

## **Chapter 9**

### **Departmental action, punishment and appeal**

#### **Introduction**

1. Reward and punishment are two essential tools of administration and management. That good and commendable performance must be suitably rewarded and the dereliction of duty should be punished, are two universally accepted principles of administration. Use, utility and inevitability of these principles become more apparent for the organisation like police, where code of conduct, discipline and performance expectations occupy significant place in the overall professional milieu. The parameters, procedures and methods of punishment and departmental proceedings like those of the rewards, should also be based on judicious, objective and just foundations. For every category of personnel, separate rules and provisions are made for this purpose and police organisations are no exception to this general rule.

#### **Disciplinary Penalties**

2 (i) Subject to the provisions of Article 311 of the Constitution and the Rules and Regulations made under the Sikkim Police Act, an officer of the rank of Superintendent of Police or above may award any of the following punishment to a police officer of a rank for which he is the appointing authority: reduction in rank, compulsory retirement, removal from service or dismissal.

ii) Any police officer of the rank of Superintendent of Police or above, subject to the rules made in this behalf, may award any of the following punishments to any non-gazetted police officer subordinate to him:

- a) Reduction in pay;
- b) Withholding of increment
- c) Withholding of promotion;
- d) Fine not exceeding one month's pay; or
- e) Reprimand or censure

iii) Any punishment mentioned above awarded to an officer, will not affect his liability for prosecution for any criminal offence committed by him in the same transaction for which departmental action has led to award of punishment to him for any transgression of departmental rules.

### **The rules**

3. The IPS Officers are governed by the All India Services (Discipline & Appeal) Rules, 1969. Members of the state police are governed by the Sikkim Police Force (Discipline and Appeal) Rules, 1989.

4. The penalties that can be awarded by various disciplinary authorities in Sikkim Police are spelt out at section 123 of Sikkim Police Act, 2008 and the Sikkim Police Force (Discipline & Appeal) Rules, 1989.

5. Apart from the delinquent acts or behaviour specified in the Sikkim Government Servants' Conduct Rules, 1981 a police officer is liable for disciplinary action for misconducts mentioned in the Sikkim Police Act, 2008 and this manual.

6. The acts of commission and omission at variance from the prescribed procedure and standards, misuse of office, moral turpitude and unprofessional conduct are all met with disciplinary action so as to have a salutary deterrent effect on the erring members as also on others. The cardinal principle of disciplinary proceedings is that no one shall be punished unless he has been given reasonable opportunity to defend himself against the action proposed to be taken against him.

### **Procedure to be strictly followed**

7. Neglect in the due observance of the rules is liable to vitiate the whole proceedings and the ultimate order passed thereon. It may often happen that though on merits an order of punishment may be fully justified, it may have to be set aside on account of technical defect or omission or irregularity committed in the disciplinary proceedings. This may often enable a guilty officer to escape punishment, as also cause considerable financial loss to the Government.

## **General principle of punishment**

8. Punishment should fit the default and should be sufficiently deterrent without being harsh, and above all it should be immediately felt.

(a) If minor punishments have no effect on a delinquent a major punishment should be called for. If such punishment has no effect on him, then he must be removed from service. Removing a police officer from service without first awarding him minor punishments and lastly a major punishment will mean that proper steps were not taken to correct him in time and make him a useful member of the force.

(b) The degree of severity of punishment should depend upon the seriousness of the default and incorrigibility of the delinquent and should aim, as far as circumstances permit, at improving him and giving him a chance to improve.

(c) It is not correct to punish a person merely on suspicion or insufficient evidence. If the charge is not proved and the circumstances of the case demand that benefit of doubt should be given, officers should state their opinion clearly.

(d) Police officers found guilty of behaving improperly towards members of the public should be dealt with severely in the interest of creating and maintaining good relations between the police and the public. Similarly, insubordination warrants the maximum punishment of dismissal from service, unless there are any extenuating circumstances or other valid answers to the charge. Leniency in such cases tends to foster a sense of indiscipline and indifference towards superior officers.

(e) Fraud, dishonesty, corruption or continued and willful negligence and all offences involving moral disgrace meet with their appropriate punishment in dismissal.

(f) Offences of gambling committed by police officers should be treated as cases involving moral turpitude. Accordingly such police officers as are found guilty either by courts of law or any departmental proceedings should be dealt with severely.

(g) Removal should be the penalty in all cases where it is not thought necessary to bar future re-employment under Government in another department for which the police officer may be suitable, and an order of removal should not be accompanied by any subsidiary orders which would operate as such bar or otherwise prejudice him.

(h) Except for absence without leave and loss caused to the Government, fine should ordinarily not be inflicted as a punishment.

## **Censure**

9. Censure should not be awarded for minor irregularities or lapses, where a warning would suffice.

(1) The main distinction between 'warning' and 'censure' is that an order of 'censure' is a penalty under the Police Act and the Discipline & Appeal Rules. It is intended to convey that the police officer concerned has been held guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment. Nothing can amount to a 'censure' unless it is intended to be such a formal punishment and imposed for 'good and sufficient reasons' after following the procedure prescribed in the Rules.

(2) There may be occasions when a superior officer may find it necessary to criticize adversely the work of his subordinates which calls for some informal action, communication of a written warning, admonition or reprimand may be taken recourse to.

(3) It is a matter of simple natural justice that written warnings, reprimands, etc. should not be administered or placed on a police officer's confidential record unless the authority doing so is satisfied that there is good and sufficient reason to do so and the person concerned has been heard.

## **Withholding of increments or promotion**

10. An increment is admissible as a matter of course unless it is specifically withheld. It may be withheld from a police officer (i) if his conduct has not been good or his work has not been satisfactory, and (ii) as a definite punishment for a specific fault. The procedure prescribed in Rules shall be followed before withholding an increment. Where it is proposed to withhold an increment in an officer's pay as a punishment, the authority

inflicting the punishment should, before the order is actually passed, consider whether it will affect the officer's pension and, if so, to what extent; if it is decided finally to withhold the increment, the order should make it clear that the effect of the punishment on the pension has been considered and that its effect is intended. In ordering the withholding of an increment, the withholding authority shall expressly state in the order :

- (i) the period for which it is withheld;
- (ii) whether the period for which it is withheld shall be exclusive of any interval spent on leave before that period is complete.
- (iii) whether the postponement shall have the effect of postponing future increments.

#### **Reduction to a lower rank, grade or stage**

11. No police officer should, who was directly recruited, be reduced to a rank lower than that to which he was directly recruited. Wholesale reduction by a number of grades or stages at a time should not be ordered. Drastic reductions may be within the letter of the rules, but they are not in keeping with their spirit and are undesirable from every point of view.

In ordering a reduction, the disciplinary authority shall expressly state in the order :-

- (a) the rank, grade or stage to which reduced ;
- (b) the period for which reduction is ordered ;
- (c) the period of reduction should be wholly spent on duty excluding any period of leave or suspension ;
- (d) whether reduction, if to a lower stage in the same time scale, shall have the effect of postponing future increments ;
- (e) whether the effect of the punishment on pension has been considered and whether the order is intended to have that effect ; and
- (f) whether in the case of reduction to a lower rank he should gain promotion to the next rank in the ordinary course but not restored to his original rank at the expiration of the period of reduction.

### **Imposition of minor punishments**

12. Minor penalties are those mentioned at serial numbers (i) to (iv) of sub-rule 1 of rule 6 of All India Service (Discipline and Appeal) Rules, 1969 and serial numbers (iv) to (x) of rule 3 of Sikkim Police Force (Discipline and Appeal) Rules, 1989. The procedure laid down in rule 10/rule 6 respectively of the said Rules shall be followed for imposing minor penalties.

### **Imposition of major penalties**

13. Major penalties are those mentioned at serial numbers (v) to (ix) of sub-rule 1 of rule 6 of All India Service (Discipline and Appeal) Rules, 1969 and serial numbers (xi) to (xv) of rule 3 of Sikkim Police Force (Discipline and Appeal) Rules, 1989. The procedure laid down in rule 8 and rule 9 of All India Service (Discipline and Appeal) Rules, 1969 or rule 7 of Sikkim Police Force (Discipline and Appeal) Rules, 1989 as the case may be, should be strictly followed for imposing any major penalties.

The following shall not amount to a penalty within the meaning of these rules, namely;

- 1) Non-promotion whether in a substantive or officiating capacity.
- 2) Reversion from a department in which he is on deputation to his parent department or to a post not lower than the post on which he holds a lien or a suspended lien, for administrative reasons.
- 3) Replacement of the services of an employee, whose services had been borrowed by other Governments or an Authority under the control of that Government.
- 4) Stoppage or postponement of increment on account of extension of probation.
- 5) Reversion of an employee appointed on probation to any other Service, grade or post, to his permanent Service, grade or post.

- 6) Reversion of an employee officiating in a higher service, grade or post to a lower service grade or post, on the ground that he is considered to be unsuitable.
- 7) Withholding of increments of pay of a Government servant for his failure to pass any departmental examination, which is required to.
- 8) Termination of the services of an employee appointed on probation.
- 9) Discharge from engagement under contract, in accordance with the terms of his contract;
- 10) Discharge of an employee appointed temporarily on the expiration of the period.
- 11) Compulsory retirement in accordance with the provisions relating to his superannuation or retirement rules.

### **Suspension**

14. Suspension is an executive order which debars a Government servant from exercising his/her powers and performing his legitimate duties during the period the suspension is in force. However, during the period of suspension the Government servant continues to be a member of the service to which he belongs and the relationship of master and servant also continues. He continues to be governed by the same set of conduct, discipline and appeal rules which were applicable to him before he was placed under suspension. Though suspension is not a formal penalty it constitutes a great hardship to the person concerned as it leads to reduction in his emoluments, adversely affects his prospects of promotion, and also carries a stigma. Therefore, an order of suspension should not be made in a perfunctory or in a routine and casual manner, but with due care and caution.

15. The rules governing suspension are contained in rules 3 and 4 of All India Service (Discipline and Appeal) Rules, 1969. Section 124 of Sikkim Police Act, 2008 and rule 10 of Sikkim Police Force (Discipline and Appeal) Rules, 1989 deal with suspension of officers of Sikkim Police. Suspension as a specific punishment should be rarely awarded,

and used only in special circumstances; and the period should not in any case exceed to an unreasonable extent.

16. Suspension as a specific punishment should not be inflicted in cases where a police officer has been placed under suspension pending disposal of inquiry or criminal prosecution. During the period a police officer undergoes this punishment, his powers, rights and liabilities will be the same as those of an officer placed under suspension pending inquiry or criminal prosecution. During the period of suspension the pay and allowances will be regulated in accordance with the relevant rules.

17. Sub-rule (2) and (4) of rule 3 of All India Service (Discipline and Appeal) Rules, 1969 and sub-rule (2) of rule 10 of Sikkim Police Force (Discipline and Appeal) Rules, 1989 deals with the circumstances under which a police officer shall be deemed to have been placed under suspension. A formal order of suspension with effect from the date on which such deemed suspension takes effect, is required to be issued by the competent authority in such cases also. Form- I is a specimen of the order for suspension; and Form- II, an order to be issued in the case of deemed suspension.

If an order of suspension is made by an authority lower than the appointing authority, such authority should report to the appointing authority the circumstances in which the order was made. Before passing an order suspension the authority proposing to make the order should verify whether it is competent to do so. An order of suspension made by an authority which does not have the power to pass such an order, is illegal and will give cause of action for setting aside the order of suspension and claiming full pay and allowances for the period the Government servant remained away from duty to the order of suspension.

Where an order of suspension is made by an authority subordinate to the appointing authority, the appointing authority should, as soon as information about the order of suspension is received, examine whether the authority by whom the order was made was competent to do so.

Where the service of a Government servant is lent to another department, or borrowed from (or lent to) a State Government or an authority subordinate thereto, or borrowed from (or lent to) a local authority or other authority, the borrowing authority

can suspend such Government servant. The lending authority should, however, forthwith be informed of the circumstances leading to the order of suspension.

The suspended Police officer retains a lien on the rank held by him substantively at the time of suspension, and does not suffer a reduction in rank. However, suspension may cause a lasting damage to the officer's reputation even if he is exonerated or is ultimately found guilty of only a minor misconduct. The discretion vested in the competent authority in this regard should, therefore, be exercised with care and caution after taking all factors into account. It may be considered whether the purpose would be served if the officer is transferred from his post. If he/she would like to have leave that might be due, and if the competent authority thinks that such step would not be inappropriate, there should be no objection to leave being granted instead of suspending him/her. Public interest should be the guiding factor in deciding whether or not a police officer should be placed under suspension, or whether he/she should be placed under suspension, or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established.

#### **18. Basic consideration for suspension**

(1) Placing a police officer under suspension would imply the likely commencement of an inquiry in a disciplinary proceeding. An officer should be suspended only if a prima-facie case exists for instituting an inquiry.

(2) The purpose in placing an officer under suspension is to keep him away from a position where he can interfere with the conduct of the inquiry or tamper with the documentary or oral evidence in any manner, or, where, having regard to the nature of the charges against him, it is felt that it would be unsafe to continue to vest in him the powers of his post. An officer can be suspended even when an inquiry is under way if it is deemed necessary in public interest.

(3) In cases of criminal prosecution, the concerned accused police officers should ordinarily be suspended.

(4) Before placing a police officer under suspension, the authority competent to place him under suspension should examine the case as to whether the default is so

serious as to merit suspension. He should also carefully consider whether on the basis of evidence available there is a prima-facie case for dismissal or removal from service or if there is reason to believe that his continuance in active service is likely to cause embarrassment or hamper the inquiry. In other cases, the concerned police officer could be transferred to a far-off place, if such a course is necessary in the interest of the inquiry. Otherwise a departmental inquiry may be held without suspension of the officer concerned.

(5) The officer who passes an order of suspension of a police officer should record his reasons therefore under his signature.

(6) The following are the circumstances under which the police officer may be placed under suspension:-

- (i) Where continuance in office of the officer will prejudice the investigation, trial or inquiry (i.e., apprehended tampering with witnesses or documents).
- (ii) Where continuance in office of the officer is likely to seriously subvert discipline in the office in which he is working;
- (iii) Where an officer is prosecuted for any offence committed in the course of his duty involving moral turpitude.
- (iv) Corruption, embezzlement or misappropriation of Government money or money of a foreign employer under whom the officer has worked on deputation or otherwise, possession of disproportionate assets, misuse of official powers for personal gain.
- (v) Serious negligence and dereliction of duty resulting in considerable loss to government and to the foreign employer while the officer had worked on deputation.
- (vi) Unauthorized absence.
- (vii) refusal or deliberate failure to carry out orders of superior officers.

19. Sub-section (1) of section 124 of Sikkim Police Act, 2008 empowers an officer of the rank of Superintendent of Police to place a police officer of the rank of Inspector of Police and below, subordinate to him, under suspension., under the circumstances mentioned at clauses (a) to (c) therein. The authorities superior to these authorities may also order suspension of a police officer pending disposal of an inquiry-or a criminal prosecution. Suspension shall take effect from the date of receipt of the order by the officer affected, unless he is an absentee without leave, in which case it will take effect from the date of absence from duty. In the case of criminal prosecution, it takes effect from the date of arrest.

**20. Date from which suspension order is effective:**

Except in cases in which a police officer is deemed to have been placed under suspension, an order of suspension can take effect only from the date on which it is made. Normally it is expected that the order will be communicated to the police officer simultaneously. Difficulties may, however arise in giving effect to the order of suspension from the date on which it is made if the police officer to be placed under suspension –

- (a) is situated at a place other than where the competent authority making the order of suspension;
- (b) is on tour and it may not be possible to communicate the order of suspension; or
- (c) is holding charge of stores and/or cash, seized goods etc.

In the cases of types (a) and (b) above it will not be feasible to give effect to an order of suspension from the date on which it is made, owing to the fact that during the intervening period a police officer may have performed certain functions lawfully exercisable by him. The competent authority making the order of suspension should take the circumstances of each case into consideration and may direct that the order of suspension will take effect from the date of its communication to the police officer concerned.

Where a police officer holding charge of stores and/or cash is to be placed under suspension he may not be able to hand over charge immediately without checking and verification of stores/cash etc. In such cases the competent authority should, taking the circumstances of each case into consideration, lay down that the checking and verification of stores and/or cash should commence on receipt of suspension order and should be completed by a specified date from which suspension should take effect after formal relinquishment of charge.

An officer who is on leave, or who is absent from duty without permission, may be placed under suspension with immediate effect. When a police officer is placed under suspension while he is on leave the unutilized portion of the leave should be cancelled by an order to that effect.

No order of suspension should be made with retrospective effect except in the case of deemed suspension. A retrospective order will be meaningless and improper.

Suspended person not to leave headquarter

21. When a police officer is placed under suspension pending inquiry he should not leave the station where his office is situated without obtaining permission of his controlling authority. When the permission is granted, he may go to any place, but he must leave his address with the Head of Office. He must also leave his address with the officer, if any, holding the inquiry. If and when there is a change in his address he must promptly intimate the same to all concerned. All correspondence relating to the inquiry will be communicated only to notified addresses and this would be in full compliance with the serving of notices to an accused officer.

22. Where a police officer is placed under suspension, it is particularly necessary to expedite the inquiry against him and to complete it as early as possible. Arrangements should be made to divest the officer to be placed under suspension, of arms and ammunition on his person and/or in his custody, and thereafter the orders of suspension served on him. Even while holding inquiries the Inquiry Officer should ensure that the accused police officer whether under suspension or otherwise is completely disarmed and is not in possession of any kind of arms, ammunition or other implements while facing the inquiry,. A police officer under suspension on a charge of misconducts either facing

inquiry or criminal prosecution may be permitted to retire on reaching the date of superannuation.

23. When a police officer is placed under suspension by an officer on being ordered by his superior officer, he should not be reinstated before completion of the inquiry without the consent of such superior officer.

**24. Appeal against suspension:**

Subject to the provisions contained in sub-rule (1) of rule 11 of Sikkim Police Force (Discipline & Appeal) Rules, 1989 a Police officer has a right to prefer an appeal against an order of suspension made or deemed to have been made under rule 10. This would imply that a police officer placed under suspension should generally know the reason leading to his suspension so that he may be able to prefer an appeal against it. Hence, where a police officer is placed under suspension on the ground that a disciplinary proceeding against him is pending or a case against him in respect of any criminal offence is under investigation, inquiry or trial, the order placing him under suspension may contain a mention in this regard.

Where a police officer is placed under suspension on the ground of contemplated disciplinary proceeding, every effort should be made to finalise the charge against him expeditiously. If this is done the officer placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time.

Consideration of appeal by the appellate authority: On receipt of the appeal the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case the order of suspension is justified or not; and confirm or revoke the order of suspension accordingly.

Revocation of suspension: An order of suspension should be revoked without delay where the police officer was placed under suspension pending completion of-

- (i) departmental inquiry, if it is decided that no formal proceedings need be drawn up with a view to imposing a penalty of dismissal, removal, compulsory retirement or reduction in rank; or if the police officer is

exonerated of the charges against him; or if the penalty awarded is not dismissal, removal or compulsory retirement.

- (ii) investigation or trial in respect of a criminal offence, if investigation does not disclose an prima facie case of an offence having been committed; or if he is acquitted by a competent court, and it is further decided that no departmental proceedings need be initiated on the basis of facts disclosed during investigation or on the basis of facts which led to the launching of prosecution in a court of law.

If a police officer who was deemed to have been placed under suspension due to detention in police custody erroneously or without basis, and thereafter released without any prosecution having been launched, the deemed suspension may be treated as revoked from the date the cause of suspension itself ceases to exist, that is, the police officer is released from police custody without any prosecution having been launched. A formal order for revocation of such suspension may, however, be issued for administrative record.

In the case of a police officer under suspension who is acquitted in a criminal proceeding, and against whose acquittal an appeal or a revision application is filed, it may be considered whether it is necessary to continue his suspension. If not, the order of suspension should be revoked immediately.

The order of revocation of suspension will take effect from the date of issue. However, where it is not practicable to reinstate a suspended police officer with immediate effect, the order of revocation of suspension should be expressed as taking effect from a date to be specified. The order of revocation of suspension should be made in the prescribed form. On revocation of an order of suspension a police officer is reinstated in service. Form- III is a specimen order of revocation of suspension.

### **Period of suspension**

25. An order of suspension should be reviewed every six months or even earlier by the officer who placed him under suspension or the officer to whom such officer is subordinate. Such review may be suo motu or on a representation made by the officer

under suspension. Where the period of suspension exceeds one year the case should be reported to the Director General of Police duly mentioning the facts leading the suspension and the reasons for the continuance of such suspension beyond one year.

**26. Speedy investigation into cases in which an officer is under suspension:**

Though suspension is not a punishment it does constitute great hardship for a police officer. Thus, in fairness to him/her, the period of suspension should be reduced to the barest minimum. Undue long suspension also involves payment of subsistence allowance without the officer performing any useful service to the department. Investigation into cases of officers under suspension should, therefore, be given high priority and every effort should be made to file the charge sheet in the court of competent jurisdiction in cases of prosecution; or serve the charge sheet on the officers in case of departmental proceedings as soon as possible. In cases other than those pending in courts the total period of suspension, that is both in respect of investigation and disciplinary proceedings, should not ordinarily exceed six months. In exceptional cases where it is not possible to adhere to this time limit, the disciplinary authority should report the matter to the next higher authority, explaining the reasons for the delay. The authorities superior to the disciplinary authority should also exercise stick check on cases in which delay has occurred, and give appropriate directions to the disciplinary authorities.

If investigation is likely to take more time it should be considered whether it is still necessary, taking the circumstances of the case into account, to keep the police officer under suspension or whether the suspension order could be revoked, and if so, whether the police officer could be permitted to resume duty on the same post or transferred to another post or office.

Acceptance of resignation/notice for voluntary retirement during suspension:

If an officer against whom an inquiry or investigation is pending, whether he has been placed under suspension or not, submits his resignation, such resignation should not normally be accepted. Where, however, the acceptance of resignation in such a case is considered necessary in public interest because one or more of the following conditions are fulfilled, the resignation may be accepted with the prior approval of the Director

General of Police in the case of group 'C' and group 'D' personnel, and that of the State Government in respect of group 'A' and group 'B' posts:-

- (i) Where the alleged offences do not involve moral turpitude; or
- (ii) Where the quantum of evidence against the accused officer is not strong enough to justify the assumption that if the departmental proceedings were continued the officer would be removed or dismissed from service;

or

- (iii) Where the departmental proceedings are likely to be so protracted that it would be beneficial to the public exchequer to accept the resignation.

If a police officer under suspension gives a notice for retirement it is open to the appropriate authority to withhold permission under rule 101 of Sikkim Government Service Rules, 1974. The power to withhold permission can be exercised by the appropriate authority even if the police officer is placed under suspension after giving the notice for retirement, but before the expiry of the period of notice.

### **Preliminary enquiry**

27. Before initiating disciplinary action against a police officer it is necessary that evidence is gathered by way of preliminary enquiry for the satisfaction of the authority that there is sufficient prima facie evidence to start disciplinary proceedings against the officer. The preliminary enquiry may be made by or under the orders of any officer under whose administrative control the officer alleged to be at fault is working or a superior authority; but the decision to hold the inquiry can only be taken by the prescribed disciplinary authority.

28. Based on the preliminary enquiry report the disciplinary authority should decide :

- (a) whether a prima-facie case exists for further action;
- (b) if so, whether a formal departmental inquiry should be held or whether the police officer should be prosecuted in a court of law;
- (c) whether the police officer concerned should be suspended pending inquiry or prosecution as the case may be ;

(d) whether the circumstances of the case warrants termination of service of the police officer without an inquiry.

29. If the preliminary enquiry does not reveal misconduct of such serious nature as to merit the imposition of any of the major penalties, but it is felt that some informal action is called for, a written warning or reprimand may be communicated to the erring officer. In appropriate case action for imposing minor penalties may be taken.

30. Any officer may call for explanation from his subordinate officer in respect of any matter pertaining to his duties and it will often be advisable before initiating an inquiry to obtain the explanation as, after obtaining it, the reporting authority may feel that there is no ground to initiate an inquiry at all. Calling for such explanation is however not compulsory and the authority competent to order the inquiry will have to decide, according to the circumstances of each case, whether or not any such explanation should be obtained before issue of a memo of charge.

### **Memorandum of charges**

31. Once the disciplinary authority is satisfied that an inquiry is necessary, or he is directed by higher authority to hold an inquiry, the first step will be to issue a memorandum of charges to the police officer concerned by the disciplinary authority. The memorandum is an intimation to the delinquent officer regarding the proposed inquiry, and giving him an opportunity to specifically admit or deny any or all the charges as well as to prefer a written submission within a stipulated period – which is normally 10 days after receipt of the memorandum – if the officer so desires. The delinquent is also informed that an inquiry will be held only in respect of such charges as are not admitted by him. The memorandum and its enclosures are prepared in three copies. The original should be delivered to the delinquent officer. One copy is kept as in the relevant file. The third copy is meant for delivering to the inquiring authority in case one is so appointed in due course. The memorandum should mention the number of sheets enclosed to it. As far as possible, the memorandum and enclosures thereto should be delivered to the delinquent officer by hand, and his/her receipt should be obtained on the office copy. If, for reasons beyond control, delivery cannot be effected by hand, the

documents may be sent to the delinquent by registered post, acknowledgment due. The memorandum of charge may be issued as per the Form- IV.

32. The following documents are to be enclosed to the memorandum:-

(a) Articles of charges – this is an abridged version of the charges, mentioning mainly the allegation in nut shell and the probable period and place of commission of the alleged act or omission. For this reason it is also known as substance of misconduct or misbehaviour. Each charge is specifically mentioned under separate serial number, and the relevant rule that was violated by the commission or omission is also spelt out. It may be kept in mind that a single incident for which a departmental action is initiated could consist of more than one charge. For example, if an officer is found intoxicated on the road during his duty time in the office, there will be two charges against him, one for leaving the place of duty, and the other for having been found in a state of intoxication. In the articles of charges Article-I will state that when the delinquent officer was posted at the particular place, he, on the particular date mentioned therein, was found intoxicated. Article-II will state that on that date he was found absent from duty. No further details of the incident will find place in the Articles of charge. Form- V is a specimen of the Articles of Charge.

(b) Statement of imputations of misconduct or misbehaviour – Every charge mentioned in the articles of charges is elaborated in this statement with details. Herein give the details of the charge in a descriptive manner, so that the delinquent is aware of the imputations leaving no room for doubt or ambiguity. Form- VI is a specimen of the Statement of imputations of misconduct.

(c) List of documents by which the charges are proposed to be proved. See Form- VII

(d) List of witnesses by whom the charges are proposed to be proved. See Form- VIII

33. Admissions, if made, should be specific and unambiguous. In case the delinquent officer admits all the charges in his written statement submitted in reply to the

memorandum of charges, no formal enquiry is warranted, and the disciplinary authority should record its findings in respect of each article of charges and take further action.

34. If the delinquent officer does not admit all or any of the charges, or if he does not submit any written statement within the stipulated time, the disciplinary authority should either conduct the enquiry himself or appoint an inquiring authority. If the higher authority has directed the disciplinary authority to hold the inquiry himself, he himself will be the inquiring authority.

35. Where more than one police officer of different ranks are involved in a single default and a joint inquiry against all such accused police officers is to be held, the disciplinary authority in respect of the delinquent police officer holding the highest rank or post should appoint the inquiring authority in respect of all accused police officers. In such cases, sufficient number of copies of the order should be prepared for service on all the delinquent officers.

In view of the above rules, the following instructions are issued:

- A. When two or more officers of the same service or different service are involved in one case, the highest authority competent to impose the penalty of dismissal from service on all such officers may make an order for holding regular inquiry against them in a common proceedings with the consent of the other disciplinary authorities/ authority.
- B. Having regard to the findings in the inquiry report in the common proceedings, it is for the disciplinary authority concerned to issue final orders inflicting the punishment duly following the procedure.
- C. When two or more persons are involved in one case, the magnitude of involvement of all the charged officers may not be the same and the degree of culpability may also vary from person to person. As such it may not be possible to impose the same penalty uniformly on all the charged officers. As such it may not be legally valid to prescribe any guidelines or yardsticks for imposing penalty in such cases. Therefore, the competent authority who orders such a joint inquiry should ensure that such penalties are imposed on

the members of service involved in the disciplinary case keeping in view the degree of their culpability/ seriousness of lapses/ charges held proved.

- D. When members belonging to more than one district or unit are involved in the same offence, they should be jointly dealt with, with the prior approval of the competent superior authority. For example, if three constables belonging to more than one district or unit are concerned in an affray, they should be dealt with by any of the three Superintendents of Police, or Commandants, after obtaining the orders of the DIGP if they belong to the same range or of the Adtl. DGP/IGP, Law & Order or DGP.
- E. The fact of an officer having been placed in charge of a post (as distinguished from his being appointed to officiate in the post) does not affect the powers of punishment given to the various officers. However, an officiating incumbent should be dealt with in the same way as a permanent officer of that rank. For instance, a Sub-Inspector holding additional charge of the post of an Inspector will be deemed to be an Inspector for the purposes of disciplinary proceedings.
- F. When an officer is promoted from a lower to a higher rank or when an officer is reverted or reduced from a higher to a lower rank, the officer competent to punish him for acts done prior to promotion or reduction shall be the officer who is competent to award punishment in respect of the higher rank.

### **Inquiring authority**

36. While appointing the inquiring authority the disciplinary authority should ensure that the officer selected to conduct the inquiry is a person who has not conducted the preliminary enquiry and who had not at any time, before being so appointed, expressed an opinion about the guilt of the accused police officer.

37. Appointment of an inquiring authority should ordinarily be made by designation and not by name. If the incumbent inquiry authority vacates his office due to transfer, retirement etc., his successor shall continue the inquiry from where it was left by his predecessor. The order of appointment of an inquiring authority should be prepared in

four copies. Two copies should be sent to the officer under whom the delinquent police officer is serving, for service and return of one copy bearing the acknowledgement of the delinquent officer. The third copy should be sent to the inquiring authority and the fourth copy should be retained by the disciplinary authority as office copy. Form- IX is a specimen order for appointing Inquiry officer; and Form- X is the specimen for appointing a new Inquiry Officer in the place of a previously appointed Inquiry Officer.

38. (1) It is desirable that where the charge is grave enough to warrant dismissal, removal, compulsory retirement or reduction to a lower rank, the officer who conducts the inquiry should preferably be in rank of Superintendent of Police.

(2) The inquiry authority should conduct the enquiry himself and not entrust it to any other officer.

(3) An officer who is to be cited as a prosecution witness in an inquiry should not be appointed inquiry authority. If he is required as a defence witness by the delinquent officer, the latter should be asked to state in writing what points the officer is cited to elucidate. If the inquiring authority considers it unnecessary to allow himself to be examined as a defence witness, he will file that representation with his remarks as part of the records of the inquiry and incorporate the facts contained in that application and his remarks thereon in the minute. If the inquiring authority thinks that his examination as a defence witness is really necessary, he should immediately report the matter to his immediate superior and seek instructions. When the officer's evidence is considered such as is likely to have a bearing on the result of the inquiry, the inquiry should not be conducted by him but by some other officer.

39. The disciplinary authority should forward to the inquiry authority, if appointed, all the relevant documents namely the memorandum of charges, the articles of charge, the statement of imputations of misconduct or misbehaviour, a copy of the written statement of defence if submitted by the delinquent officer, evidence proving delivery of the memorandum of charges and enclosures thereto, and a copy of the order appointing the presenting officer, if appointed.

### **Presenting officer**

40. Whether the inquiry is conducted by the disciplinary authority or the inquiry authority, the disciplinary authority may appoint a police officer as 'presenting officer' to present on its behalf the case in support of the articles of charge. Appointing a presenting officer is not mandatory, but only to assist the inquiry officer. Whether or not a presenting officer is appointed, the delinquent officer has the right to take the assistance of any police officer to present the case on his behalf. However the delinquent officer cannot take the assistance of a legal practitioner unless the presenting officer is a legal practitioner or the disciplinary authority, considering the circumstances of the case, permit the delinquent officer to engage a legal practitioner. Form- XI is the specimen order for appointing Presenting Officer.

### **Inquiry proceedings**

41. The inquiring authority should maintain a record in the form of an order sheet, in which he should make a brief record of the day-to-day proceedings of the inquiry including oral and written requests of the delinquent police officer and the orders passed on such requests.

42. Immediately on receipt of the documents from the disciplinary authority, the inquiry authority should serve a notice in writing to the delinquent officer, directing him to appear on a date specified therein - which should ordinarily be within the next 10 days - at the place and time fixed by the inquiry authority. If the delinquent officer requests for a few more days for unavoidable reasons, the inquiry authority may consider such request on merit; but this should not be a delay tactics on the part of the delinquent officer.

43. When the accused delinquent officer appears for the inquiry on the date of first hearing, the inquiring authority should put the following questions, and the answers, should be recorded in writing in the order sheet:

- (1) Have you received a copy of the charge memo with a statement of the allegations?
- (2) You have submitted a written statement in reply to the memo of charge. It has been taken on record.

- (3) Have you understood the charges?
- (4) Have you any objection to my holding the inquiry against you?
- (5) Have you anything else to say before I proceed with the inquiry?

The answers must be read over (and translated if necessary) to the delinquent officer, and his signature and that of the inquiring authority appended to it. The following certificate should be written at the end of each set of questions and answers: "Recorded by me, read over (and translated) to the deponent and acknowledged by him to be correct".

44. If the delinquent officer pleads guilty to all the charges that are to be inquired into, the inquiry authority shall record the plea in the order sheet, sign it and obtain the signature of the delinquent officer. Thereafter the inquiry authority shall draw up his findings.

45. If the delinquent officer does not plead guilty and wishes to defend himself, he shall be permitted to inspect the documents that are to be relied upon to prove the charges, and in case he requests for copies of such documents he should be provided with them without much delay.

46. As far as practicable, inquiry proceedings should be conducted at least once in every week. If the delinquent officer does not submit a written defence and does not appear before the inquiry authority or fails to comply with the rules, the inquiry authority should hold the enquiry ex-parte.

### **Defence plea**

47. A delinquent police officer must have reasonable facilities for the preparation of his defence, and subject to this condition, it is the inquiring authority's responsibility to complete the departmental proceedings with the greatest speed and submit his report to the appropriate authority. As a delinquent officer cannot be kept under suspension for long period, the enquiry should be completed as quickly as possible. If the delinquent police officer, for some substantial reason, applies for extension of time to enable him to put in his defence the inquiring authority, if he is satisfied that the request is reasonable, may grant further reasonable time to put in his written statement. If, on the contrary, the inquiring authority considers that the application should be refused on the ground that it

is made for the purpose of vexation or delay or for defeating the ends of justice, he may, after recording the reasons in writing, reject the application.

### **Inspection of documents by the delinquent police officer**

48. The inquiring authority should give every reasonable facility to the delinquent officer to inspect any records necessary for the purpose of preparing his defence. Such inspection should be arranged in the presence of a responsible police officer to ensure that the records are not tampered with in any manner. Documents and records not referred in the memorandum of charges but which the delinquent officer considers relevant should be made available to him unless there are special and valid reasons for not doing so. If any particular record has been withheld, the reasons for doing so should be recorded in writing in the proceedings and communicated to the delinquent officer in the form of a separate order, a copy of which, with the delinquent officer's acknowledgement, should be kept in the proceedings file.

49. When an delinquent police officer who is on leave fails without sufficient cause to obey a written order requiring him to attend the inquiry on a specified date, he will be liable to have his leave cancelled. It is incumbent on the officer whether he is under suspension or on leave, to leave his address in the office where he is attached or posted, and with the inquiry authority. Any orders intended for the delinquent police officer will be sent to the address furnished by him, and it is therefore his responsibility to see that he makes proper arrangements to receive such communication. If he claims that he was unable on account of ill-health to attend the inquiry, his claim will be rejected unless it is supported by a medical certificate mentioning that the delinquent is not in a condition to attend the inquiry.

### **Recording of evidence**

50. At the inquiry, evidence should be heard on charges which are not admitted or which, though admitted, the inquiring authority desires to inquire into. The inquiry should not however extend to matters not mentioned in the memorandum of charges. The evidence in support of the charges should be recorded first in the presence of the delinquent police

officer and then he be given an opportunity to cross-examine the witnesses. At the head of each statement the name, father's name (or husband's name), age, occupation and address of the witness should be entered and in the case of an official witness, his name, rank or designation should be written.

51. The evidence of each witness should be recorded in the form of a narrative in the first person and when the evidence is completed the delinquent police officer should be called upon to cross-examine the witness. If, as a result of cross-examination, any doubts are raised, the inquiring authority may re-examine the witness for clarification and if, as a result of such re-examination, any new matter is introduced, the delinquent officer should be afforded an opportunity to further cross-examine the witness with reference to the new matter. If the delinquent officer states that he has no cross examination or refuses to cross-examine, a record should be made thus 'Cross-Examination Nil' or 'Declines to cross-examine'.

52. The whole statement should thereafter be read over to the witness and if necessary explained to him in the language in which it was given. If the witness denies the correctness of any part of the evidence when it is read over to him, the inquiring authority may either carry out the correction or instead of correcting the evidence, make a memorandum of the objection and add such remarks as he thinks necessary.

53. In a joint inquiry each of the delinquent officers should be afforded opportunity to cross-examine the witnesses examined in support of the charge. A delinquent officer should be given opportunity to cross-examine the witnesses of the co-accused officers if the evidence of such a witness supports the charge levelled against that particular delinquent officer

54. At the foot of the completed deposition including cross-examination of each witness, the following certificate should be written and signed by the inquiring authority, the witness and the delinquent officer. "Recorded by me, read over (and translated) to the deponent and acknowledged by him to be correct". If there are more than one page of deposition the pages other than the last should also be initialed by all the parties mentioned, preferable below the last line, if space is available.

#### **Documents to be taken on record**

55. Documents in support of the charges should be marked in red ink in a conspicuous place and marked as Exhibit P-1, P-2, and so on. They should be kept in a separate file with an index showing the particulars in brief of each exhibit, the witness who produced it and its page number(s) in the file. The inquiring authority may also put in other documents and evidence if he considers it important to find out the truth. Such exhibits will be indicated as Exhibit by Inquiring Authority - Ex. C-1, C-2, and so on. (C- indicating court).

56. After taking all the oral and documentary evidence in support of the charge and the case for the prosecution is closed, the inquiring authority should put the following questions to the delinquent police officer and record both the question and the reply in his very words in the order sheet:

(1) You have heard the evidence of the witnesses against you. What have you to say?

(2) Have you any witnesses to be examined in your defence?

(3) Do you wish to produce any documents in your defence?

57. He must be given a reasonable time to draw up and present a list of witnesses and documents. The inquiring authority can question him for what purpose each witness is required so as to avoid protraction of the inquiry by citing unnecessary witnesses. Normally, the request to call an official witness should not be rejected. When, however, it appears that the request is frivolous or vexatious and that it is made with a view to unnecessarily prolong the inquiry and that the facts which he is expected to speak to (according to the statement of accused) are not relevant for the purpose of inquiry, the request should be refused. The reasons for refusing to call a witness (official or private) should be recorded in writing and communicated to the delinquent officer and his acknowledgement obtained. Failure to do this will vitiate the inquiry.

### **Defence Witnesses**

58. Defence witnesses, styled 'DW', are thereafter examined-in-chief by the delinquent police officer and cross-examined, if necessary, by the presenting officer (if

appointed) and also by the inquiring authority, but not by other witnesses to the inquiry, however much they are impugned. The delinquent officer may re-examine the defence witnesses as he considers necessary, after which the inquiring authority may again question the defence witnesses further. If the delinquent officer makes a request for permission to examine himself as a witness in his defence, the application should be granted and the delinquent officer examined as a defence witness. Defence exhibits should be marked in red ink as D-1, D-2, and so on.

59. If, in spite of reasonable opportunity afforded to the delinquent officer for adducing defence evidence, he fails to adduce such evidence, it is open to the inquiring authority to conclude the inquiry on the basis that the delinquent officer has no defence evidence to produce.

60. If the accused officer dispenses with any of the defence witnesses or documents cited by him, this fact should be recorded in the 'Proceedings' file under the signatures of the accused officer and the Inquiring Authority. Copies of such evidence as are required by the accused Police Officer may be permitted to be taken by him.

#### **Attendance of witnesses**

61. The inquiry officer has no power to enforce the attendance of any non-official witness. As regards official witnesses, he should be able to procure their presence either by writing to them direct or to their superior officers at appropriate levels. Normally, the request to call an official witness, when his evidence is relevant, should not be rejected. When, however, it appears that the request is frivolous or vexatious or it is made with a view to prolong unnecessarily the inquiry, the request should be refused and the reasons thereof recorded in writing. In all cases where the inquiring authority feels that the evidence of an official witness is relevant for the inquiry whether called at the instance of the delinquent officer or at his own discretion, the expenditure should be borne by Government. In all other cases where the inquiring authority feels that the evidence of a particular witness is not relevant for the inquiry but is called at the instance of the delinquent police officer, the expenses of such witnesses should be borne by the delinquent police officer. Before asking such a person to appear before him as a witness, the inquiring authority should require the delinquent officer to deposit the necessary

expenses with him. If he fails to deposit the amount, the inquiring authority may decline to summon the witnesses and examine them.

### **Responsibility of the inquiring authority**

62. It is the responsibility of the inquiring authority to arrive at the truth or otherwise of the charges against the delinquent officer on the evidence brought on record during the inquiry. For this purpose, it is his responsibility to put whatever questions that may be considered necessary both to the witnesses examined in support of the charges and to the witnesses produced by the delinquent officer.

### **63. Precautions for inquiring officer**

(1) The inquiry officer must be strictly impartial. It is particularly important that the formalities prescribed in the statutory rules and orders are followed. It is essential that the conduct of the proceedings should be such as to inspire a belief that the inquiry is being conducted in an impartial manner.

(2) Inquiry should be completed with as little delay as possible. Care should be taken to avoid all dilatoriness; and adjournment or postponement of the inquiry should not be allowed unless absolutely necessary. Where an officer is suspended pending an inquiry into his conduct, it is all the more necessary that the inquiry should be completed expeditiously and orders passed as early as possible.

(3) If at any stage of an inquiry the delinquent officer declines or expresses his unwillingness to take part in the proceedings before the inquiring authority, the inquiring authority is entitled to, and should proceed with the inquiry ex-parte, conclude it upon the materials placed before him and record his findings.

(4) If the enquiry conducted on the complaint of a person or body or on the basis of preliminary enquiry conducted by an other officer, such private person or officer should not be allowed to examine or cross examine any witness but he may suggest questions to the enquiry officer to put to such witnesses.

### **Drawing up of the inquiring findings**

64. On completion of the inquiry, including personal examination of the delinquent officer, if done at his request, the inquiring authority shall record his findings which will be known as minute in respect of each charge, with reasons thereof. A minute shall be written in all cases. The minute will be written under the following heads:

- (a) Statement of the charge(s)/statement of allegations or brief facts of the case;
- (b) Summary of the prosecution evidence ;
- (c) Summary of the defence evidence ;
- (d) Memo of the points urged by the delinquent officer during his personal hearing, if any ; and
- (e) Findings on each charge or charges.

65. No reference to the demeanour of witnesses should be made in the minute unless a note was made in the records at the time of the inquiry in this regard. This is necessary to ensure that the inquiring authority who frames the minute does not speak about the demeanour of witnesses merely from memory. The summary under items (b) and (c) of the minute should contain only so much of the evidence on record as is essential for the adequate discussion of the facts in issue.

66. The finding on each charge should be recorded separately after careful consideration of the evidence adduced for and against it. Where there are several charges, the inquiring authority should deal with each charge completely, analyze the evidence in respect of each charge and come to the conclusion as to whether he considers a charge is proved or not, before passing on to the next charge. A full and final summing up will be given at the end, covering all the charges.

67. When only a part of a charge is proved by the evidence on record or a charge is proved in a modified form, it shall be recorded accordingly, detailing the extent to which or the form in which the charge is held to be proved. When it becomes necessary to record findings on charges different from those originally framed, the inquiring authority

may record findings on such charges, provided reasonable opportunity had been given to the delinquent officer to defend himself by way of cross-examination and by adducing other defence evidence in respect of such charges.

### **Forwarding the Inquiry Report and the Minute**

68. The inquiring authority should forward the minute and other records of inquiry, which should be treated as confidential, with a forwarding letter through the proper channel to the authority competent to award the penalty,. He will also send the service register and personal file of the accused officer, if they are in his custody; otherwise, the officer through whom the records are sent to the competent authority should attach the service register and personal file in original, if they are with him. The authorities through whom the records of inquiry pass may also add their remarks on the forwarding letter.

69. Along with the forwarding letter, a statement showing the following particulars of the delinquent police officer should be enclosed:

- (1) Date of birth.
- (2) Date of appointment.
- (3) Length of service.
- (4) Substantive rank.
- (5) Date of promotion to present rank or grade.
- (6) Pay in the substantive grade or rank.
- (7) Pay in the present grade or rank.
- (8) Date of next increment due.
- (9) Number of monetary rewards and Good Service Entries.
- (10) Number of punishments: Major & Minor.

### **Systemization of the inquiring record**

70. The inquiry records should be sorted and arranged in four files as under:

File No.1 : called the "Proceedings File" should contain the following records:

- (1) Order-sheet.
- (2) Acknowledged copy of the suspension order, if the delinquent officer has been placed under suspension pending inquiry.

- (3) Acknowledged copy of the order (or memo) of the disciplinary authority, appointing the inquiring authority to conduct the inquiry.
- (4) Acknowledged copy of the memorandum of charges.
- (5) Written statement of the delinquent officer submitted in reply to the memorandum of charge.
- (6) First oral statement of the delinquent officer recorded on the first day of hearing of the inquiry.
- (7) Statements of witnesses recorded in support of the charge(s) including cross-examinations and re-examinations, etc.
- (8) Oral statement of the delinquent officer recorded after examination of the witnesses in support of the charge(s).
- (9) Statements of witnesses examined in defence including cross-examinations and re-examinations, etc., if any.
- (10) Documents in support of the charges.
- (11) Documents in support of the defence, if any.
- (12) Oral statement of the delinquent officer recorded after the examination of witnesses in defence.
- (13) Further written statement of defence, if any, of the delinquent officer.
- (14) Minute of the inquiring authority.

File No.2: called the 'Preliminary Enquiry File' should contain the entire preliminary enquiry records including the statements of witnesses, if any, recorded during the preliminary enquiry and report of the preliminary enquiry filed chronologically,

File No.3: called 'Miscellaneous File' should contain the following records: All petitions of the delinquent officer requesting for supply of copies of records and other correspondence exchanged by the inquiring authority in connection with the inquiry including notices issued and acknowledged, etc.

File No.4: called the 'Order File-' should consist of -

- (1) Recommendations of the inquiring authority and/or any other superior officer through whom inquiry records pass.
- (2) Findings of the disciplinary authority, if the inquiring authority is not himself the disciplinary authority.
- (3) Show cause notice (copy acknowledged by the delinquent officer), if any.
- (4) Representation of the delinquent officer in reply to the show causes notice.
- (5) Proceedings of the disciplinary authority passing the final orders.
- (6) Correspondence such as notices, etc., exchanged by the disciplinary authority.

71. Each page of each file should be numbered in book form and an index prepared. All the four files together form the 'inquiry file' which should be docketed.

#### **Provisional conclusion**

72. The authority competent to impose punishment shall examine the minute along with the records of the inquiry and record its provisional findings on each charge giving reasons therefore. Thereafter it shall come to a provisional conclusion in regard to the penalty to be imposed.

#### **Second or Further Opportunity to the Delinquent**

73. Where the penalty proposed is of major nature, the delinquent officer should be supplied with a copy of the report of the inquiring authority and be called upon by the competent authority or such other officer authorised by it in this behalf to show cause within a reasonable time, not ordinarily less than one week but not exceeding two weeks, against the penalty proposed to be inflicted. Any representation in this behalf submitted by the delinquent officer shall be duly taken into consideration before final orders are passed.

#### **The final order**

74. The final order containing the decision of the authority competent to impose the penalty should be a self-contained order, a speaking one and should set out briefly the relevant facts, and charges against the delinquent officer, findings of the inquiring authority consider the explanation offered by the charged officer in respect of the charges held proved against him; the decision of the disciplinary authority thereon with reasons in brief for any departure from the findings of the inquiring authority and it should be signed by the disciplinary authority.

75. In the case of punishments other than compulsory retirement, removal or dismissal from service, the disciplinary authority, if he is the appointing authority, should also pass orders releasing the delinquent officer from suspension,. If he is not the appointing authority he should refer the matter to the appointing authority with a copy of his final order, requesting him to release the delinquent officer from suspension and to give him a posting.

76. The disciplinary authority passing final orders should prepare sufficient number of copies of the proceedings. The first and the second copies of the order should be sent to the head of office under whom the delinquent officer was serving, with instructions to serve the original copy on the delinquent officer, obtain his dated signature on the duplicate copy for having received the original copy, and to return to the disciplinary authority the acknowledged duplicate copy for being included in the original inquiry records. The third copy should be sent to the appointing authority if the disciplinary authority is not himself the appointing authority. The fourth copy should be sent to the drawing and disbursing officer who was drawing the pay of the delinquent officer till then. The fifth copy should be endorsed to the "establishment section" concerned. The sixth copy should be the spare copy and the seventh copy, the office copy to be filed in the office file of the disciplinary authority.

#### **Entry of punishment in defaulter sheet**

77. All punishments including judicial, awarded to police officers of the ranks of Police Inspector and below should be entered in their service books and personal files. A copy of the final order will also be placed in the personal files. In the case police officers below the rank of Assistant Sub-Inspector, punishments of drill, extra guard duty, extra

work and fatigue duty shall not be so entered. Similar action shall be taken in respect of all punishments including judicial awarded to senior police officers as well.

### **Appeals**

78. An appeal against any order of punishment passed against an officer any rules made there under, shall lie, where the order is passed by the Director General of Police, to the State Government, and where the order is passed by an officer subordinate to the Director General of Police, to the officer next higher in rank in the police hierarchy who passed such order.

79. An appeal, in order to be accepted, shall be preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the delinquent officer, unless the appellate authority is satisfied that the appellant had sufficient case for not preferring the appeal in the stipulated time.

80. Appeals must be accompanied by a copy of the minute and a copy of the order appealed against. No appeal shall be entertained if it is not preferred within the time limit prescribed in rules. The period intervening between the date of application for a copy of the minute or any other material forming the contents of the appeal and the receipt thereof by the appellant may be excluded from the calculation of the time limit for appeals. A police officer is entitled statutorily to only one appeal against any order imposing a penalty on him.

### **Records to be sent with appeals**

81. Every appeal shall be forwarded to the appellate authority with an expression of opinion and with remarks on each paragraph of the appeal in regard to the accuracy of the statements made and inferences drawn. In forwarding appeals the records connected with the order appealed against and the records of inquiry in the case of penalties of dismissal, removal, compulsory retirement or reduction in rank should be forwarded to the appellate authority together with a copy of the appellant's service book and personal file. However, the records of the enquiry need not be sent with time-barred appeals. The appellate authority will call for them if he requires them. A certificate that the copy of the minutes furnished by the appellant is genuine should also be sent.

82. When an appeal is presented the appellate authority should first satisfy that the requirements of the disciplinary proceedings rules have been complied with. If there are any procedural defects to occasion prejudice to the appellant or causing miscarriage of justice the case should be returned to the authority which passed the original order,

81. If the procedural defects are of a minor nature which could not have caused miscarriage of justice to the appellant the appellate authority may dispose of the appeal on its merits, but it will specify the irregularities in its order and state why they have been disregarded. The appellate authority will consider:

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for inflicting punishment ;

(c) whether the penalty is excessive, adequate or inadequate; and if it thinks necessary, may require the authority passing the order to make further inquiry on any point or points specified and shall then pass such orders as it thinks just and proper, including the enhancement of any punishment given, or the awarding of a more severe punishment;

83. However, a punishment shall not be enhanced, or a more severe punishment awarded in appeal, unless notice to show cause against such enhancement or more severe punishment, as the case may be, has been given and any cause shown thereon considered.

84. In cases where delinquent officers are reinstated in service after suspension, compulsory retirement, removal or dismissal from service, specific declaration as to whether the previous service rendered by them counts for pension or not, should be recorded in the service book and attested by the head of the office.

85. When an admissible appeal is submitted to the Government, all the evidence, documentary and oral, which forms part of the record of the inquiry should be submitted with the appeal, together with the remarks of the Director-General on the points raised in the appeal.

86. **Revision**

(1) The State Government alone shall have the power of revision. The Director-General may, in respect of punishments which are appealable, call for the records of the case on his own motion or otherwise to satisfy himself about the propriety or correctness of an order passed and if he is of the opinion that the order passed is improper, he may forward the proceedings to the State Government with his report containing recommendation for revision.

(2) Similarly, a superior police officer in respect of punishments inflicted by an officer subordinate to him may call for records and if, on a perusal of the records, he is of the opinion that the order passed is improper, he may forward the proceedings to the Director-General through the official channel for a review.

### **Reinstatement and payment of arrears**

87. In cases where an order of dismissal, removal or compulsory retirement passed by the competent authority is set aside in appeal or revision or under an order of court of law and the police officer is reinstated in service on grounds of equity, the questions as to what pay and allowances should be allowed for the intervening period and whether or not the period should be treated as duty should be dealt with under the relevant rules.

### **Register of punishments**

88. All the district superintendents of police and branch heads should maintain a register of punishments in which will be entered the details of all the inquiries instituted against the police officers while in their charge.

**ORDER OF SUSPENSION**

(pending disciplinary proceedings or during investigation/inquiry/trial in a criminal case)

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS a disciplinary proceeding against (number, name and rank) .....  
is contemplated/pending;

**OR**

WHEREAS a case against (number, name and rank) ..... in respect of a criminal  
offence is under investigation/inquiry/trial;

2. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by  
sub-rule (1) of rule 10 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989,  
hereby places the said (number, name and rank) ..... under suspension with immediate  
effect.

3. It is further ordered that during the period that this order shall remain in force the  
headquarters of (number, name and rank) ..... shall be (name of the place) ..... and the  
said (number, name and rank) ..... shall not leave the headquarters without obtaining  
the previous permission of the undersigned.

Signature

Name and designation

Copy to:

1. (number, name and rank of the suspended officer) ..... Orders regarding  
subsistence allowance admissible to him/her during the period of suspension will issue  
separately.

- 2. .... (immediate superior officer of the officer ordering suspension).
- 3. Accounts section of the suspended officer.
- 4. Pay & Accounts office concerned.
- 5. Officer-in-Charge of State Armoury
- 6. Personal file of the suspended officer
- 7. Guard file.

**ORDER OF SUSPENSION**

(when suspension is ordered in view of detention of a police officer for a period of 48 hours or more)

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS a case against (number, name and rank) ..... in respect of a criminal offence is under investigation;

2. AND WHEREAS the said (number, name and rank) ..... was detained in custody on (date) ..... and the period of custody exceeded forty-eight hours;

2. NOW, THEREFORE, the said (number, name and rank) ..... is deemed to have been placed under suspension with effect from the date of detention, that is (date of detention) ..... in terms of sub-rule (2) of rule 10 of Sikkim Police Force (Discipline & Appeal) Rules, 1989, and he shall remain under suspension until further orders.

3. It is further ordered that on being released from custody during the period that this order shall remain in force the headquarters of (number, name and rank) ..... shall, unless otherwise ordered by a Court of law, be (name of the place) ..... and the said (number, name and rank) ..... shall not leave the headquarters without obtaining the previous permission of the undersigned.

Signature  
Name and designation

Copy to:

1. (number, name and rank of the suspended officer) ..... Orders regarding subsistence allowance admissible to him/her during the period of suspension will issue separately.

- 2. .... (immediate superior officer of the officer ordering suspension).
- 3. Accounts section of the suspended officer.
- 4. Pay & Accounts office concerned.
- 5. Officer-in-Charge of State Armoury
- 6. Personal file of the suspended officer
- 7. Guard file.

**ORDER OF REVOCATION OF SUSPENSION**

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS an order placing (number, name and rank) ..... under suspension was made/deemed to have been made vide order No. .... dated .....

2. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by clause (c) of sub-rule (5) of rule 10 of Sikkim Police Force (Discipline & Appeal) Rules, 1989, hereby revokes the said order of suspension with immediate effect.

Signature

Name and designation

Copy to:

1. (number, name and rank of the suspended officer) ..... Orders regarding subsistence allowance admissible to him/her during the period of suspension will issue separately.
2. .... (immediate superior officer of the officer ordering suspension).
3. Accounts section of the suspended officer.
4. Pay & Accounts office concerned.
5. Officer-in-Charge of State Armoury
6. Personal file of the suspended officer
7. Guard file.

**FORM OF MEMORANDUM CONTAINING CHARGES**

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

The undersigned proposes to hold an inquiry against (number, name and rank) ..... Under rule 6/rule 7 of Sikkim Police Force (Discipline & Appeal) Rules, 1989. The substance of the imputation of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charges is enclosed (Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexures III and IV).

2. (number, name and rank) ..... is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He/She is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He/She should, therefore, specifically admit or deny each article of charge.

4. (number, name and rank) ..... is further informed that if he/she does not submit written statement of defence on or before the date specified in para 2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of rule 6/rule 7 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989, or orders/directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry against him ex-parte.

5. Attention of (number, name and rank) ..... is invited to rule 21 of the Sikkim Government Servants' Conduct Rules, 1981, where it is provided that no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his/her interest in respect of matters pertaining to his/her service under the Government. If, therefore, any representation is received on his/her behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that (number, name and rank) ..... is aware of such a representation and that it has been made at his/her instance, and action will be taken against him/her for violation of rule 21 of the Sikkim Government Servants' Conduct Rules, 1981.

6. Receipt of this Memorandum should be acknowledged by (number, name and rank) .....

Enclosures:

Signature  
Name and designation

To (number, name and rank) .....

Copy to:-

.....

.....

**FORM – V**

**See Chapter  
Order No.**

Annexure-I

**STATEMENT OF ARTICLE OF CHARGES FRAMED AGAINST  
SHRI.....**

Article-1

That the said Shri/Smt (No., name and rank) ..... while functioning as  
..... on ..... (date) or during the period ..... to .....

Article-2

That said Shri/Smt (No., name and rank) ..... on the  
aforesaid date (or during the aforesaid period and while functioning in the aforesaid  
office

Article-3

That said Shri/Smt (No., name and rank) ..... on the  
aforesaid date (or during the aforesaid period and while functioning in the aforesaid  
office

**FORM – VI**

**See Chapter  
Order No.**

Annexure-2

**STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN  
SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI .....**

Article-1

That the said Shri .....(N.....)  
- (Give details)

Article-2

- repeat from previous form

Article-3

- repeat from previous form

**FORM – VII**

**See Chapter  
Order No.**

Annexure-III

LIST OF DOCUMENTS BY WHICH THE ARTICLES OF CHARGE FRAMED AGAINST(No., Name & Designation) .....ARE PROPOSED TO BE SUSTAINED.

- 1
- 2
- 3
- 4

**FORM – VIII**

**See Chapter  
Order No.**

Annexure-IV

LIST OF WITNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST (No., Name & Designation) .....ARE PROPOSED TO BE SUSTAINED.

- 1
- 2
- 3
- 4

**ORDER APPOINTING INQUIRY OFFICER**

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS an inquiry under rule 6/rule 7 of Sikkim Police Force (Discipline & Appeal) Rules, 1989 is being held against (number, rank and name) .....

2. AND WHEREAS the undersigned considers that an Inquiry Officer should be appointed to inquire into the charges framed against the said (number, rank and name) .....

3. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by sub-rule ---- of the said Rule, hereby appoints (name and designation of the Inquiry Officer) ..... as the Inquiry Officer to inquire into the charges against (number, rank and name) .....

Signature  
Name and designation

Copy to:

1. .... (Inquiry Officer).
2. ....(Police officer against whom the inquiry is being held)
3. File
4. Guard file

**ORDER APPOINTING INQUIRY OFFICER IN PLACE OF INQUIRY OFFICER  
PREVIOUSLY APPOINTED**

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS an inquiry under rule 6/rule 7 of Sikkim Police Force (Discipline & Appeal) Rules, 1989 is being held against (number, rank and name) .....

2. AND WHEREAS (name and designation of the officer originally appointed as Inquiry Officer) ..... was appointed as Inquiry Officer to inquire into the charges against (number, rank and name) ..... vide order No..... dated .....

3. AND WHEREAS (name and designation of the officer originally appointed as Inquiry Officer) ..... has since been transferred/is not available to hold the enquiry, and it is necessary to appoint another officer as Inquiry Officer to inquire into the charges framed against (number, rank and name) .....

4. NOW, THEREFORE, the undersigned, in exercise of the powers conferred by sub-rule ---- of rule 6/rule 7 of Sikkim Police Force (Discipline & Appeal) Rules, 1989, hereby appoints (name and designation of the officer being newly appointed) ..... as Inquiring Officer in the place of (name and designation of the original Inquiry Officer) ..... to inquire into the charges framed against the said (number, rank and name of the officer facing the inquiry) .....

Signature  
Name & designation

Copy to:-

1. .... (new Inquiry Officer)
2. .... (previous Inquiry Officer)
3. .... (officer facing the inquiry)
4. file
5. guard file

**ORDER APPOINTING PRESENTING OFFICER**

OFFICE OF THE .....  
POLICE DEPARTMENT  
GOVERNMENT OF SIKKIM

No. ....

Dated .....

**ORDER**

WHEREAS an inquiry under rule 6/rule 7 of Sikkim Police Force (Discipline & Appeal) Rules, 1989 is being held against (number, rank and name) .....

2. AND WHEREAS the Disciplinary Authority has appointed (name of Inquiry Officer) as Inquiry Officer to inquire into the charges framed against (number, rank and name) .....

3. NOW, THEREFORE, the Disciplinary Authority, in exercise of the powers conferred by clause (c) of sub-rule (5) of the said Rule, hereby appoints (name and designation of the officer) ..... as Presenting Officer to present on behalf of the Disciplinary Authority the case in support of the articles of charge framed against (number, rank and name) .....

Signature  
Name & designation

Copy to:-

- 1. .... (Inquiry Officer)
- 3. .... (officer facing the inquiry)
- 4. file
- 5. guard file