

Guidelines for the Inquiry Officer, entrusted with the Disciplinary Enquiries under the Punjab Civil Services (Punishment and Appeal) Rules, 1970.

Role and Responsibilities of Presenting Officer.

Normally, in each departmental enquiry, a Presenting Officer is appointed by the concerned Disciplinary/Punishing Authority to present his case before the Enquiry Officer. The Presenting Officer is an authorized Agent/Representative of the concerned Disciplinary/Punishing Authority to present its case before the Enquiry Officer. The Presenting Officer has a significant role in getting the fair and impartial proceedings conducted during the course of an Enquiry. It is the responsibility of the Presenting Officer to produce all relevant oral and documentary evidence, witnesses and other material in support of charges levelled against the delinquent/charged employee on behalf of the Punishing Authority before the Enquiry Officer during the course of enquiry proceedings. The Presenting Officer should not be afraid of any kind of undue pressure being exerted upon him by any unscrupulous elements. In case he receives such kind of threat or any unscrupulous element approaches him for any undue favour, he should immediately report such kind of incident to the Punishing/Disciplinary Authority by whom he was appointed as PO.

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- (i) It is first and foremost duty of the Presenting Officer to attend all hearings of inquiry proceedings on the stipulated date and time fixed by the Inquiry Officer. Usually, he should avoid himself to seek any adjournment from the Inquiry Officer to present his case.
- (ii) It is also the responsibility of the Presenting Officer that if the delinquent Government employee raises certain objections or issues which call for decision, he has to assist the Enquiry Officer for resolving the relevant issues without remitting the matter to the Punishing Authority.
- (iii) After examination of witnesses, documents produced by the delinquent employee, the Presenting Officer can cross examine such witnesses. After completion of production of evidence by both the parties, the Presenting Officer is required to file written brief in support of charges levelled against the delinquent employee with the permission of Enquiry Officer.
- (iv) It is also the responsibility of the Presenting Officer to ensure that in case the delinquent employee does not appear before the Enquiry Officer on a stipulated date or indulges in delaying tactics or demands irrelevant documents/record, he may request the Enquiry Officer to proceed ex-parte against the delinquent employee.
- (v) The Presenting Officer can produce any additional witnesses, documents if he described subsequently in support of charges with the permission of the Enquiry Officer.
- (vi) The Presenting Officer has to produce all available relevant material, oral or documentary evidence, witnesses in support of charges levelled against the delinquent employee in such a way as he himself is fighting his own case. It should be the endeavour of the Presenting Officer to get the Enquiry completed expeditiously as early as possible.

Role of Witnesses of the Disciplinary Authority.

The witnesses so listed in the statement of charges or other officials, in whose custody the material, documents and evidence is available in support of the charges levelled against the delinquent employee, are required to appear before the Enquiry Officer for adducing evidence in support of the charges as and when summoned by the Enquiry Officer or is asked by the Presenting Officer. The witnesses of the Disciplinary Authority should be very cautious while answering question in their cross-examination and they should not record any incriminate statement which may lose case of the Disciplinary Authority. Thus, irrelevant and frivolous questions during the course of cross-examination should be avoided.

Main Guidelines for Enquiry Officers.

General Principles.

- (1) The Enquiry Officer has to conduct the proceedings within the framework of the provisions of the Punjab Civil Service(Punishment and Appeal) Rules, 1970(hereinafter referred to as the Rules) and the instructions issued there under from time to time. With the objectivity of approach and judicial independence, the Enquiry Officer is to record his finding on the basis of evidence adduced and to report whether the charges framed against the delinquent Government employee are proved or not. He should be free from any bias and be impartial, should not condemn any body unheard and should follow the Rules of natural justice, viz.
 - (a) The party should have the opportunity of producing all relevant evidence on which he relies;
 - (b) the party should be given an opportunity of cross examining the witnesses examined by the other party;
 - (c) the evidence of opponents should be taken in his presence;
 - (d) no material should be relied upon against the delinquent Government employee without his being given an opportunity of explaining them.
- (2) It is not essential for the inquiry officer to strictly follow the provisions of the Indian Evidence Act, for taking evidence but the Rules of natural justice are to be followed.

2. Preliminary stage.

- (1) Before the commencement of the enquiry, the inquiry officer should satisfy himself that he has received:
 - (i) An order of the competent authority appointing him as the inquiry officer;
 - (ii) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
 - (iii) a copy of the written statement of defence, if any, submitted by the Government employee
 - (iv) a copy of the statements of witnesses, if any, referred to in Sub Rule (3);
 - (v) evidence proving the delivery of the documents required to be delivered to the Government employee under Sub Rule 4; and
 - (vi) a copy of the order appointing the 'Presenting Officer'
 - (vii) If the aforementioned documents have not been received by him, he shall cause the same to be supplied to him and can ask the Presenting Officer to supply the said documents.

(Rules 8(2) and 8(6) of the Rules of 1970.

3. Appearance.

Enquiry officer is required to send a written notice specifying day and time for appearance before him, to the Government employee, within ten working days of the receipt of articles of charge and the statement of imputations of misconduct or misbehaviour by the Government employee or within such further time not exceeding ten days as may be allowed by the inquiry officer. (Rule 8.7 of Rules of 1970).

4. Recording of plea.

On appearance, the inquiry officer shall ask the Government employee if he pleads guilty to the charges framed against him or has any defence to make (if the Government employee has not already admitted any of the articles of charge in his written statement or has not submitted any written statement). If the Government employee pleads guilty in any of the articles of charges, the inquiry officer shall record the same, get the signatures thereon of the Government employee, and return the finding of guilt in respect of those articles of charges to which the Government employee has pleaded guilty.

(Rule 8(9,10) of Rules of 1970.

5. Failure/refusal/omission to plead.

In case the Government employee does not appear before the inquiry officer within the stipulated period, or refuses or omits to plead, then the inquiry officer shall:

- (i) order the presenting officer to produce the evidence by which he proposes to prove the articles of charge.
- (ii) adjourn the case to a later date not exceeding thirty days for (i) above.
- (iii) record an order that Government employee may for preparing his defence;
- (A) inspect within five days of the order or within such further time which should not exceed five days, as the inquiry officer may allow the following documents:-
 - (i) the Substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
 - (ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge, which shall contain: (1) a statement of all relevant facts including any admission or confession made by the Government employee. (2) a list of documents by which and a list of witnesses by whom, the articles of charges are proposed to be sustained.
- (B) Submit a list of witnesses to be examined on behalf of the Government employee.
- (C) give a notice for discovery or production of any document which is in the possession of Government but is not mentioned in (A) above. This notice is to be given by the Government employee within ten days of the order of the inquiry officer or within such further period not exceeding ten days as may be allowed by the inquiry officer.

(Rule 8(11) of Rules 1970

6. Discovery/production of record and supply of copies of documents.

- (1) if the delinquent Government employee applies for the discovery or production of record by the Government in his defence, the request shall be granted. But the inquiry officer should ensure that the documents sought to be summoned are relevant for the purpose of the enquiry. The Government employee is required to indicate the relevance of the documents required by him. Such requests may be declined by the inquiry officer for reasons to be recorded by him.

- ✓ (2) The inquiry officer will then place a requisition alongwith the notice or copy thereof with the authority in whose custody or possession the documents are kept for production of the documents on a date to be mentioned in the requisition.
- (3) No request from the delinquent Government employee shall be granted by the inquiry officer for the supply of copies of listed documents except copies of the statements, if any, of the witnesses to be produced during the enquiry.
- (4) If the delinquent Government employee applies orally or in writing for the supply of copies of the statements of all the witnesses examined during the preliminary enquiry or investigation, then copies of those statements of witness only are to be supplied to him on which reliance is proposed to be made by the punishing authority. These copies shall be supplied by the inquiry officer not later than three days before the commencement of the examination of witnesses on behalf of the punishing authority.
- (5) If, for any reason, it is not possible to furnish the Government employee with those copies, the inquiry officer should allow him to make copies for himself.

(Note below Rule 8(11)(ii) of Rules of 1970.

7. Recording of evidence.

- (1) The proceedings shall be conducted in the present of the delinquent government employee unless held ex parte. As far as possible, day-to-day proceedings shall be held and long adjournments avoided.
 - (2) The statements of witnesses shall normally be recorded in narrative and not in question and answer form. But, if the witness is evasive in his reply or appears to the inquiry officer to conceal the truth, answer may be elicited by putting a specific question and recording his answer.
 - (3) First of all oral and documentary evidence on behalf of the punishing authority shall be allowed to be produced.
 - (4) During recording of evidence, such questions to witnesses as are irrelevant or malicious or scandalous or mischievous in nature, should be disallowed by the inquiry officer.
 - (5) The inquiry officer, may, however, put such questions to the witness at any time to bring out the truth or clear any doubt in his statement.
 - (6) While the presenting officer is entitled to re-examine the witnesses on any points on which they have been cross examined, for re-examination on any new matter, the permission of the inquiry officer is essential.
 - (7) New evidence may be permitted by the inquiry officer before the close of the case on behalf of the punishing authority, or Government employee, as the case may be if in his opinion, it is necessary so to do in the interest of justice and not with a view to filling up gaps in the evidence. The inquiry officer may himself call for new evidence or recall or re-examine any witness.
 - (8) On demand, the inquiry officer shall supply to the Government employee, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of new evidence excluding the days on which and to which the case is adjourned.
 - (9) The inquiry officer shall also give the Government employee an opportunity of inspecting such documents before they are taken on record.
- (Rule 8(15) of Rules 1970
- (10) If the delinquent Government employee raises certain objections or issues which call for decision, the inquiry officer, after giving notice of the issues so raised to

the Presenting officer, may decide the same by writing a speaking order. The case shall under no circumstances be remitted to the punishing authority nor shall it be adjourned pending decision of the punishing authority.

- (11) When the case of the punishing authority is closed, the delinquent Government employee shall be required to state his defence orally or in writing. The oral evidence shall be recorded by the inquiry officer and signatures of Government employee obtained thereon. A copy of the statement of defence shall be given to the Presenting Officer.
- (12) Production of evidence and witnesses by the Government employee, their examination, cross examination and re-examination by the inquiry officer has to be according to the provisions applicable to the witnesses for the punishing authority.
- (13) After the close of the case by the delinquent Government employee, he shall be examined and all the circumstances appearing against him in evidence may be put to him with a view to affording him an opportunity to explain the circumstances appearing against him.
- (14) It will be appropriate to ask the delinquent Government employee as to why the witnesses on behalf of the punishing authority are deposing against him.
- (15) In case the delinquent Government employee so chooses, he may be examined on his own behalf like other witnesses and his testimony so recorded, shall be appraised as any other piece of evidence brought on the record.
- (16) After the completion of the production of evidence by both the parties, the inquiry officer may hear the Presenting Officer and the delinquent Government employee or the inquiry officer may permit them, if they so desire, to file written brief of their respective cases.

Rule 8(16,17 and 18) of Rules 1970

8. Engaging of legal practitioner.

While the Government employee is permitted to take the assistance of another Government employee or a retired Government employee to present his case, the inquiry officer should not permit him to engage a legal practitioner unless the Presenting Officer is a legal practitioner or the punishing authority has permitted the Government employee to engage a legal practitioner.

Rule 8(8) of Rules 1970

9. Ex-parte proceedings.

- (1) The inquiry officer may hold the inquiry ex parte, if (i) the delinquent Government employee does not submit the written statement or defence by the due date or (ii) does not appear in person before the inquiry officer or (iii) otherwise fails or refuses to comply with the provision of Rule 8 of the Rules of 1970.
- (2) The inquiry officer should consider the grounds of absence of the Government employee from disciplinary proceedings on their merits and take a decision whether to condone the absence or not. However, if there is persistent default on the part of the Government employee and the inquiry office is of the opinion that the Government employee is adopting dilatory tactics, he may take ex parte proceedings after recording reasons therefor.
- (3) If during the course of ex parte proceedings, the delinquent Government employee appears before the inquiry officer, he should be allowed to join the proceedings at that stage but proceedings shall not be held de novo.

10. Change of Inquiry Officer.

In the event of change of inquiry officer, the successor inquiry officer may act on the evidence recorded by his predecessor or partly recorded by the predecessor and partly by himself. But if in the opinion of the succeeding inquiry officer it is necessary in the interest of justice to further examine any witness whose evidence has already been recorded by his predecessor, he may recall, examine, cross examine and re-examine such witness.

8(22) of the Rules of 1970.

11. Model of service of notice, orders, etc.

- (1) Every order and notice and other process under the Rules is to be served in person on the delinquent Government employee or communicated to him by a registered post.

Rule 22 of Rules 1970

- (2) If, however, in any case serving of the notice, etc. in person or by a registered post is not possible, e.g., whereabouts of the delinquent Government employee are not known, he has proceeded abroad etc., the same should be got published in a daily newspaper.

12. Compelling attendance of witnesses and production of documents in exceptional cases.

- (1) The inquiry officer conducting departmental enquiry is legally competent to exercise the powers as are exercisable by a Commission appointed for enquiry under the Public Servants (Inquiries) Act, 1850 for the purposes of summoning of witnesses and for compelling the production of documents. A person disobeying a process issued in this behalf, is liable to the same penalty as if the process issued by a Court had been disobeyed. The enquiry officer derives these powers under the Punjab Departmental Enquiries (Powers) Act, 1955.
- (2) The presenting officer or the delinquent Government employee may be allowed to produce his witnesses. A witness could also be summoned for evidence of producing of documents. Where there is disobedience to the process issued by the inquiry officer, a notice may be sent to the witness through the District Judge in whose jurisdiction the witness resides. For facility of the inquiry officer, specimen of the forms of summons to be issued for summoning the witnesses or for production of documents are appended as Annexures 'A', 'B' and 'C'.
- (3) A recourse to mode mentioned above, may be used sparingly and cautiously only under extreme exceptional circumstances and shall not be resorted to in summoning Government employees or documents in custody of the Government as the same can be obtained otherwise.

13. Standard of proof.

The standard of proof in the case of domestic enquiries is not as strict as is in criminal cases, i.e. beyond all reasonable doubt. The findings in a departmental enquiry are to be based on the preponderance of probabilities as in civil cases. From fact on record, all inferences may be drawn which any rational and prudent person would normally do.

14. Recording of reports.

- (1) After the conclusion of the enquiry, the inquiry officer shall prepare a report. The findings should be based strictly on evidence adduced during the course of enquiry.
- (2) No material from personal knowledge, or other extraneous consideration should be imported, while giving the findings. Due judicial notice of the laws in force and relevant Code provisions may be taken.
- (3) The reason for accepting or rejecting any plea or contention or any evidence should be clearly stated.
- (4) If the evidence on record establishes a charge different from the original charge, the inquiry officer may write his findings thereon also.

The findings shall not be recorded on any article of charge different from the original articles of charge unless, the Government employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

Rule 8(23) of Rules 1970

- (5) The principles of natural justice, equity and fair play should be kept in mind by the inquiry officer while recording the report.
- (6) The report shall contain:
 - (a) a brief introduction leading to the enquiry;
 - (b) a gist of charges;
 - (c) summary of defence of the delinquent Government employee in respect of each article of charge;
 - (d) summary of evidence of both sides with regard to each article of charge;
 - (e) reasons for acceptance or rejection, in whole or in part, of the evidence of either party;
 - (f) the conclusions arrived at with reference to each article of charge.

Rule 8(23) of Rules 1970

- (7) Inquiry officer shall, under no circumstance, propose in his report the penalty which may be imposed on the Government employee by the punishing authority.
- (8) Even when ex parte proceedings are taken, the inquiry officer shall record the evidence and write a report.

ANNEXURE 'A'

SUMMONS TO WITNESS

[Section 2 of Punjab Departmental Inquiries (Powers) Act, 1955 read with Section 8 of the Punjab Servants (Inquiries) Act, 1850 (Act No. 37 of 1850)]

Departmental inquiry being held in relation to Shri/Smt. Kumari.....
(Name) (designation), working in the
..... (name of the Departments/office)

To

.....
.....
(Name and address of the witness).

WHEREAS your attendance is required to give evidence documents on behalf of
..... (name of the defendant/Department concerned) in the above
departmental inquiry, you are hereby required (personally) to appear before this Inquiring
Authority on the day of.....(name of the month), 20.... at
.....O'clock in the forenoon/afternoon and to bring with you [or to send to this Inquiring
Authority).....

(description of documents required).

If you fail to comply with this order without lawful excuse, you will be Subject to the
consequences of non attendance laid down in Section 9 of the Public Servants (Inquiries) Act,
1850, inter alia entailing your prosecution under Section 174 and Section 175 of Indian Penal
Code.

Given under my hand and the seal of this Inquiring Authority this day of (name of
month)20.....

Given under my hand and the seal of this Inquiring Authority this day of (name of
moth)20.....

Inquiring Authority

ANNEXURE 'B'

**REQUEST FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A
WITNESS IN A DEPARMTNETAL INQUIRY**

**[Section 2 of Punjab Departmental Inquiries (Powers) Act, 1955 read with Section 8
of the Punjab Servants (Inquiries) Act, 1850 (Act No. 37 of 1850)]**

To

(Name and address of the District Judge concerned)

.....
.....

Under the provisions of Section 2 of Punjab Departmental Inquiries (Powers) Act, 1955
read with Section 8 of the Punjab Servants (Inquiries) Act, 1850 (Act No. 37 of 1850), a
summons, in duplicate, is herewith forwarded for service on the witness
(name)(address). You are requested to cause a copy of the said summons to
be served upon the said witness and return the original to this Inquiring Authority, signed by the
said witness, with a statement of service endorsed thereon by you.

Inquiring Authority

ANNEXURE 'C'

FORM FOR SUMMONING PUBLIC SERVANT AS A WITNESS

No.
Office of the
Punjab, Chandigarh.....

(Place of issueDated.....)

To

.....
.....

I am appointed as the Inquiry Authority for holding an enquiry against Shri/Smt/Kumari
..... I request you to appear before me on at
..... (time and place).

Your presence for the above purpose may be treated in terms of the Punjab Departmental
Inquiries (Powers) Act, 1955.

Inquiring Authority

Copy to with the request to permit the official mentioned above
to attend the enquiry on due date.

Inquiring Authority