

No. 11012/8/2011-Estt.(A)
Government of India
Ministry of Personnel, PG & Pensions
Department of Personnel & Training

North Block, New Delhi
January 6, 2014

OFFICE MEMORANDUM

Subject: Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965- Advice of the Union Public Service Commission (UPSC) to be communicated to the delinquent Government servant along with the final order of penalty- Amendment - regarding

The undersigned is directed to refer to the provisions of the Rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and to say that the nature of consultation with the Union Public Service Commission (UPSC) and the manner of communication of the advice of the UPSC to the delinquent Government servant have been subject matter of litigation in some cases in CAT/High Courts etc. The Hon'ble Supreme Court in the T. V. Patel case, delivered on 19.04.2007, held that the Disciplinary Authority is not required to furnish a copy of the advice tendered by the Union Public Service Commission to the Charged Officer before the final order of penalty is passed. Accordingly, vide Office Memorandum No. 11012/10/2007-Estt.(A) dated 07.01.2008, the Ministries/ Departments/ Offices were requested to comply with the existing provisions of CCS(CCA) Rules, 1965 and bring the contents of the O.M. to the notice of all concerned for adopting a uniform stand.

2. Now, the Hon'ble Supreme Court in its judgment on 16.03.2011, while dismissing the Civil Appeal No. 5341 of 2006 in the matter of Union of India & Ors. vs S. K. Kapoor, has held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. The Hon'ble Court also observed that there may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice.

3. The matter has been examined in consultation with Department of Legal Affairs and it has been decided that in compliance of the judgement of the Hon'ble Supreme Court in S.K. Kapoor case, a copy of the advice of UPSC, in all cases where the Commission is consulted, may be provided to the Charged Officer, not withstanding the provisions of Rule 17 and Rule 32 of CCS (CCA) Rules, 1965 before a final decision is taken by the Disciplinary Authority (DA).

4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted:

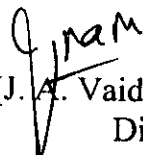
- (i) On receipt of the Inquiry Report, the DA may examine the same and forward it to the Commission with his observations;
- (ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the Charged Officer along with the Inquiry Report and his tentative reasons for disagreement with the Inquiry Report and/or the advice of the UPSC;
- (iii) The Charged Officer shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the Inquiry report/advice of UPSC is in his favour or not.
- (iv) The Disciplinary Authority shall consider the representation of the Charged Officer and take further action as prescribed in sub-rules 2(A) to (4) of Rule 15 of CCS (CCA) Rules, 1965.

5. A flow chart indicating the present and revised procedure is annexed for ready reference.

6. All Ministries/ Departments/Offices are requested to bring the above guidelines to the notice of all Disciplinary Authorities under their control. All cases, where final orders have not been issued may be processed as per these guidelines.

7. Formal amendment to CCS (CCA) Rules will follow.

8. Hindi version will follow.


(J. A. Vaidyanathan)
Director (E)
Telefax: 23092179

To

All Ministries /Departments

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Registrar General, the Supreme Court of India, New Delhi.
7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
8. The Comptroller and Auditor General of India, New Delhi.
9. The Secretary, Union Public Service Commission, New Delhi.
10. The Secretary, Staff Selection Commission, New Delhi.
11. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
12. National Commission for Scheduled Castes, New Delhi.
13. National Commission for Scheduled Tribes, New Delhi.
14. National Commission for OBCs, New Delhi.
15. Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi.
16. Establishment Officer & A.S.
17. CVOs of all Ministries/Departments.
18. All Officers and Sections in the Department of Personnel and Training.
19. Facilitation Center, DOP&T (20 copies)
20. NIC (DOP&T) for placing this Office Memorandum on the Website.
21. Establishment Section (100 copies).

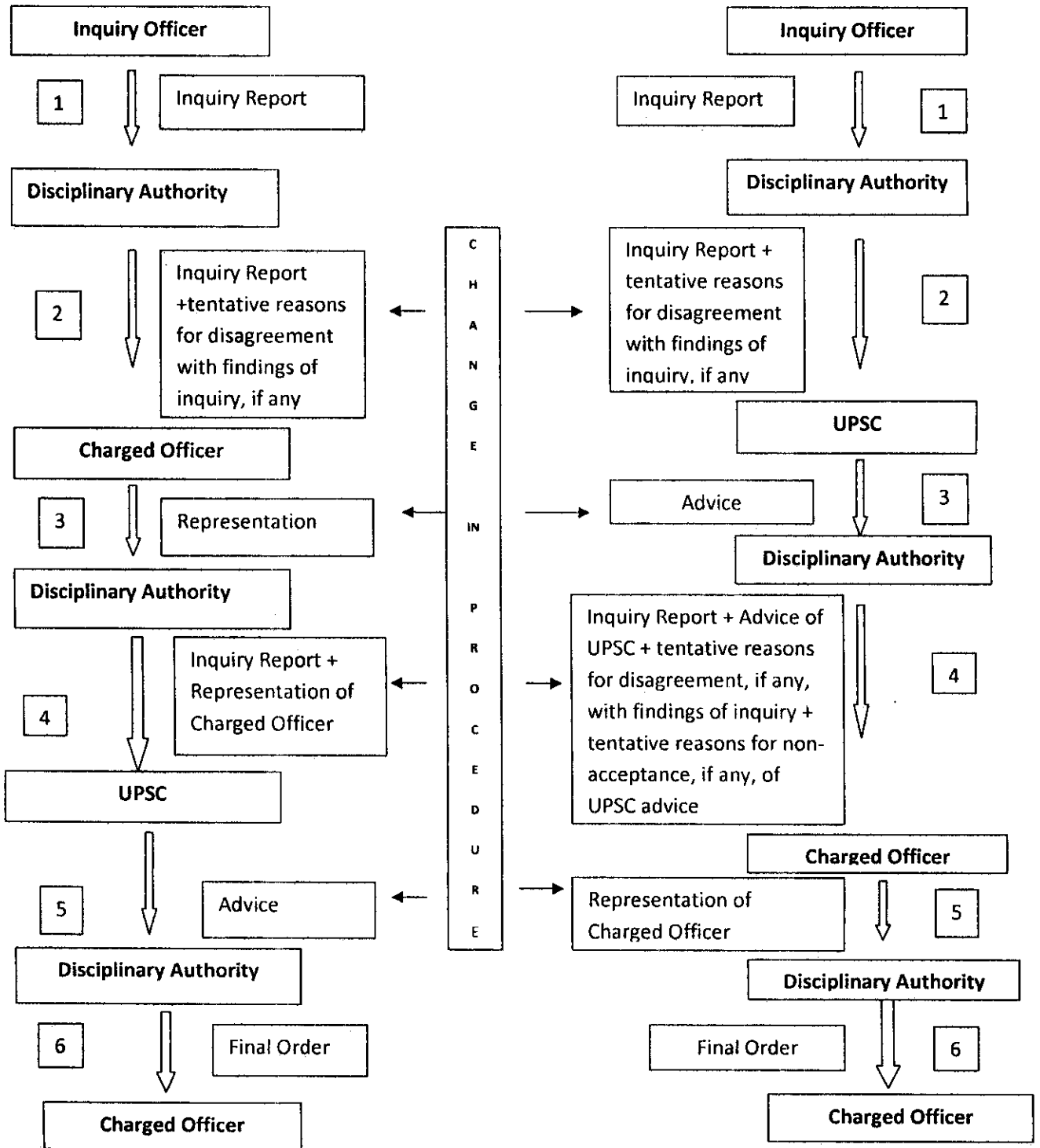
C. . .
V

DoPT O.M. No. 11012/8/2011-Estt(A) dated 6th January, 2014

Communication of UPSC Advise in Disciplinary Matters

Existing Procedure

Revised Procedure



(Handwritten signature)