, 113, 114, 115)

38. Proposal for expeditious decision in cases where Disciplinary Inquiries have been under contemplation.

(Para 116)

39. Proposal for high level Inquiry Officers in cases of fast-track Disciplinary Inquiries against senior Government Servants.

(Para 117)

40. Proposal for Committee of Secretaries to review cases of disagreement with the UPSC in disciplinary matters.

(Para 118, 119)

41. Abuse of power by Disciplinary Authorities.

(Para 120, 121)

42. Proposal to set up Statutory Vigilance Commissions in all States of the Indian Union.

(Para 125)

43. Proposal to take expeditious disciplinary action in cases of officers of the All-India Services serving in connection with the affairs of a State following searches and seizures by Central Agencies and registration of cases against them.

(Para 126, 127, 128)

44. Monitoring agencies for Disciplinary Inquiries.

(Para 129, 130, 131)

45. Proposal for modification of the format of Annual Performance of Appraisal Report.

(Para 132)

46. Revised guidelines to be issued by the Central Vigilance Commission for Disciplinary Inquiries.

(Para 133)

47. Proposal for minor penalty Disciplinary Inquiries to be initiated in suitable cases.

(Para 134)

48. Proposal for eliminating delay in service of Articles of Charge in Disciplinary Inquiries.

(Para 136)

49. Proposal for more expeditious disposal of pending cases of Disciplinary Inquiries by a specified deadline.

(Para 136)

50. Need for updating Handbooks for Inquiry Officers and Disciplinary Authorities.

(Para 137)

51. Cases where a decision of the competent Authority could be the subject of judicial review.

(Para 138)

52. Need for fairness and justice in treatment of Government Servants.

(Para 139, 140)