

पत्रांक-3/एम0-40/2025सा0प्र0. 2831 /

बिहार सरकार

सामान्य प्रशासन विभाग

प्रेषक,

डॉ० बी० राजेन्दर

अपर मुख्य सचिव

सेवा में,

सभी अपर मुख्य सचिव / प्रधान सचिव / सचिव / विभागाध्यक्ष

पुलिस महानिदेशक

सभी प्रमण्डलीय आयुक्त

सभी पुलिस महानिरीक्षक / पुलिस उप महानिरीक्षक

सभी जिला पदाधिकारी / उप विकास आयुक्त / अपर समाहर्ता

सभी वरीय पुलिस अधीक्षक / पुलिस अधीक्षक

सभी अनुमंडल पदाधिकारी / भूमि सुधार उप समाहर्ता / पुलिस उपाधीक्षक

पटना-15, दिनांक : 10-2-26

विषय:- "बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली, 2005" के प्रावधानों के संदर्भ में समय-समय पर निर्गत विभिन्न स्पष्टीकरण/मार्गदर्शन/निदेश को समेकित कर निर्गत Master Circular के अंग्रेजी अनुवाद के संबंध में।

महाशय,

उपरोक्त विषय के संबंध में कहना है कि सामान्य प्रशासन विभाग के परिपत्र संख्या-01 दिनांक-01.01.2026 द्वारा "बिहार सरकारी सेवक (वर्गीकरण, नियंत्रण एवं अपील) नियमावली, 2005" के प्रावधानों के संदर्भ में समय-समय पर निर्गत विभिन्न स्पष्टीकरण/मार्गदर्शन/निदेश को समेकित कर एक Master Circular निर्गत किया गया है।

सुलभ संदर्भ हेतु उक्त Master Circular का अंग्रेजी अनुवाद संलग्न है।

अनुलग्नक:- यथोक्त।

विश्वासभाजन,

Rajendra
9/2/2024

(डॉ० बी० राजेन्दर)

अपर मुख्य सचिव

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List of Referenced Letters

S.No.	List of Letters
1	Circular Number 585 dated 09.01.2024
2	Circular Number 1787 dated 29.01.2025
3	Circular Number 945 dated 24.06.2005
4	Circular Number 6968 dated 12.07.2021
5	Circular Number 3026 dated 20.02.2024
6	Notification No. 20/FieldEstb.-08 (Sitamarhi)-11/2019 Sa. Pra. 8823 dated 02.06.2022
7	Notification No. 3/M.-61/2019-13239/Sa. Pra. dated 05.11.2021
8	Circular Number 2178 dated 28.02.2007
9	Circular Number 2230 dated 17.04.2008
10	Circular Number 18976 dated 21.10.2022
11	Circular Number 23061 dated 21.12.2022
12	Circular Number 6288 dated 18.04.2024
13	Circular Number 2324 dated 10.07.2007
14	Circular Number 1821 dated 23.05.2007
15	Circular Number 12787 dated 28.08.2015
16	Circular Number 12196 dated 07.09.2016
17	Circular Number 5840 dated 18.06.2020
18	Circular Number 1187 dated 22.01.2024
19	Resolution Number 3/M-06/2018-2162/Sa. Pra. dated 05.02.2025
20	Letter No. 6956 dated 21.10.2008
21	Chief Inquiry Commissionerdirectorate's Letter No. Mu. Ja. A. Ni. (Estb.): 15/2025-433 dated 31.07.2025
22	Circular Number 13888 dated 21.07.2023
23	Circular Number 21590 dated 23.11.2023
24	Circular Number 17796 dated 21.09.2023
25	Circular Number 2959 dated 31.08.2007
26	Circular Number 18976 dated 21.10.2022
27	Circular Number 18976 dated 21.10.2022
28	Chief Inquiry Commissioner Letter No. Mu. Ja. A. (Mukadama): 02/2022-665 dated 08.11.2022
29	Circular Number 4162 dated 25.03.2021
30	Circular Number 6727 dated 08.07.2020
31	Circular Number 806 dated 16.01.2018
32	Circular Number 14123 dated 16.10.2019
33	Circular Number 1882 dated 06.02.2020
34	Circular Number 2910 dated 28.02.2022
35	Resolution Memo No. 170 dated 06.01.2010
36	Circular Number 1659 dated 05.02.2021
37	Circular Number 8811 dated 18.07.2017
38	Circular Number 8334 dated 15.09.2020

Master Circular Consolidating various clarifications/guidance/directives issued from time to time in respect of the provisions of "Bihar Government Servants (Classification, Control and Appeal) Rules, 2005"

The then Department of Personnel and Administrative Reforms, presently the General Administration Department's notification number-1112 dated-12.07.2005 has notified "Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. During the course of time, several amendments have been made in this Rule. The updated revised Rules incorporating all the amendments of the rules have been published on the website of the General Administration Department in the form of Master Circular by the letter number-10052 dated-02.06.2025 of the General Administration Department.

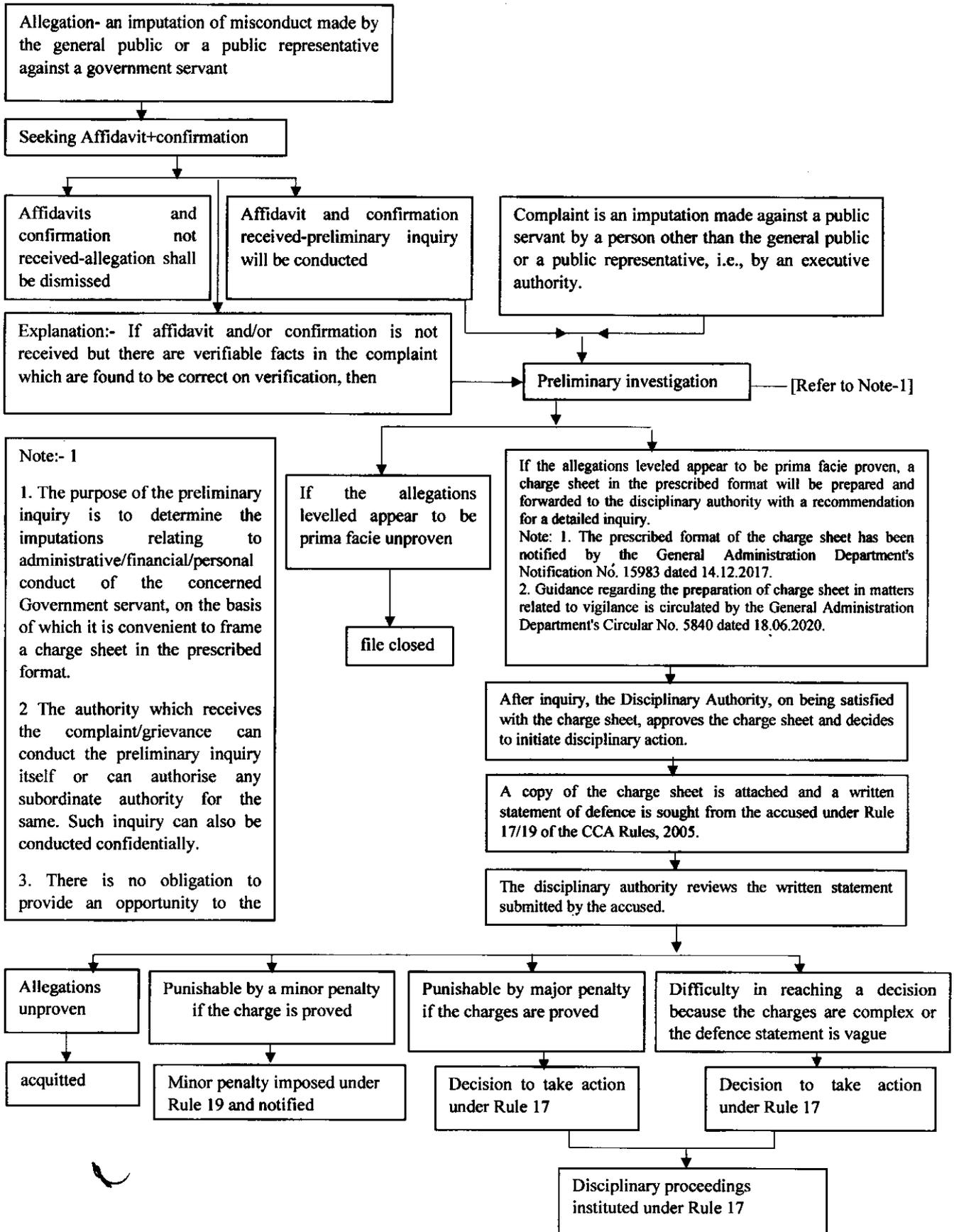
2. Various clarifications, guidance, and instructions have been issued from time to time by the General Administration Department regarding these Rules and by the Finance Department regarding certain provisions of the Bihar Pension Rules. A Master Circular consolidating all such clarifications, guidance, and instructions issued so far regarding disciplinary action is being published as follows:

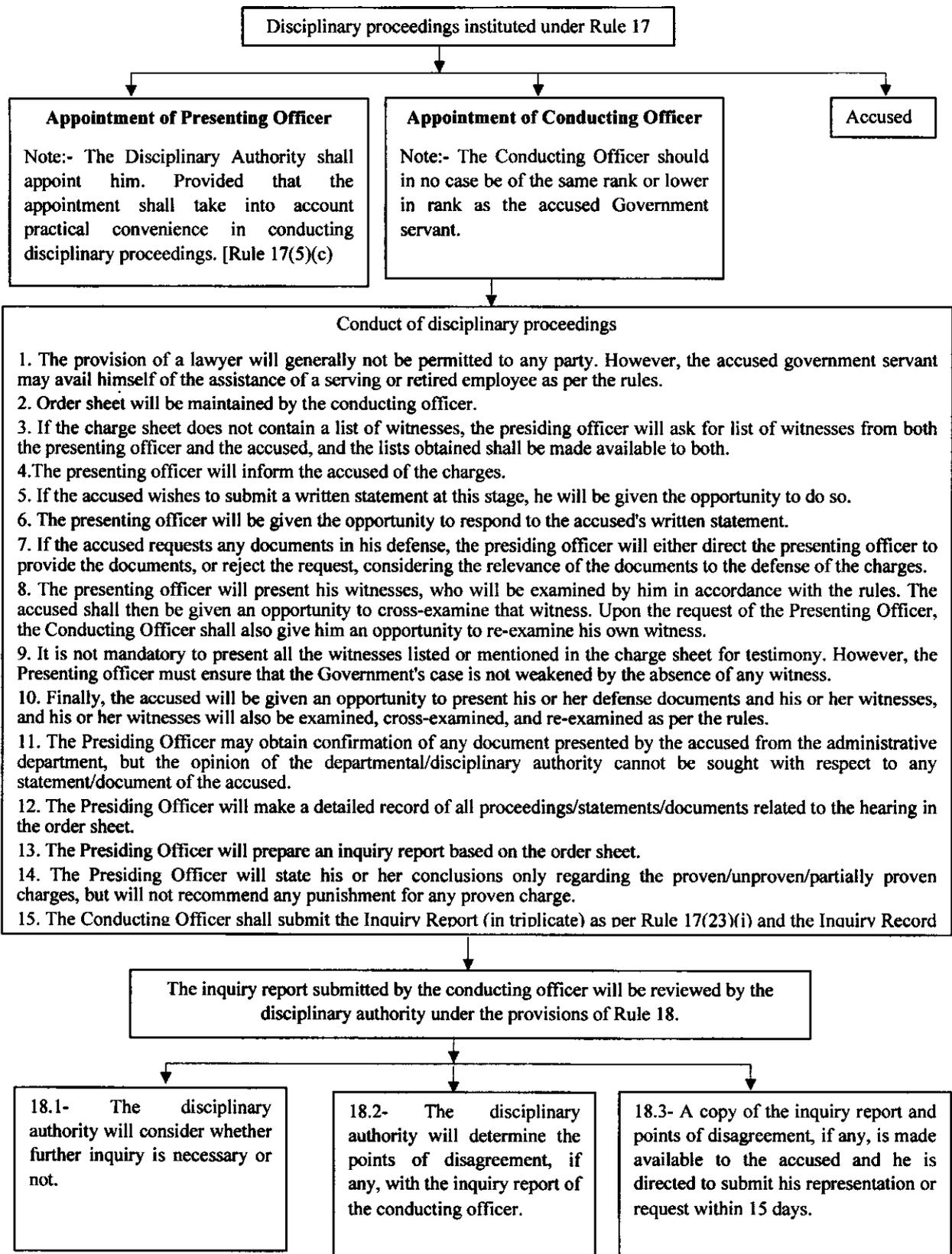
I. Flow Chart¹

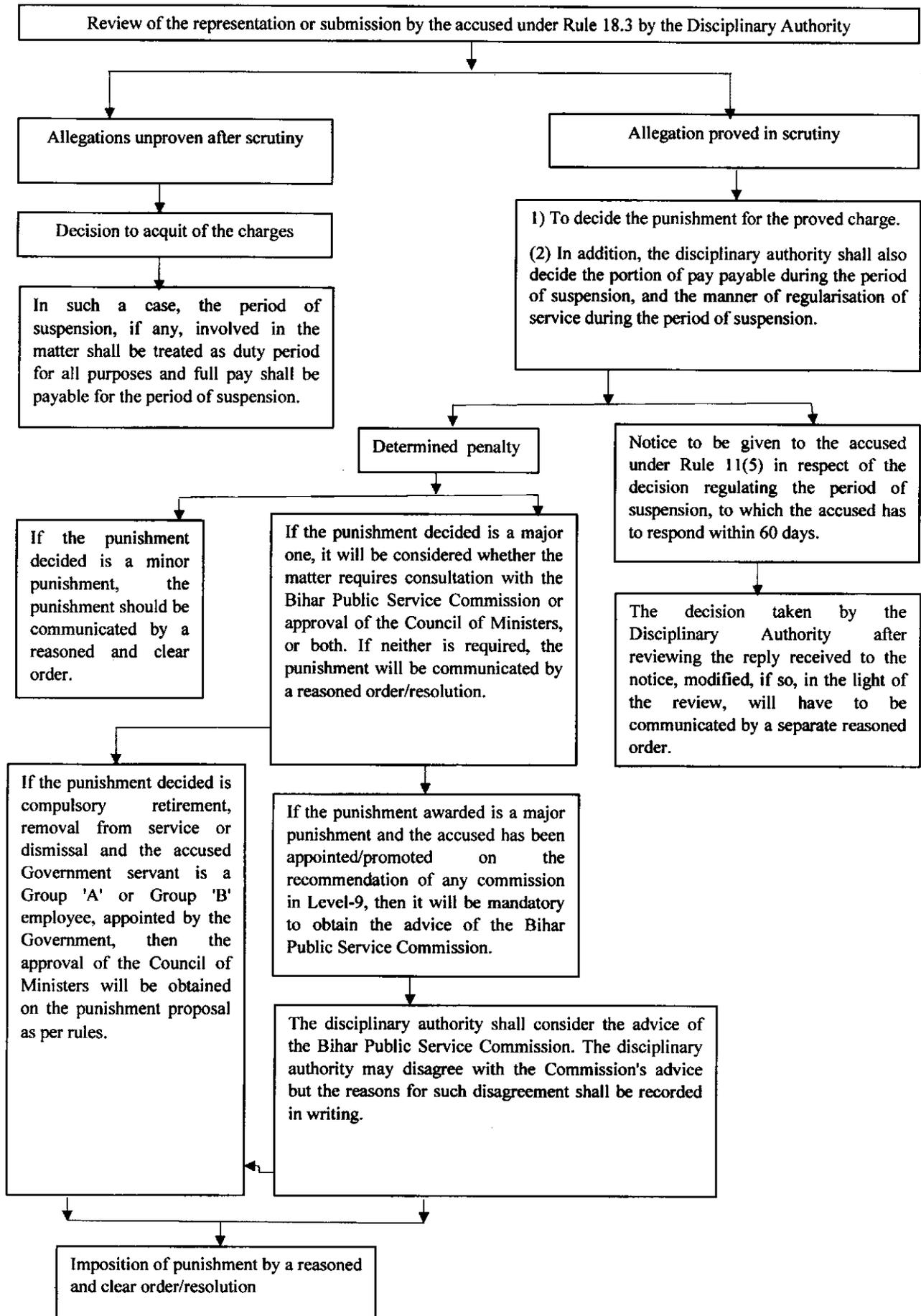
1) For the proper conduct of disciplinary proceedings, it is essential to be familiar with the flow chart of its various stages. Accordingly, the flow chart of disciplinary proceedings is provided below. It is essential to comply with the actions to be taken at each stage so that the process is not vitiated and the disciplinary action is not questioned by the appellate authority or any court on technical grounds.

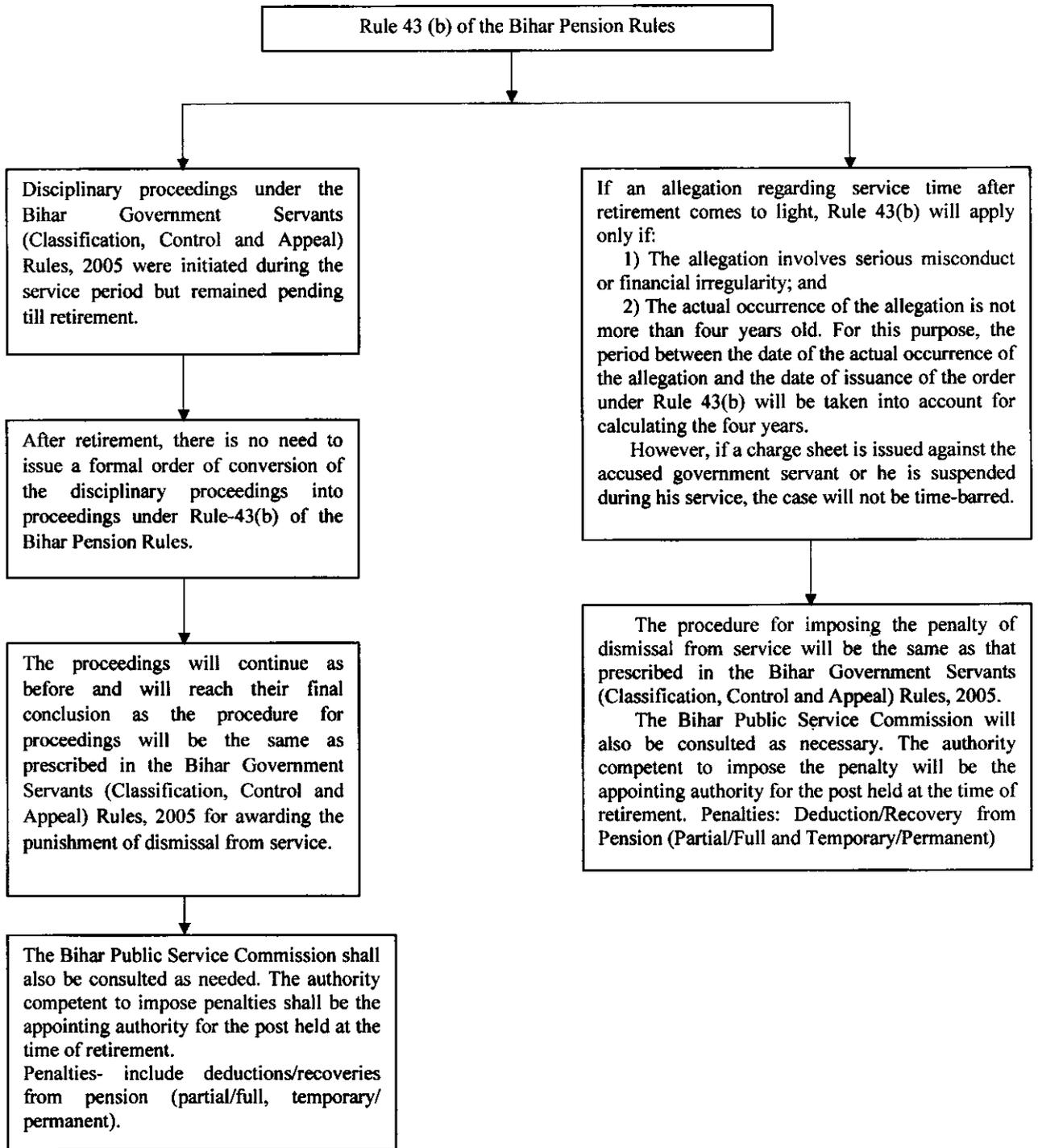
¹Circular No.-585 Dated-09.01.2024

Flow Chart









Note: While action for post-retirement misconduct may be taken under Rule 43(a) of the Bihar Pension Rules, action cannot be taken under this provision in respect of any allegations related to service time. Clearly, action for any allegations related to service time can only be taken under Rule 43(b) of the Bihar Pension Rules.

II. Allegations²

2) Allegations are a basis for initiating disciplinary action. The following procedure must be followed when initiating disciplinary action based on complaints:

i. Anonymous, factiously named, or pseudonymous applications/complaints will not be processed; instead, they will be filed.

ii. Unsigned open letters and pamphlets published against officials will also not be acted upon similarly.

iii. Upon receipt of a signed and with address allegation from the general public, a written confirmation will be obtained from the complainant within a specified period, along with an affidavit stating their personal knowledge of the matter and their willingness to provide evidence to prove the facts.

iv. Upon receipt of allegations from Honourable Members of the Lok Sabha, Rajya Sabha, Legislative Assembly, and Legislative Council, an affidavit will not be requested from them. However, a written confirmation will be obtained from them within a specified period, along with a written assurance from them that they are willing to provide evidence in relation to the allegation.

v. On receipt of an allegation from other types of public representatives, a written confirmation will be obtained from them within the prescribed period, along with an affidavit stating that they have personal knowledge of the matter and are prepared to give evidence to prove the facts.

vi. In case the written confirmation and affidavit are not received within the prescribed period in respect of sub-paragraphs (iii) and (v), and in case the written confirmation and assurance of readiness to produce evidence within the prescribed period in respect of sub-paragraph (iv), the letter of allegations shall be filed.

Explanation:

But despite such filing, if there are any verifiable facts in the said complaint and they appear serious to the Government/Head of the Department, then they can be verified and necessary action can be taken on the basis of verification.

vii. Only after action through registered post in accordance with subparagraphs (iii), (iv), and (v) above, will the inquiry process be initiated by order of the Government/Head of Department/Appointing Officer after review. Whether an explanation from the Government servant should be obtained or not, before the initiation of inquiry, will depend on the nature of the allegation.

²Circular No.-945 dated 24.06.2005

III. Preliminary Inquiry

3) (i) In the preliminary inquiry of the allegation/complaint/grievance, the concerned Government servant may be given an opportunity to present his side or such preliminary inquiry may be conducted confidentially. Important judicial pronouncements given by the Hon'ble Supreme Court/Hon'ble High Court regarding preliminary inquiry and departmental inquiry are as follows-

a) The Preliminary inquiry is fact finding enquiry. The purpose of holding it is to ascertain as to whether there is a prima facie case for the institution of a regular departmental proceeding and if so, to gather evidence therefor. However such preliminary inquiry should not be confused with the possible institution of a regular departmental inquiry which may be ordered later on. There is no punitive element in a preliminary inquiry and provisions of Article 311(2) of the Constitution have no application to its being held. (Champak lal V. Union of India, AIR 1964 SC 1854)

b) The Preliminary inquiry may be held confidentially or even ex-parte. (Tribuwan Nath V. State AIR 1960 Pat 116)

ii) In the event of the allegation/complaint/grievance being prima facie substantiated in the preliminary inquiry, a charge sheet in the prescribed format is to be framed against the Government servant concerned and forwarded to the Disciplinary Authority of the Government servant concerned for a detailed inquiry.

(iii) The approval of the Disciplinary Authority is to be obtained on the charge sheet first.

By the Hon'ble Supreme Court in its judgment in Union of India & Ors. Vs. B.V. Gopinath [(2014) 1 SCC 351] and the High Court of Patna in its judgment dated 28.01.2015 in CWJC No. 17892/2014 Chandrakant Kumar Anil Vs. Union of India & Ors., it has been made clear that it is not legal to take further action on the charge sheet without obtaining the approval of the disciplinary authority (appointing authority).

IV. Regarding determination of Disciplinary Authority for conducting disciplinary proceedings against Government servants³

(4) The determination of competent authority and procedure for conducting disciplinary action against Government servants of the Government of Bihar has been laid down in the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time). Accordingly, the competent authority for initiating disciplinary action against a Government servant shall be his "Disciplinary Authority".

5) Rules 2(j) and 15 of the Rules define the disciplinary authority. In light of this definition, the appointing authority of a government servant, or any subordinate authority acting under delegated powers, shall be the disciplinary

³Circular No.-6968 dated 12.07.2021

authority. Therefore, the disciplinary authority is competent to take appropriate decisions regarding disciplinary action against a government servant.

6) It should be noted that if a penalty is imposed on a Government servant by the appointing authority itself in its capacity as disciplinary authority, such disciplinary authority is competent to impose both minor and major penalties as prescribed in Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time). However, if a disciplinary authority exercises the powers of a disciplinary authority under the powers delegated by the appointing authority, such authority can decide only on the imposition of minor penalties as prescribed in Rule 14. A decision regarding the imposition of major penalties by a disciplinary authority acting under the powers delegated by the appointing authority would be contrary to the provisions of Article 311 of the Constitution of India.

7) It is to be noted that by the Cabinet Secretariat Department's Notification No. 105 dated 25.01.2017 read with Notification No. 106 dated 27.01.2017, Part-B of the Fourth Schedule of the Bihar Executive Rules, 1979 has been amended as follows:

Provision	Authority competent to decide
6. Promotion matters (including those recommended by the Public Service Commission/Bihar Staff Selection Commission).	
i) Cases of promotion to the Basic Grade of State Services.	i) Secretary
ii) All cases of promotions/financial up gradation (ACP/MACP/DACP) etc. except promotions to topmost posts/Heads of Departments in State Services.	(ii) Departmental Minister through Principal Secretary /Secretary
iii) Cases relating to promotion to the topmost post of State Services/Head of Department/Grant of Financial Upgradation (ACP/MACP/DACP) etc.	(iii) Chief Minister through Chief Secretary
iv) Cases of promotion from Basic Grade to supervisory posts in lower grades of State Services.	(iv) Head of Department
7. Appointment matters (including those recommended by the Bihar Public Service Commission/Bihar Staff Selection Commission)	
i) Group 'A' (including Head of Department)	i) Chief Minister through the Chief Secretary

(ii) Group - 'B'	(ii) Departmental Minister through the Principal Secretary /Secretary
(iii) Group - 'C' and 'D'	(iii) Principal Secretary/ Secretary or Head of the Department or the appointing authority as declared by the Government.

8) In the above situation, it is clarified that:

(i) The appointing authority for the post held by an accused government servant at the time of the conduct of disciplinary proceedings/imposition of penalty shall be his/her competent disciplinary authority, even if the allegation/misconduct occurred during a period when the concerned government servant held a lower post.

(ii) Clearly, a government servant can be appointed by both direct recruitment and promotion. In the case of a direct recruitment, the appointing authority will be determined by serial number 7 of Part B of the Fourth Schedule of the Bihar Executive Rules, while in the case of a promotion, the appointing authority will be determined by serial number 6 of Part B of the Fourth Schedule of the Bihar Executive Rules.

(iii) Similarly, if a government servant is working on a post as a result of promotion, the competent authority mentioned above will be his/her appointing authority for promotion to that post.

iv) The appointing authority determined by the above method shall also be the disciplinary authority for the Government servant concerned. The appointing authority may, if it deems appropriate, delegate the power of its disciplinary authority to any subordinate authority by order.

(v) Regulation 11 and Regulation 12 of the Bihar Public Service Commission (Limit of Functions) Regulations, 1957 (as amended from time to time) have been replaced by the General Administration Department's Notification No. 9794 dated 22.07.2019. This replacement has made it mandatory for the Government to consult the Bihar Public Service Commission in the event of a reduction in pension or an order of major punishment in disciplinary matters relating to Government servants of Level 9 and above in the State Service Cadre, whose appointment/promotion is made on the recommendation/consultation of the Bihar Public Service Commission or any other Commission of the State Government.

vi) It has been clarified by clause 7 (ii) of Circular No. 806 dated 16.01.2018 of the General Administration Department that in the light of the provision contained in clause 28 of Schedule 3 of the Executive Rules, the approval of the Council of Ministers is to be obtained after consultation with the Bihar Public Service Commission as required on

the proposal of punishment decided by the disciplinary authority for dismissal, removal from service or compulsory retirement (all three major punishments) of the officers of Group 'A' and Group 'B', who have been appointed by the Government. Thereafter, the approved punishment is to be communicated.

9) For example-

(a) In the case of Bihar Engineering-

(i) If it is proposed to conduct departmental proceedings/impose penalty against an Executive Engineer but the allegations/misconduct reported against him relate to his tenure as Assistant Engineer, then also his disciplinary authority will be the same authority which is the competent authority in respect of the post currently held by him i.e. the post of Executive Engineer.

(ii) Appointments to the post of Assistant Engineer in the works departments are made through direct recruitment and also through promotion from the non-cadre post of Junior Engineer. Therefore, if an Assistant Engineer is appointed through direct recruitment, then, in light of the aforementioned provision of Part 'B', serial number 7(ii) of the Fourth Schedule of the Executive Rules, being a Group 'B' employee, the Departmental Minister, through the Principal Secretary/Secretary, will be their appointing authority and therefore also their disciplinary authority. However, in cases where the appointment to the post of Assistant Engineer is made through promotion from the post of Junior Engineer, then, in light of the aforementioned provision of Part 'B', serial number 6(i) of the Fourth Schedule of the Executive Rules, being a case of promotion to the basic grade of the Bihar Engineering Service, the Departmental Principal Secretary/Secretary will be their appointing authority and therefore also their disciplinary authority.

(iii) For all posts above the Assistant Engineer in the Bihar Engineering Service (excluding the top-most post and the Head of Department), the appointing authority, in light of the provision mentioned in Rule 6(ii), will be the Departmental Minister through the Principal Secretary/Secretary, and therefore they will also be their disciplinary authority.

(iv) For the top-most post and the Head of Department in the Bihar Engineering Service, the appointing authority, in light of the provision mentioned in Rule 6(iii), will be the Chief Minister through the Chief Secretary, and therefore they will also be their disciplinary authority.

b) The appointing authority of a Government servant appointed by direct recruitment to the post of Principal of an Institute of the Labour Resources Department or Science and Technology Department, which is a Group 'A' post, shall be the Hon'ble Chief Minister through the Chief Secretary in the light of the above mentioned provision of Serial No. 7 (i) of Part-B of the Fourth Schedule of the Executive Rules and hence he shall also be his disciplinary authority..

V. Competent authority to consider appeal/review petition/revision related to the order of punishment/suspension imposed by the Head of Department/Head of Office against Assistant Branch Officer/Branch Officer of Bihar Secretariat Service⁴

- (10) As the appointing authority for Assistant Section Officers and Section Officers of the Bihar Secretariat Service, the Additional Chief Secretary/Principal Secretary/Secretary and the Honourable Minister of the General Administration Department are their disciplinary authorities, respectively. However, these appointing authorities have delegated their disciplinary authority, as communicated by the then Department of Personnel and Administrative Reforms (presently the General Administration Department) Order No. 2940 dated 19.05.2008. It is only in light of this delegated power that the Head of Department/Head of Office of the Administrative Department exercises the power to impose minor penalties and/or suspend Assistant Section Officers and Section Officers of the Bihar Secretariat Service, who are currently posted in their department/office, if sufficient cause exists.
- (11) In the light of the provisions of the relevant Rules, the Member, Revenue Board has been declared as the Appellate Authority in respect of Assistant Section Officer of Bihar Secretariat Service by Notification No. 2815 dated 30.12.2005 read with Notification No. 2378 dated 28.04.2008 of the General Administration Department.
- (12) Along with, under the provisions of Rule 24 and 28 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, Member Revenue Board has been specified as the Appellate Authority and Hon'ble Minister, General Administration Department as the Revisional Authority for revision against the order of the Appellate Authority, in respect of Assistant Section Officer of Bihar Secretariat Service, by the Notification No. 13239 dated 05.11.2021 of General Administration Department.
- (13) Thus, in respect of Assistant Section Officer and Section Officer of Bihar Secretariat Service, only the power of Disciplinary Authority has been delegated to the concerned Head of Department/Head of Office. The power of Appellate Authority or Revisional Authority has not been delegated.

However, instances have come to the notice of the General Administration Department where the Head of Department, in exercise of the delegated power of disciplinary authority, has again cancelled/reviewed the penalty imposed against an Assistant Section Officer/Section Officer of the Bihar Secretariat Service in the capacity of Appellate Authority/Reviewing Authority. Since the Head of Department/Head of Office has not been delegated the power of appellate authority, it is not in accordance with the rules for him to cancel/review the penalty imposed in his capacity as Appellate Authority in such cases and such an order will also not be considered legal.

⁴Circular No. 3026 dated 20.02.2024

(14) It is therefore clarified that the Head of Department/Head of Office may exercise the delegated power of disciplinary authority to impose minor penalty and/or suspend Assistant Section Officers and Section Officers of the Bihar Secretariat Service, who are currently posted in his department/office, if sufficient cause exists. But in such cases, the punishment imposed by him cannot be cancelled/reviewed by him as the appellate authority itself, as doing so would not be considered as in accordance with the rules.

VI. Disciplinary and Appellate Authority for Clerical and Other Cadres⁵

15) In respect of the posts of Bihar Collectorate Clerical Cadre, Bihar Field Office and Collectorate Stenographer/Stenotypist Cadre, Bihar Driver Cadre and Bihar Office Attendant/Attendant (Special) Cadre under the administrative control of General Administration Department, for which the disciplinary authority is the concerned District Magistrate, the Appellate Authority and the Revisional Authority for revision against the order of the Appellate Authority under the provisions of Rule 24 and 28 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 respectively are specified as under:

Sl. No.	Cadre	Designation	Disciplinary authority	Appellate authority	Revisional authority for revision against the order of the appellate authority
1	Bihar Collectorate Clerical Cadre	i) Lower Division Clerk (ii) Upper Division Clerk (iii) Head Clerk (iv) Assistant Administrative Officer	District Magistrate	Divisional Commissioner	Member, Revenue Board
2	Bihar Field Offices and Collectorate Stenographer/Stenotypist Cadre	(ii) Stenographer Grade-III/ Stenotypist-III (ii) Stenographer Grade-II/ Stenotypist-II (iii) Senior Stenographer Grade-I/Stenotypist-I (iv) Head Stenographer/Head Stenotypist	District Magistrate	Divisional Commissioner	Member, Revenue Board

⁵Notification No. 20/Area. Estt.-08 (Sitamarhi) - 11/2019 S.P. 8823 dated 02.06.2022



3	Bihar Driver Cadre	i) Driver (Ordinary Category) (ii) Driver (Category-II) (iii) Driver (Category-I) (iv) Driver (Special Category)	District Magistrate	Divisional Commissioner	Member, Revenue Board
4	Bihar Office Attendant / Attendant (Special Cadre)	i) Office Attendant /Attendant (Special) (Category-IV) (ii) Office Attendant /Attendant (Special) (Category-III) (iii) Office Attendant /Attendant (Special) (Category-II) (iv) Office Attendant /Attendant (Special) (Category-1)	District Magistrate	Divisional Commissioner	Member, Revenue Board

(16) In respect of the posts of Bihar Secretariat Service, Bihar Secretariat Stenographer Service and Bihar Secretariat Clerical Service under the control of General Administration Department, for which the disciplinary authority is Additional Chief Secretary/Principal Secretary/Secretary, General Administration Department, the Appellate Authority and the Revisional Authority for revision against the order of Appellate Authority under the provisions of Rule 24 and 28 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 respectively are specified as under⁶:

Sl. No.	Service	Designation	Disciplinary authority	Appellate authority	Revisional authority for revision against the order of the appellate authority
1	Bihar Secretariat Service	Assistant	Additional Chief Secretary/Principal Secretary/Secretary, General Administration Department	Member, Revenue Board	Honorable Minister, General Administration Department
2	Bihar Secretariat Stenographer Service	i) Stenographer (ii) Personal Assistant	Additional Chief Secretary/Principal Secretary/Secretary, General Administration Department	Member, Revenue Board	Honorable Minister, General Administration Department

⁶Notification No. 3/M.-61/2019-13239/SA dated 05.11.2021

3	Bihar Secretariat Clerical Service	i) Lower Division Clerk (ii) Upper Division Clerk	Additional Chief Secretary/Principal Secretary/Secretary of General Administration Department	Member, Revenue Board	Honorable Minister, General Administration Department
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VII. Time Limit for Disciplinary Action

(17) The time limit⁷ for timely execution of disciplinary action is prescribed as under:

	Various stages	Time Limit
i	After receipt of complaint/allegation, preliminary action required to ascertain the truth of the imputation/clarification/appropriate decision etc.	One month
ii	If further disciplinary action is decided, then framing of charge sheet (with evidence)	One month
iii	Decision on further action by the disciplinary authority/charge sheet along with evidence is sent to the accused Government servant/written statement by the accused Government servant/recording of finding on the basis of written statement.	Two months
iv	Time period for completion of action as per Rule 17 of the said Rules	Six months
v	Action as per Rule 18 of the said Rules	Two months
		Total - 12 months (One year)

18) For the timely execution of disciplinary action⁸, it is essential that files related to these actions are processed in a timely manner at various levels and are not left unnecessarily pending. It is essential to ensure that the execution of disciplinary action files at any employee/official level is generally not delayed for more than three days. In the event of a delay exceeding this, appropriate action may be taken against the concerned employee/official.

VIII. Strict compliance of the Rules, 2005

(19) (i) The Hon'ble High Court, Patna has made strong observations in cases of non-compliance of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 in disciplinary actions. The operative part of the order passed on 29.08.2022 in LPA No. 1203/2019 State of Bihar vs. Sagar Kumar

⁷Circular No. 2178 dated 28.02.2007

⁸Circular No. 2230 dated 17.04.2008

Rai and others is as follows, which is necessary to be kept in mind by all concerned:-

"12. Copy of this order shall be forwarded to the Chief Secretary, State of Bihar. He is requested to formulate guidelines in respect of implementation of CCA Rules, 2005 to the Heads of the Department and Secretariat level or appointing authority/disciplinary authority⁹. We suggest that disciplinary authority or any other authority who invokes various provisions of CCA Rules, 2005 in a disciplinary proceedings and if he/she/they side track such a mandatory provision and proceeded to pass order in a disciplinary proceedings, he/she/they must be liable for penal action under the very same set of CCA Rules, 2005. With regard, State Government must examine whether penal action is warranted against disciplinary/inquiring/ appellate or appointing authority for violation of various provisions of CCA. Rules, 2005 in a departmental inquiry"¹⁰. In such an event only, disciplinary/inquiring/appellate authority would be very much alert in invoking CCA Rules, 2005 in respect of initiation and completion of disciplinary proceedings against his/her subordinate officer/employee of the state.

ii) A detailed review of the suspension of Government servants of the Government of Bihar, framing of charge sheet and timely conduct of disciplinary action was carried out by the Delegated Legislation Committee of the Seventeenth Bihar Legislative Assembly¹¹. After the review, the Committee has made the following recommendations in the above context in Special Report No. 5 relating to the General Administration Department:-

(i) Timely compliance of the instructions issued by the General Administration Department should be ensured.

(ii) In case of suspension, if action is not completed within the stipulated time period, action should be taken against the concerned officer as per rules.

(iii) Before framing the charge sheet (Form 'K'), the prescribed procedure should be followed.

IX. Criminal Misconduct and Disciplinary Proceedings

(20) In addition to criminal proceedings against government servants involved in criminal misconduct, disciplinary proceedings should also be initiated by framing a charge sheet based on appropriate facts. In this regard, the Hon'ble Supreme Court, in its order dated 27.09.1996 in the case of State of Rajasthan vs. B.K. Meena (AIR 1997 Supreme Court 13), held that disciplinary

⁹Circular No.-18976 Dated-21.10.2022

¹⁰Circular No.-23061 Dated-21.12.2022

¹¹Circular No.-6286 Dated-18.04.2024

proceedings can be conducted simultaneously with criminal proceedings on the same charges¹².

- (21) In cases of employees/officials caught red-handed taking bribes, their joining is to be accepted after release on bail from prison under Rule 9(3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Along with this, there is a provision that they can be suspended again after accepting their joining. In this matter, it is important to keep in mind that the employees/officers caught red-handed while taking bribe, after joining subsequent to release from jail, should be immediately transferred from the post they previously held, i.e. the posting during which they were caught taking bribe.¹³
- 22) In cases of persons caught red-handed accepting bribe, the following time limits¹⁴ are prescribed for timely execution of departmental proceedings and bringing them to their logical conclusion in time.

Various stages		Time Limit
i	After being caught red-handed, the Vigilance Bureau / Economic Offences Unit / Special Vigilance Bureau sends information along with all the documents related to the necessary evidence to the cadre controlling department and posting department of the concerned government servant.	One Week
ii	On the basis of the above evidence and documents, the concerned disciplinary authority will investigate the point of administrative failure/lapse and accordingly prepare a charge sheet for disciplinary action.	Three Weeks
iii	Charge sheet (with evidence) to be sent to the accused Government servant / written statement to be given by the accused Government servant / recording of finding on the basis of written statement and decision on further course of disciplinary proceedings by the disciplinary authority.	Two months
iv	The period for the conducting officer to complete the departmental inquiry and submit the inquiry report as per Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time).	Three Months
v	To take action as per Rule 18 of the said Rules	Two Months

¹²Circular No. 2324 dated 10.07.2007

¹³Circular No. 1821 dated 23.05.2007

¹⁴Circular No. 12787 dated 28.08.2015

and bring the matter to its logical conclusion.

Total: eight months

23) In order to ensure timely and logical conclusion of disciplinary proceedings in cases where a person is caught red-handed accepting a bribe, specific inquiry officers have been identified. Furthermore, the following procedures¹⁵ must be followed in such cases:

i. In cases where a person is caught red-handed accepting a bribe (trap cases), the disciplinary authority should appoint an officer not below the rank of Additional Collector at the district level and a Joint Secretary at the department level as the presenting officer in the disciplinary proceedings.

ii. After a government servant is caught red-handed accepting a bribe or is arrested for other misconduct, the Vigilance Bureau/Economic Offences Unit/Special Vigilance Unit should immediately provide its advice (including a list of witnesses and their addresses) to the administrative department along with all relevant evidence for initiating disciplinary proceedings against that government servant.

iii. In all such cases, where a government servant has been made an accused on the charge of being caught red-handed taking bribe and disciplinary proceedings are to be initiated against him, the disciplinary proceedings must be initiated within two months from the date of arrest of the concerned Government servant and the disciplinary proceedings must be completed within ten months from the date of framing of the charge sheet.

iv. In such cases, the officers/members included in the raid team of the Vigilance Department/Economic Offences Unit/Special Vigilance Unit are competent witnesses, and it is necessary from legal point of view to present them to give evidence related to the charges in the disciplinary proceedings. Failure to examine the witnesses may vitiate the disciplinary proceedings. Therefore, it will be the responsibility of the Director General, Vigilance Investigation Bureau and the Inspector General, Economic Offences Unit to ensure that the officers/personnel included in the raid team are present on the scheduled date in the disciplinary proceedings, so that there is no unnecessary delay in the conduct of the proceedings due to the absence of witnesses.

In cases related to trap operations, it will be sufficient to include the officer in charge of the trap team and 2/3 other officers/personnel in whose presence the government servant was caught red-handed accepting the bribe, as witnesses. The presenting officer should summon the necessary witnesses related to a particular point on the same day so that their statements can be recorded, and

¹⁵Circular No. 12196 dated 07.09.2016

repetition and frequent summoning of witnesses for the same fact can be avoided.

V. In the event of the accused not cooperating in the proceedings, there is a provision for an ex-parte hearing by the Presiding Officer. Therefore, in the event of the accused government servant not cooperating in the disciplinary proceedings, the disciplinary proceedings should be completed within the prescribed time limit, while adhering to the principles of natural justice.

vi. Copies of all documents/statements necessary to prove the charges against the accused government servant should be filed along with the charge sheet so that they can be made available to the accused on the first date. The Presiding Officer, through the Presenting Officer, will ensure that the charge sheet and other relevant documents are made available to the accused employee. If the accused employee requests other documents, the Presiding Officer should decide on their availability within a maximum period of one month. The operating officer will ensure that as far as possible the accused employee submits the statements of witnesses and the list of documents sought in his defense, along with the name and address of the custodian, so that a quick decision can be taken in this regard and the presenting officer should quickly obtain the required documents from the concerned department and make them available. In this regard, all the department heads / disciplinary authorities will ensure that all the documents required and fit for making available, are made available as soon as possible.

vii. The concerned department, the Vigilance Department, the Economic Offences Unit, and the Vigilance Investigation Bureau should regularly monitor the progress of pending cases under their jurisdiction. Furthermore, the presenting officer should submit a report on the progress made on each hearing date to the concerned department, along with a report on the presence or absence of necessary documents or witnesses, so that further action can be initiated without delay.

X. Framing of charge sheet in the course of conducting disciplinary proceedings relating to criminal cases¹⁶

24) It has been observed that in certain cases, departmental proceedings are initiated by framing a charge sheet against the accused government servant based on the criminal incident itself.

(i) In such cases, the basis for framing a charge sheet for departmental proceedings should be the administrative lapses committed by the concerned government servant. In fact, before framing a charge sheet, it is appropriate to conduct a preliminary inquiry into the administrative lapses and violations of

¹⁶Circular No. 5840 dated 18.06.2020



administrative provisions committed by the concerned government servant. If a charge sheet is framed based on the findings of the preliminary inquiry, the need for records, evidence, and exhibits related to the criminal proceedings will generally be absent in the departmental proceedings, and the departmental proceedings can be brought to their logical conclusion within the stipulated time.

(ii) However, there have been instances where both criminal and disciplinary proceedings/departamental proceedings have been initiated based on the same allegation.

(iii) In the circumstances described above, the accused Government servant asks for production of documents/records relating to the criminal case registered against him for submitting his defense statement or for defending himself in the course of departmental proceedings.

iv) When the Administrative Department or the conducting officer requests the concerned prosecuting agency to provide the required documents/records, the prosecuting agency expresses its inability to provide the required documents, citing the possibility of weakening of the prosecution case due to breach of confidentiality by providing the required documents while the case is under investigation, or due to the submission of the required documents/records as exhibits in the Hon'ble Court in the event of charge sheet having been filed in the competent court, as a result of which the required documents/records are the property of the Court.

(v) In the above situation, there is difficulty in conducting/executing departmental proceedings under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, because in departmental proceedings initiated against a Government servant, he/she must be given adequate opportunity to defend himself/herself, for which the relevant documents/records must be made available to the accused Government servant on his/her request.

vi) In respect of the manner in which the departmental proceedings relating to the matters under consideration should be conducted, the advice of the learned Advocate General has been obtained through the Law Department, the operative part of which is as under:-

"In my opinion, if the charges are same and are based on the findings of the vigilance investigation, then in order to prove the same, it would be necessary to bring the requisite documents and oral evidence on record so as to prove the charges and simultaneously, all such documents and evidences relied on will have to be provided/supplied to the delinquent so as to defend his case. Authenticated Carbon or photocopies, of documents can also serve the purpose, if original or CC is not becoming available.

vii) It would be necessary for taking action in the light of the above advice of the learned Advocate General, that:

(a) Before handing over any office record to a vigilance or prosecution agency during the investigation of a criminal case, an attested photocopy of the record should be preserved in the office for future use in the conduct of disciplinary proceedings against the accused government servant.

(b) In cases involving arrests of government servants red-handed while accepting bribes, a preliminary investigation into administrative lapses and violations of administrative provisions should be conducted before the charge sheet is framed against the accused government servant. The charge sheet should be framed as per the rules based on the findings of the preliminary investigation regarding administrative lapses and violations of administrative provisions. Information regarding the filing of an FIR can be used as circumstantial evidence in the charge sheet. In such cases, violations of the provisions of Rule 3 (1) (i), (ii) and (iii) of the Bihar Government Servants' Conduct Rules, 1976, should also be made a separate charge.

c) In cases of disproportionate assets also, administrative lapses/violations of administrative provisions (for example, whether the accused Government servant has timely reported transactions exceeding two months' basic pay in accordance with the provisions of the Bihar Government Servants' Conduct Rules, 1976, whether he has timely submitted details of his assets and liabilities, whether he has obtained permission from the prescribed authority before entering into any transaction with any person/institution other than a regular or reputed businessman, whether the details of assets and liabilities reported by the prosecuting agency are different from those submitted by the Government servant concerned, whether his assets and liabilities are commensurate with his known sources of income, etc.) should be investigated and the charge sheet should be framed based on the findings of such investigation only.

XI. Framing of the charge sheet¹⁷

25) (a) Rule 17 (3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 provides for framing of charge sheet against Government servants, which is as follows:-

"(3) Where an inquiry is proposed against a Government servant under this rule, the disciplinary authority shall-

(i) record or cause to be recorded the substance of the imputations of misconduct or misbehaviour in the form of one definite and distinct article of charge;

¹⁷Circular No. 1187 dated 22.01.2024



(ii) record or cause to be recorded in support of each article of charge, a statement of imputations of misconduct or misbehaviour, which shall contain-

(a) an allegation of all relevant facts including any admission or confession made by the Government servant, and

(b) a list of documents and a list of witnesses by whom the articles of charge are proposed to be proved."

(b) Rule 19 of the said Rules, 2005 provides as follows:

19. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of Rule 18, no order imposing any penalty specified in clauses (i) to (v) of Rule 14 on a government servant shall be passed without taking the following actions:

a) informing the Government servant in writing of the proposal for taking action against him and of the imputation of misconduct or misbehaviour on the basis of which the action is proposed, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) inquiring into every case in which, in the opinion of the disciplinary authority, such inquiry is necessary, in the manner prescribed in sub-rules (3) to (23) of rule 17;

(c) considering the representation submitted by the Government servant under clause (a) and the inquiry, if any, held under clause (b);

(d) recording the finding on every misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

2) The record of proceedings in such cases shall include—

(i) a copy of the notice to the Government servant about the action proposed against him;

ii) a copy of the statement of allegations of misconduct or imputation of misbehaviour made available to him;

(iii) his representation, if any;

(iv) evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) findings in respect of each imputation of misconduct or misbehaviour; and

(vii) order on the matter, with reasons.

26) Therefore, before taking action against a Government servant under the provisions of Rule 17 or Rule 19 of the Bihar Government Servants

(Classification, Control and Appeal) Rules, 2005, it is necessary for the disciplinary authority to record in writing the gist of the imputations of misconduct or misbehavior against him and the allegation of the imputations of misconduct or misbehavior. For this purpose, the form of charge sheet for collecting the required information in the prescribed format has been prescribed in Appendix-1 of the "Bihar Regulations for Framing of Charge Sheet against Government Servants, 2017". It is noteworthy that there is a provision for recording the following information in Parts 2 and 3 of the prescribed form of charge sheet –

"3(3) The second part shall contain the gist of the imputations of misconduct or misbehavior in the form of a definite and distinct allegation.

(4) The third part shall contain an allegation of imputations of misconduct or misbehaviour in support of each article of charge, containing an allegation of relevant facts, including any admission or confession made by the Government servant.

- 27) In the circumstances described, in order to take action under Rule 17 or Rule 19 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, it is essential that a charge sheet be prepared in the prescribed format and approved by the disciplinary authority. Clearly, a charge sheet will be considered valid only if it is in the prescribed format and approved by the disciplinary authority.

XII. Directorate of the Chief Inquiry Commissioner¹⁸

- (28) In order to make the process of disciplinary action error-free, for proper conduct, proper supervision and timely inspection of disciplinary proceedings conducted under the Government of Bihar, Directorate of the Chief Inquiry Commissioner has been constituted by the resolution dated 05 February, 2025, which is an attached office of the General Administration Department under the control of Director General-cum-Chief Inquiry Commissioner.
- 29) The main responsibilities of the Directorate of the Chief Inquiry Commissioner are as follows:-
- (a) Related to Supervision, Monitoring, Inspection and Training:
- i. To arrange for the supervision, monitoring, inspection and training of the process of disciplinary inquiry conducted by various disciplinary authorities under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time).
 - ii. To conduct the disciplinary proceedings assigned to the Chief Inquiry Commissioner/Inquiry Commissioner in his capacity as the conducting officer,

¹⁸Resolution No. 3/M-06/2018-2162/SA dated 05.02.2025

as per the rules, and to submit the inquiry report to the concerned disciplinary authority within the stipulated time.

iii. For this purpose, the Joint Commissioner (Departmental Inquiry) at the divisional level and the Additional Collector (Departmental Inquiry) at the district level will be the nodal officers, and all departments will declare an officer not below the rank of Joint Secretary as the nodal officer.

iv. To take necessary action for organizing training of Bihar Government officials/employees (including presentation/submission officers) engaged in such work for conducting/executing disciplinary proceedings as per rules by coordinating with BIPARD.

b) Responsibility for Conducting Disciplinary Proceedings at Various Levels –

i. The Chief Inquiry Commissioner will be entrusted with the investigation of only serious charges, such as serious misconduct, dishonesty, embezzlement, etc., against officials in Pay Level 9 or higher.

ii. Cases of general charges against officials of the rank of Additional Secretary or higher may also be entrusted to the Chief Inquiry Commissioner for investigation.

iii. In special circumstances, any case of any charge may be entrusted to the Chief Inquiry Commissioner for investigation, with reasons to be recorded, as decided by the Government.

iv. Cases involving traps against officials in Pay Level 9 or higher may be entrusted to the Chief Inquiry Commissioner for investigation, who will then refer such cases to a dedicated Inquiry Commissioner. In such cases, the concerned Inquiry Commissioner will submit his inquiry report directly to the disciplinary authority.

v. Cases involving traps against officials and employees in Pay Level 8 or lower will be entrusted to officials not below the rank of Joint Secretary in the Department for investigation. At the divisional level, such cases will be handed over to the Joint Commissioner (Departmental Inquiry) and at the district level, such cases will be handed over to the Additional Collector (Departmental Inquiry).

vi. The concerned departments will provide the required cooperation to the Directorate in the supervision and monitoring of disciplinary proceedings conducted against the employees of various departments.

vii. The Joint Commissioner (Departmental Inquiry) at the divisional level and the Additional Collector (Departmental Inquiry) at the district level will also perform the role of Master Trainer. They will also provide training in conducting disciplinary proceedings to the conducting officers appointed by various disciplinary authorities in their areas. The progress report of the

disciplinary proceedings conducted by them in their areas will be made available to the Directorate every month for monitoring.

viii. The officers appointed as conducting officers will not be given any other administrative responsibility.

- 30) Before referring disciplinary proceedings for investigation to the Director General-cum-Chief Inquiry Commissioner, Bihar, Patna, it should be ensured that only such disciplinary proceedings are submitted to the Chief Inquiry Commissioner as are covered by clause 29 (b) above. Before referring disciplinary proceedings to the Chief Inquiry Commissioner, it is necessary to obtain the consent of the Chief Secretary through the General Administration Department. However, in cases where the order/approval of the Honorable Chief Minister has been obtained for entrusting the inquiry to the Chief Inquiry Commissioner, or the approval of the Honorable Chief Minister as the Departmental Minister has been obtained, the consent of the Chief Secretary will not be required.¹⁹
- (31) The resolution regarding the referral of disciplinary proceedings to the Chief Inquiry Commissioner must be submitted along with the required information in the checklist, as per the prescribed format below, signed and stamped by the competent authority, so that the Chief Inquiry Commissioner is assured that the disciplinary authority has completed the required procedural action for the inquiry.

Check List

- i. Has the charge sheet been prepared correctly and in the prescribed format, and is each charge specific? Has sub-rule (3) of Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, been complied with?
- ii. Has a copy of the charge sheet, the statements of imputations, and the list of documents and witnesses been made available to the accused officer as required by sub-rule (4) of Rule 17 of the said Rules?
- iii. Has the written statement of defense been obtained as required by sub-rule (4) of Rule 17 of the said Rules?
- iv. Has the written statement of defense been reviewed at the level of the disciplinary authority, and has a conclusion been reached after review?
- v. Have the documents required by sub-rule (6) of Rule 17 of the said Rules been attached in original to the resolution?
- vi. Has the resolution made reference to the relevant rule relating to the appointment of the officer conducting and conducting the disciplinary proceedings?

¹⁹ Letter no. 6956 dated 21.10.2008

- vii. Has the Chief Secretary's consent been obtained to the proposal for an inquiry by the Chief Inquiry Commissioner, and has this been stated in the resolution?
 - viii. Has the officer signing the resolution verified and satisfied himself with the above requirements before signing?
- (32) In addition to the above, before entrusting an inquiry to the Chief Inquiry Commissioner, special attention must be paid to the following points²⁰ so that the investigation process can be completed as per the rules without any vitiation:
- (a) The order from the level of disciplinary authority, appointing the presenting officer must be attached to the inquiry proposal.
 - (b) The receipt for providing the charge sheet (with evidence) to the accused government servant under Rule 17 (4) must be attached to the order/resolution sent to the Inquiry Officer for inquiry.
 - (c) The Vigilance Department itself should coordinate with subordinate agencies to provide evidence/records to the inquiry officers in trap cases. Subordinate agencies of the Vigilance Department should preserve certified copies of the original evidence/records before submitting them to the court.
 - (d) To ensure the presence of witnesses in trap cases, the Vigilance Department, Bihar, Patna, should direct its subordinate units (such as the Special Vigilance Unit, Vigilance Investigation Bureau, and Technical Investigation Cell) to maintain a database of retired investigation officers, including their names, designations, current addresses, and mobile numbers. This will facilitate the work of the presenting officer.

XIII. Suspension

- (33) Rule 9 of the 2005 vests the disciplinary authority of a Government servant with the power to suspend the concerned Government servant in the following circumstances:
- “9. Order of suspension- (1) The Appointing Authority or any authority to which the Appointing Authority is subordinate or the Disciplinary Authority or any other authority authorized in this behalf by general or special order of the Government may suspend a Government servant when—
- (i) disciplinary proceeding is being contemplated to be initiated or are pending against the Government servant, or
 - (ii) in the opinion of the aforesaid authority, the Government servant is involved in any activity prejudicial to the interests of security of the State, or

²⁰Letter No. M.J.A.N. (Estt.): 15/2025-433 dated 31.07.2025 of the Directorate of Chief Inquiry Commissioner

(iii) a criminal case is under investigation, inquiry or trial against the Government servant and in the opinion of the competent authority, it is expedient to suspend the Government servant in the public interest.

(34) Further, in view of the provision of Rule 9 (2) of the Rules, if a Government servant is imprisoned for a period exceeding 48 hours in the course of investigation of a criminal case or as a result of being held guilty in a criminal case, he shall be deemed to have been suspended from the date of his imprisonment.

(35) Regarding suspension of Government servants during disciplinary proceedings and periodical review of their suspension period, the following points²¹ are to be followed:

i. In any case, if the reported allegations merit a minor punishment, the concerned government servant should not be suspended.

ii. The disciplinary authority should take a decision to suspend the concerned government servant only after due consideration of the nature, gravity and sensitivity of the reported allegations.

iii. Every disciplinary authority should review the suspension of government servants under its control who have remained suspended for a period of more than one year, every three months and in such cases, a decision should be taken to continue the suspension only if the reported allegations are serious and sensitive. In the remaining cases, the concerned government servant should be relieved from suspension and posted to a post from where he/she cannot influence the case being conducted against him/her.

iv. In the light of clause iii above, a departmental committee²² has been constituted in each department to review the suspension as under:-

- (a) Additional Chief Secretary/Principal Secretary/Secretary/Administrative Department - Chairman
- (b) One representative of General Administration Department, one representative of Finance Department - Member
- (c) Senior Officer in Charge of the concerned vigilance section of the Administrative Department - Member Secretary

²¹Circular No. 13888 dated 21.07.2023

²²Circular No. 21590 dated 23.11.2023

36) The main guiding principles²³ regarding suspension under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 are as follows:

- i. According to Rule 30 of the said Rules of 2005, notwithstanding anything contrary to the 2005 Rules in any other Rules, the provisions of the 2005 Rules will have overriding effect. Therefore, all actions such as suspension, payment of subsistence allowance during the period of suspension, characterization of service on reinstatement, etc., are to be taken in accordance with the provisions of the said Rules of 2005. Instead of taking action as per the provisions of Rules 96 to 100 of the Bihar Service Code, the provisions contained in Rules 9 to 13 of the said Rules of 2005 are to be followed.
- ii. The appointing authority or an authority higher than the appointing authority or the disciplinary authority or any other authority authorized by the Government in this behalf shall be the competent authority to suspend a Government servant under Rule 9(1).
- iii. A government servant may be suspended under Rule 9(1)(a), (b), and (c). Rule 9(2) provides for deemed suspension for the period of detention. Rule 9(3) provides for accepting/joining upon release from detention in cases covered by Rule (2), and subsequently re-suspension under Rule 9(1)(a), (b), and (c) as necessary. It has been observed that even when a criminal case against a government servant is under investigation, inquiry, or trial, suspension proceedings are initiated under sub-rule (2) of Rule 9.

If a government servant is not previously suspended and is placed in custody due to an incidental action or if information of detention is received later, a deemed suspension order may be issued under sub-rule (2) of Rule 9.

However, in cases where suspension is justified under Rule 9(1), it would be appropriate to take action under Rule 9(1) even in the event of detention, so that there is no need to re-suspend under Rule 9(1) after release from custody.

- iv. Action under sub-rule (3) of Rule 9 can be taken only in cases under sub-rule (2), not in cases under sub-rule (1).
- v. According to Rule 9(4), if a Government servant under suspension is punished with dismissal, removal, or compulsory retirement in the course of time, and such punishment is set aside on appeal or revision, and the case is remanded for re-inquiry or proceedings, such Government servant shall remain under suspension from the date of dismissal, removal, or retirement until further orders.
- vi. According to Rule 9(7), a charge sheet must be framed within three months from the date of issuance of the suspension order. If a charge sheet is not framed within three months, the suspension order will be revoked. However, the

²³Circular No. 17796 dated 21.09.2023

- suspension may continue if the authority issuing the suspension order renews the suspension for a further period of four (4) months, recording the reasons for the delay in framing the charge sheet. If the charge sheet is not framed even after four months of the renewal, the suspension order shall be deemed to have been automatically revoked.
- vii. Provision for subsistence allowance during suspension is provided in Rule 10. In this regard, action is no longer required under Rule 96 of the Bihar Service Code. According to the provisions of Rule 10, a subsistence allowance equal to half the average pay and, in addition, the admissible dearness allowance on such half pay may be paid. No other allowance is admissible.
 - viii. The admissibility and procedure for payment of subsistence allowance in cases deemed to be suspended under Rule 9(2) are also provided in Rule 10(3).
 - ix. Not fixing up of a headquarters for the period of imprisonment is mentioned in the second proviso to Rule 10(14)(iii). According to Rule 10(3), in such cases, subsistence allowance is to be paid to the Government servant's nominee on the basis of the Government servant's authorization letter, and from the same establishment where the employee was at the time of his/her detention.
 - x. The provisions relating to regularization of service and admissibility of pay and allowances on reinstatement after suspension are given in Rule 11. The provisions relating to regularization of service and admissibility of pay and allowances on reinstatement after dismissal, removal or compulsory retirement on appeal are given in Rule 12. And the provisions relating to regularization of service and admissibility of pay and allowances on reinstatement after dismissal, removal or compulsory retirement on appeal are given in Rule 13.
 - xi. Where there is no order for payment of full salary for the period of suspension, the ratio of pay and allowances may be decided as per Rule 11(5) and after giving notice to the Government servant concerned and considering the representation (if any) received from the Government servant within 60 days from the date of service of the said notice, the pay and allowances may be decided.
- 37) The key points regarding the suspension of imprisoned Government servants are as follows:
- i. If a Government servant is suspended from the date of imprisonment under Rule 9 (2) (a), then upon release on bail, his/her joining to the administrative department/office will be accepted under Rule 9 (3) (i).
 - ii. Rule 9 (3) (ii) clarifies that if a decision is taken to re-suspend a Government servant under sub-rule (1) (a) or (b) or (c) of Rule 9, then he/she may be suspended by issuing a separate order after accepting his/her joining in accordance with Rule 9 (3) (i). Such suspension shall not be retrospective but will be effective from the date of issuance of the said suspension order.

iii. Under Rule 9(3)(i), the Government servant concerned shall be paid full salary for the period from the date of acceptance of contribution to the date preceding the date of re-suspension.

- 38) ²⁴When a criminal case is filed against an officer/employee for criminal misconduct under the Prevention of Corruption Act and the Indian Penal Code, departmental proceedings must also be initiated simultaneously by framing a charge sheet based on appropriate facts. In this context, even while the criminal case is pending, a penalty can be imposed based on the conclusion of the disciplinary proceedings. Since a penalty can be imposed based on the outcome of the disciplinary proceedings, a decision can also be made regarding the period of suspension. The lack of a decision regarding the period of suspension creates difficulties in deciding the payment of retirement benefits and the regularisation of this period, especially in the case of retired officers/employees.

Therefore, the State Government has decided that if a decision is not reached in the criminal case by the date the disciplinary proceedings are concluded, then, in accordance with Rule 11 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, a clear decision regarding the period of suspension of the government employee shall be taken by the competent authority based on the outcome of the disciplinary proceedings. In cases where disciplinary proceedings have not been initiated and only criminal proceedings are underway, and the accused government servant has been taken into custody, the decision regarding the period of custody can only be taken after the conclusion of the related criminal case.

XIV. Action to be taken by the Disciplinary Authority before handing over the inquiry to the Conducting Officer²⁵

- 39) Under the provisions of the Rules,
- i. the charges reported against a Government servant are to be framed under Framing of Chargesheet against Bihar Government Servants Regulations, 2017, which shall include a detailed statement of the charges, documents related to the charges, and a list of witnesses.
 - ii. The accused Government servant shall be served with a copy of the charge sheet along with all relevant documents, and he shall be expected to submit a written statement of his defense within the specified time, and also state whether he wishes to be heard in person.
 - iii. If the accused Government servant requests the records relating to the charge to submit his written statement, the records shall be made available to him. If the records sought are not relevant to the reported charge or, for specific reasons, making available the records is not in as

²⁴ Circular No. 2959 dated 31.08.2007

²⁵ Circular No. 18976 dated 21.10.2022

- per rule, the accused Government servant shall be informed of the facts, stating the reasons in writing.
- iv. Under the provision of Rule 19 of the Rules, the disciplinary authority may, after considering the defense/explanation received from the Government servant in respect of the charge sheet, take a decision without initiating any disciplinary proceedings and may decide to impose a minor punishment proportionate to the proved charge.
 - v. In order to impose major punishment in respect of the allegations reported against the Government servants, it is necessary to conduct disciplinary proceedings as per the provisions of Rule 17.
 - vi. If it is necessary to conduct a detailed inquiry into the allegations reported in the charge sheet framed against the accused Government servant, then the Disciplinary Authority will take the decision to conduct disciplinary proceedings against the Government servants in the light of the provisions contained in Rule 17 of the Rules and an Officer will be appointed to conduct the proceedings.
 - vii. In the course of conducting disciplinary proceedings, the accused government servant must be afforded an opportunity to examine, cross-examine, and re-examine the evidence/witnesses in connection with the charge. The presenting officer shall also be afforded the opportunity to examine, cross-examine, and re-examine the witnesses/witnesses presented by the accused government servant.

XV. Action to be taken by the Administrative Department/Disciplinary Authority on the basis of the report submitted by the Conducting Officer after the inquiry²⁶

- 40) After disciplinary proceedings, action on the inquiry report submitted by the Conducting Officer is to be taken under Rule 18:
- (i) Under Rule 18 (1), the Disciplinary Authority shall consider whether the inquiry report contains a finding on all the charges or all the parts of the charge. If the inquiry report does not contain a clear finding on any charge or part of the charge, the Disciplinary Authority may record this and return the case to the Conducting Officer for further inquiry and submission of a report.
 - (ii) Under Rule 18 (2), the Disciplinary Authority shall decide on the basis of the available records whether it agrees with the inquiry report, either wholly or partially. In case of complete or partial disagreement with the inquiry report, the Disciplinary Authority shall record the points of disagreement.
 - (iii) Under the provisions of Rule 18 (3) of the Rules, the inquiry report of the conducting officer and the points of disagreement with the inquiry report, if any,

²⁶Circular No. 18976 dated 21.10.2022

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are to be communicated to the accused Government servant and he is to be directed to submit his representation within one month.

iv) Under the provisions of Rule 18 (4), the disciplinary authority will consider the representation or request, if any, submitted by the government servant.

(v) Under the provisions of Rule 18 (5) and (6), the disciplinary authority will determine and communicate the penalty as described in Rule 14, proportionate to the substantiated charge, or to discharge the accused if the charge remains unsubstantiated. In this regard, the disciplinary authority will also seek the advice of the Bihar Public Service Commission or the approval of the State Council of Ministers, as required, on the punishment decided in certain cases, as necessary.

(vi) Regarding the action to be taken against a government servant after their conviction in a criminal case, the procedure is laid down in Rule 20(i) of the Rules. In light of this provision, where a penalty is to be imposed on a government servant based on their conviction in a criminal case, there is no need to conduct disciplinary proceedings. The disciplinary authority is to impose the penalty directly after considering the circumstances of the case. However, before imposing any such penalty, the government servant shall be given an opportunity to make a representation against the proposed penalty, and if consultation with the Bihar Public Service Commission is required before imposing such a penalty, then the Commission shall also be consulted before the penalty is imposed.

XVI. Action to be taken by the Conducting Officer as per Rule 17 of the Rules, 2005²⁷

(41) The Conducting Officer is required to take the following actions at various stages as per Rule 17:-

- (i) Rule 17 (6) -The Disciplinary Authority, where it is not the Inquiring Authority, shall forward to the Inquiring Authority the following records:-
- i. a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour;
 - ii. a copy of the written statement of defense, if any, submitted by the Government servant;
 - iii. a copy of the statements of the witnesses, if any, specified in sub-rule (3) of this rule;
 - iv. evidence proving that the documents specified in sub-rule (3) of this rule have been made available to the Government servant; and
 - v. a copy of the order appointing the Presenting Officer.

²⁷ Chief Inquiry Commissioner's letter No. M.J.A. (Case): 02/2022-665 dated 08.11.2022

- (ii) Rule 17 (8) - A Government servant may take the assistance of another Government servant posted in any office at his headquarters or at the place where the inquiry is being held to present his case on his behalf. Provided that he shall not engage a legal practitioner for this purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority so permits, having regard to the circumstances of the case: Provided further that a Government servant shall not take the assistance of another Government servant who has more than three pending disciplinary cases in which he is to be assisted.
- (iii) Rule 17(9) - If a government servant, who has not admitted any item of the charge in his written statement of defense or has not submitted any written statement of defense, appears before the inquiring authority, the authority shall ask him whether he is guilty or not, or whether he has anything to say in his defense. If he pleads guilty to any item of the charge, the inquiring authority shall record that plea, sign the record, and obtain the signature of the government servant thereon.
- iv) Rule 17 (10) - The Inquiring Authority shall return its finding of guilt on the articles of charge to which the Government servant has pleaded guilty.
- (v) Rule 17 (11) - If the Government servant fails to appear within the time specified or refuses to plead or does not plead, the Inquiring Authority shall require the presenting officer to produce the evidence by which he proposes to prove the articles of charge. Upon the appearance of both parties, the Inquiring Authority may direct each party to produce a list of witnesses to be examined on their behalf. Furthermore, the Government servant may inspect the documents specified in the list in sub-rule (3) of this rule. The Government servant may issue notice for the discovery or production of any document in the possession of the Government but not specified in the list specified in sub-rule (3) of this rule.
- (vi) Rule 17 (12) - On receipt of an application from a Government servant for the requisition of a document/document, the Inquiry Officer shall forward the application to the authority in whose custody or possession the documents are held. Provided that the Inquiry Authority may refuse the requisition of such documents as it considers irrelevant to the case.
- vii) Rule 17 (13) - On receipt of the requisition specified in sub-rule (12) of this rule, every authority having custody or possession of the requisitioned documents shall produce them before the Inquiring Authority. However, if the production of such documents would be against the public interest or the security of the State, the authority having custody of the documents shall inform the Inquiring Authority, and the Inquiring Authority shall communicate this information to the Government servant.

(viii) Rule 17 (14) - Testimonies are to be taken. The Presenting Officer shall examine the witness named by the Disciplinary Authority, and the Government servant shall cross-examine the witness. The Presenting Officer shall be entitled to re-examine the witnesses on the points on which they have been cross-examined, but shall not cross-examine them on any new matter without the permission of the Inquiring Authority. The Inquiring Authority may also ask the witness such questions as it deems appropriate.

(ix) Rule 17(15) - Before the case is closed by the disciplinary authority, the inquiring authority may, if it deems necessary, in its discretion, permit the presenting officer to produce such evidence as is not included in the list furnished to the government servant, or may itself call for fresh evidence, or recall and re-examine any witness, and in such a case, the government servant shall, if he so desires, be entitled to a list of the additional evidence proposed to be produced and to an adjournment of the inquiry for a period of three clear days before such fresh evidence is produced. The inquiring authority may also permit the government servant to produce fresh evidence if it is of the opinion that it is necessary in the interest of justice to produce such evidence.

Provided that no fresh evidence shall be allowed to be given or called to supplement the evidence, or to recall any witness. Such evidence may be called for only if there is some inherent deficiency or defect in the evidence originally adduced.

x) Rule 17 (16) - When the case is closed for the disciplinary authority, the Government servant shall be required to state his defense, either orally or in writing, as he prefers. If the defense is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the defense shall be given to the appointed Presenting Officer, if any.

(xi) Rule 17 (17) - Evidence shall then be presented on behalf of the Government servant. The Government servant may, if he so desires, examine himself. Thereafter, the process of examination and cross-examination of the witnesses produced by the Government servant shall be carried out.

(xii) Rule 17 (18) - After the Government servant has closed his case, the Inquiring Authority shall, if he has not examined himself, make general inquiries with the purpose of clarifying his position with regard to the circumstances appearing in the evidence against him.

(xiii) Rule 17 (19) - After the completion of the production of all evidence, the Inquiring Authority shall hear the Presenting Officer and the Government servant charged in detail and shall permit them, if they so desire, to file written briefs of their respective cases.

xiv) Rule 17(20) - If the Government servant, who has been served with a copy of the articles of charge, fails to submit a written statement of defense on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this Rule, the Inquiring Authority may hold an ex-parte inquiry.

(xv) Rule 17(23)(i) - After the conclusion of the inquiry, the inquiry report should contain the following:

- (a) Charge sheet
- (b) The defense of the charged Government servant in respect of each article of charge.
- (c) The assessment of evidence in respect of each article of charge.
- (d) The finding on each article of charge and the reasons therefor.

xvi) The following is the model format for filing the final inquiry report relating to disciplinary proceedings:

1. Name of the accused Government servant
2. Disciplinary proceedings number
3. Designation of the Government servant
4. Resolution number and date of the Administrative Department
5. General reference
6. Statement of charge
7. Written statement of defense of the accused Government servant
8. Opinion of the Presenting Officer on the written statement of defense
9. Written response of the accused Government servant to the opinion of the Presenting Officer
10. Evidence/Witness/Testimony (if given as evidence by the Disciplinary Authority/Charged Officer)/Examination/Cross-examination/Re-examination
11. Written statements of both the parties
12. Hearing
13. Analysis and Findings
14. Final Conclusion

XVII. Responsibility of Presenting Officer in Conduct of Disciplinary Proceedings

- 42) Rule 17(5)(iii) of the 2005 Rules provides for the appointment of a Presenting Officer by the Disciplinary Authority, and Rules 17(11), (13), (14), (15), (16), (17), (18), (19), and (22) provide for the duties of the Presenting Officer. In

conducting disciplinary proceedings, the Presenting Officer must perform the following duties/responsibilities.²⁸

(i) The Presenting Officer should appoint a Government servant who possesses the knowledge required to properly present the matter on behalf of the Disciplinary Authority.

(ii) The Presenting Officer should obtain the necessary records and evidence related to the charge and present them to the Conducting Officer. Their role is to present the prosecution's side.

(iii) The presenting officer is responsible for effectively presenting the disciplinary authority's case in support of the charges leveled against the government servant, and for presenting witnesses and evidence before the inquiry officer to prove the charges.

(iv) The Presenting Officer is responsible for examining/cross-examining/re-examining the witnesses of the prosecution/accused Government servant.

(v) On the request of the accused Government servant or in the light of the decision of the conducting officer, it is the responsibility of the Presenting Officer to obtain the evidence records related to the case from the authority in whose custody those evidence records are and make them available in the departmental proceedings.

(vi) The Presenting Officer is responsible for presenting the case on behalf of the prosecution on any written statement submitted by the accused Government servant.

(vii) There is no provision for the Presenting Officer to give his opinion/view in respect of the allegations reported against the accused Government servant during the conduct of disciplinary proceedings.

XVIII. Regarding providing departmental opinion on the written statement of the accused officer during the conduct of disciplinary proceedings²⁹

43) Sometimes, during the conduct of disciplinary proceedings, a departmental opinion is expected by the conducting officer on the written statement submitted by the government servant, in his defense. In Rule 17, there is no provision for expecting opinion/comment of the disciplinary authority on any written statement submitted by the accused government servant, during the conduct of proceedings. There is provision of presenting officer, making available supporting evidences, if asked for, required to substantiate the charges. In this context, the following points are important:

(i) Clearly, in disciplinary proceedings conducted under Rule 17, the disciplinary authority is required to review the inquiry report submitted by the conducting

²⁸ Circular No. 4162 dated 25.03.2021

²⁹ Circular No. 6727 dated 08.07.2020

officer, under the provisions of Rule 18. In the situation described, if a departmental opinion, which is essentially the opinion of the disciplinary authority, is provided to the conducting officer on the written statement of the accused government servant during the disciplinary proceedings, the conducting officer's conclusion will be considered to be influenced by the disciplinary authority's opinion. In such a situation, the disciplinary proceedings will not be considered impartial but will be considered vitiated. It will be difficult to establish in judicial review that the disciplinary authority has not attempted to influence the proceedings through departmental opinion to reach a decision according to its own wishes.

- ii) The above discussion makes it clear that in the course of conducting disciplinary proceedings, the Inquiring Authority must record its independent conclusion on the evidence, witnesses, and written statements submitted by the Presenting Officer and the accused Government servant. If the Inquiring Authority deems it necessary, it may order the Presenting Officer to provide the evidence/records related to the charge. In such a situation, the Presenting Officer is responsible for obtaining the relevant evidence from the authority in whose custody the records are and making them available in the disciplinary proceedings.
- (iii) The learned Advocate General's advice has also been obtained through the Law Department on the interpretation of the above clauses. The operative part of the advice given by the learned Advocate General on the relevant issue is as follows:- "It is seen that in most of the cases the Inquiry Officer in a Proceeding is appointed by the Disciplinary Authority and hence, in case "Abhimat"/Views" of the department is disclosed before the Inquiry Officer even before he has arrived on any conclusion in the inquiry proceeding, there is every likelihood that it may influence his mind to take a partial view in such inquiry.

Even otherwise, it is inappropriate that a Disciplinary Authority should or cause to disclose his mind even before the departmental inquiry is concluded. Besides, in the provisions as enumerated under rule-17 of the said CCA Rules, 2005, there is no rule of submitting any "Abhimat" or presentation "Views" of the Department before the Inquiry Officer. What is required is presentation of facts, documents and evidences by the Presenting Officer to prove the charges and to participate in hearing, cross examine defense witnesses and submit written brief of his case during the course of the enquiry proceeding".

XIX. Regarding the Disciplinary Authority competent to impose major penalty and penalty related to pension deduction after disciplinary action under the Rules-2005³⁰

- 44) Regarding disciplinary action, the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules-2005 (as amended from time to time) are applicable to retired Government servants, whereas action against retired Government servants is taken under the provisions of the Bihar Pension Rules. Points to be noted regarding the competent disciplinary authority are as follows:-
- (i) Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules classifies penalties into minor and major. Rule 2 (i) of these Rules authorizes the disciplinary authority to impose any penalty classified in Rule 14 against any Government servant.
 - ii) Rules 2(i), 9, and 15 of the Rules define disciplinary authority. It is noteworthy that, in light of the provisions of Article 311 of the Constitution, the power to impose major penalties cannot be delegated by the appointing authority.
 - (iii) The provision in Clause 30 of the Rules is also relevant, which reads as follows: "30. Overriding effect of these Rules. - Notwithstanding anything contrary to these Rules in any other Rules, the provisions of these Rules shall prevail."
 - (iv) The above provisions clearly state that only the appointing authority of the Government servant concerned shall be competent to impose any penalty provided in Rule 14 of the Rules as the disciplinary authority. Furthermore, even if any other Rules contain provisions contrary to these Rules, the provisions of these Rules shall prevail, meaning that only the provisions of these Rules shall apply.
 - (v) Under Rule-10 of the Bihar Rules of Executive Business, Schedule-3 attached to the Rules mentions the matters in which the final decision is to be taken with the approval of the Council of Ministers. By the Notification No. 105 dated 25.01.2017 of the Cabinet Secretariat Department, the original provision of Clause-28 of Schedule-3 has been replaced as follows: "28 Proposal for dismissal, removal or compulsory retirement of an officer of Group "A" and Group "B" who have been appointed by the Government."
 - vi) In light of the above-mentioned amendment to the Executive Rules, the disciplinary authority's proposal for dismissal, dismissal, or compulsory retirement (all three major penalties) of Group A and Group B officers appointed by the government must be considered and approved by the Council

³⁰Circular No. 806 dated 16.01.2018

of Ministers, after consultation with the Bihar Public Service Commission, where necessary. The approved penalty is then communicated.

- (vii) Pension deduction (full/partial, for a specific period/permanent) in disciplinary proceedings against retired government servants is provided for in Rules 43 and 139 of the Bihar Pension Rules. Pension deduction is not classified as a penalty under Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time). Therefore, the concept of disciplinary authority cannot be used to decide pension deduction.

Rule 43B of the Bihar Pension Rules stipulates the following: "The State Government reserves the right to withhold or withdraw the pension or any part thereof, either permanently or for a specified period. If it is found through judicial or departmental proceedings that a government servant has caused financial loss to the State Government due to negligence or fraud during his service or re-employment period, the State Government may recover the full or partial amount of such loss from the pension of that government servant.

.....

The Bihar Public Service Commission will be consulted before passing the final order."

This provision applies to all Government servants (Group 'A', 'B', 'C' and 'D').

- (viii) Rule 35 of the Bihar Pension Rules defines "State Government" as "State Government means the Government of the State of Bihar." This definition of State Government is also provided in Rule 45 of the Bihar Service Code. The Government of Bihar is not defined in the provisions of the Bihar Executive Rules.
- (ix) The Third Schedule, attached to Rule 10 of the Bihar Executive Rules, lists matters on which final decisions are to be taken at the level of the Council of Ministers. Similarly, Rule 32A/B lists matters on which final decisions are to be taken at the level of the Honourable Chief Minister/His Excellency the Governor. Decisions on remaining matters relating to a department are to be taken at the level of the Minister in charge of the department under Rule 22 or Schedule 4 of the Executive Rules. Deductions from pension are not listed in Schedule 3 or Rule 32A/B of the Executive Rules, and no authority is prescribed for this purpose in Schedule 4. Therefore, it is clear that under the provision of delegation of powers contained in the Executive Rules, the Minister in charge of the Department as the State Government is the competent authority to take decision regarding deduction from the pension of retired Government servants of the State.
- x) In the light of the provisions of Bihar Public Service Commission (Determination of jurisdiction) Regulations, 1957, by the General

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Administration Department's Circular No. 2609 dated 13.09.2006 (Compendium, 2010 Vol. 1 page 358), a provision has been made to seek the advice of Bihar Public Service Commission and to consider its advice before issuing the final order in the matter of imposing major punishment in disciplinary cases against such Government servants, whose appointment is based on the recommendation of Bihar Public Service Commission, and before passing the order of deduction from the pension of such retired Government servants.

xi) In light of the provisions described above, and after due review, the following decisions are communicated regarding the competent authority for imposing any penalty under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, or for pension reduction/100% forfeiture of pension under various rules of the Bihar Pension Rules:

i) The disciplinary authority competent to impose any penalty provided in Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time), except in the cases described in sub-paragraph (II) below, shall be the appointing authority of the Government servant concerned. Notwithstanding any contrary provision in any other rule, the said provision of these rules shall prevail, that is, the provisions of these rules shall apply.

(ii) In light of the provision contained in Clause 28 of Schedule 3 of the Executive Rules, the disciplinary authority's proposal for dismissal, dismissal, or compulsory retirement (all three major penalties) of a Group A or Group B officer appointed by the Government must be consulted, if necessary, by the Bihar Public Service Commission and, after consideration, the approval of the Council of Ministers is obtained. The approved penalty is then communicated.

[Note:- (1) The clarification given in sub clause (iii) [omitted above] of clause 7 [reproduced as para xi) above] of Circular No. 806 dated 16.01.2018 has become irrelevant in the light of Finance Department's Notification No. 295 dated 13.05.2020. By Finance Department's Notification No. 295 dated 13.05.2020, the words "State Government" mentioned in Rule 43 and 139 of Bihar Pension Rules, 1950 have been replaced by "Appointing Authority of the post held at the time of retirement".

(2) The clarification given in clause 7 [reproduced as para xi) above] (iv) [omitted above] of Circular No. 806 dated 16.01.2018 has been deleted by General Administration Department's Circular No. 14123 dated 16.10.2019.]

xii) By notification memo number 9794 dated 22.07.2019 of the General Administration Department, Regulations 11 and 12 of the Bihar Public Service

Commission (Functions) Regulations, 1957 (as amended from time to time) have been substituted. This substitution provides that in disciplinary matters concerning government servants of Level-9 and higher levels of the State Service Cadre, whose appointment/promotion is made on the recommendation/advice of the Bihar Public Service Commission or any other commission of the State Government, it is mandatory for the government to consult the Bihar Public Service Commission before ordering a deduction from pension or imposing a major penalty.³¹

XX. Regarding taking action against retired Government servant convicted/convicted in criminal cases under the provisions of Rule-43 of Bihar Pension Rules³²

- 45) In the context of the provision of Rule 43 of the Bihar Pension Rules, an important decision has been passed by the Hon'ble Patna High Court on 13.02.2012 in CWJC No. 2527/2009, the referenced part of which is as follows

-----Future good conduct will be the implied condition of every grant of pension would mean that a pensioner who has been granted pension is expected to maintain a good conduct in future and in case a pensioner is convicted of serious crime or held guilty of grave misconduct, the Provincial Government has the power granted by Rule 43 (a) to withhold or withdraw the pension or any part of it and its decision has been made final and conclusive.....

-----from a comparison of Rule 43 (a) with Rule 43 (b) that the former relates to future good conduct of a pensioner and the same may be invoked if he is convicted of serious crime or is held guilty of grave misconduct. The serious crime or grave misconduct under this provision, i.e. rule 43 (a) is not related to his conduct during service and/or service rendered on re-employment. It is a conduct expected of a pensioner in future after he is granted a pension. Thus, there is clear distinction between the aim and object of Rule 43(a) and that of Rule 43(b). Both the provision operate in different areas having different connotations. The decision under rule 43(a) is not on account of any departmental proceeding or judicial proceeding instituted when the government servant was in service or instituted later in respect of an event which related to his service rendered before retirement or on re-employment

-----On the other hand, the future good conduct mentioned in Rule 43(a) is good conduct expected of every government servant even after superannuation. Such future conduct is not related to his service period at all----

³¹Circular No. 14123 dated 16.10.2019

³²Circular No. 1882 dated 06.02.2020

.....Rule 43(a) comes into play after retirement and applies till pensioner breathes his last. There can be no question of time limitation for exercise of such power because this Rule is not at all connected with any departmental proceeding. Rule 43(a) nowhere refers to any departmental proceeding instituted earlier or to be instituted later.

- 46) In the above judgment it is clearly held that the provisions of Rule 43(a) can be invoked only when the retired government servant's future conduct is not good. The provisions of Rule 43(a) cannot be used for investigating any disciplinary/criminal charges during the period of service, and therefore, the condition stipulated in the proviso to Rule 43 (that the actual incident of the charge should not be more than four years old) is not applicable in the context of Rule 43(a).
- 47) The judgment also makes it clear that disciplinary proceedings against a government servant for any charge related to service period can be initiated under the provisions of Rule 43(b) of the Bihar Pension Rules, including the conditions contained therein, and if the charge is proved, a decision can be taken to withhold the pension or any part thereof. However, departmental proceedings cannot be initiated under the provisions of Rule 43(a) for any disciplinary/criminal charge during service.
- 48) The advice of the learned Advocate General on the subject under consideration is as follows

“..... Rule 43(a) of the said Rules vests power in the Provincial Government to withdraw or withhold pension or any part of it, if the pensioner is convicted of serious crime or grave misconduct. The provision clarifies that "future good conduct" is an implied condition of every grant of pension. Thus, apparently, this provision controls events arising out after retirement of an employee because good conduct of a pensioner is a condition for every grant of pension and if his conduct is found wanting in view of his conviction for serious crime or guilty for grave misconduct then, the pension earlier granted can be withheld or withdrawn either in full or in part. The Division Bench of Patna High Court has also clarified this view in its judgment dated 13.12.2012 passed in CWJC No. 2527/2009.....

Thus, in case an order of conviction and sentence is passed against a pensioner by the criminal court for commission of any serious and grave offence/misconduct omitted while he was inservice, then the State Government may in exercise of power vested under Rule 43(b) can take action of withholding/withdrawing his pension or part thereof by simply issuing a show cause notice. Since the employee has already been proceeded judicially in the criminal case and conviction order has been passed holding him guilty of charges, no separate proceeding is required to be instituted under Rule 43(b), except a simple show cause to respond on order of conviction.”

XXI. Regarding adverse effect of penalty imposed against Government servant on financial upgradation admissible under ACP/MACP³³

(49) The Bihar Government Servants (Classification, Control and Appeal) (Third Amendment) Rules, 2010 has clarified the adverse effect of penalties provided in Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time).

50) After due consideration of the matter under consideration, it is clarified that:

(i) In case of departmental proceedings against a Government servant, there is a provision for keeping the financial upgradation under ACP/MACP pending till the completion of the departmental proceedings.

(ii) If the Government servant under consideration is acquitted in the departmental proceedings, he will be granted financial upgradation from the due date of the admissible financial upgradation.

(iii) If the departmental proceedings against the Government servant under consideration are concluded with the imposition of a penalty, then:

(a) The period of the adverse effect of the penalty imposed against him will have to be calculated before considering the liability of financial upgradation admissible to the Government servant.

(b) If the due date of the admissible financial upgradation to the Government servant does not fall within the adverse effect period of the sentence imposed against him, in such a situation, the financial upgradation will be granted from the due date.

(c) If the due date of admissible financial upgradation of a Government servant falls within the adverse effect period of the punishment imposed against him, then he will be granted financial upgradation from the next date after the expiry of the adverse effect period of the punishment.

iv) For example -

If a Government servant is punished by Order No. 1042 dated 30.09.2018 with the penalty of withholding two increments with non-cumulative effect, then as a result of the penalty, his pay increments admissible from 01.07.2019 and 01.07.2020 will be temporarily blocked. In the above situation, the penalty will have adverse effect on his service from 30.09.2018 to 30.06.2021. Therefore, if their ACP due date is before 30.09.2018 or after 30.06.2021, then the admissibility of ACP/MACP shall not be affected by the punishment. But if their ACP/MACP due date is any date between 30.09.2018 and 30.06.2021, then they may be granted financial upgradation from

³³ Circular No. 2910 dated 28.02.2022

01.07.2021 after the adverse effect of the penalty has ended, provided they possess other eligibility criteria for financial upgradation on that date.

It is also noteworthy that the period of adverse effect of cumulative withholding of increment and penalty of censure shall also be determined in the same manner. The adverse effect of the period of adverse effect shall only affect the due dates of service confirmation, promotion and the admissibility of ACP/MACP.

XXII. Regarding the adverse effect of proceedings instituted under Rule 43 (B) of the Bihar Pension Rules while considering the promotion of Government servants³⁴

- (51) Since departmental proceedings or criminal proceedings are initiated against an employee due to allegations made during his service period, therefore, just as the recommendation on suitability by the Departmental Promotion Committee due to departmental proceedings/criminal proceedings instituted during his service period is kept in a sealed cover as per Resolution No. 7457 dated 11.09.2002, similarly, the recommendation on suitability by the Departmental Promotion Committee due to departmental proceedings or criminal proceedings instituted under Rule 43 (B) of the Pension Rules is also the basis for keeping the recommendation on suitability by the Departmental Promotion Committee in a sealed cover.
- (52) Therefore, the State Government, vide Resolution No. 7457 dated 11.09.2002, has decided that if after the retirement of a Government servant, departmental proceedings are conducted under Rule 43 (B) of the Bihar Pension Rules or if the departmental proceedings conducted during the service period are converted into proceedings under Rule 43 (B) of the Pension Rules after retirement or if any criminal proceedings are instituted, then the recommendation on suitability by the Departmental Promotion Committee in respect of such retired Government servants for promotions due during their service period shall be kept in a sealed cover.
- 53) The above procedure will continue to be followed by all Departmental Promotion Committees to be held in future until the departmental proceedings or criminal proceedings against the retired Government servant concerned are concluded.

XXIII. Regarding the execution of penalties of withholding of increments in more than one case³⁵

- (54) Whether the punishments of withholding of increments/increments with cumulative/non-cumulative effect imposed against a Government servant in

³⁴Resolution No. 170 dated 06.01.2010

³⁵Circular No. 1659 dated 05.02.2021

more than one separate cases shall have simultaneous effect or the adverse effect of the second punishment will commence after the end of the adverse effect of the first punishment –issuing of clarification regarding this was under consideration.

- (55) It is noteworthy that no clear provision has been made in the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 in the context of the matter under consideration and no separate clarification has been issued in this context either. But in the context of the provisions of The Central Civil Services (Classification, Control and Appeal) Rules, 1965, the following clarification has been issued for the above situation by the Director General of Personnel and Training vide letter no. 230/308/75-Disc. II dated 03.05.1976.

“-----where the disciplinary authority imposed penalties of stoppage of increment one after the other in separate cases on the Government Servant, the effect of the first punishment order of stoppage of increment will continue for the period specified in the punishment order. Thereafter, the pay of the Government Servant will be raised by giving him increments which, but for the imposition of the penalty, would have been admissible to him and only then the second order of stoppage of increment will be made effective which will continue for the period specified in the second punishment order of stoppage of increment and so on.”

- 56) It is clear from the above explanation that where a sentence of stoppage of increment/increments with cumulative/non-cumulative effect has been imposed against a Government servant in more than one separate cases, then-
- (i) The first sentence will first remain in effect for the period specified in the punishment order;
 - (ii) Thereafter the pay of the Government servant will be raised by granting him the admissible increment commensurate with the punishment imposed; and
 - (iii) Thereafter the effect of next punishment shall commence.
- 57) In the above situation, it is clarified that in case a sentence of stoppage of increment/ increments with cumulative/non-cumulative effect is imposed against a Government servant in more than one separate case under the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, the punishment will be effective as per the provisions mentioned in clause 56 above.

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XXIV. Clarification regarding conclusion of disciplinary proceedings after the death of the charged Government servant before the order of punishment is conveyed³⁶

58) Clause 11 (2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (as amended from time to time) provides for the regulation of the period of suspension of a Government servant in the event of his death during the period of suspension as under: "Notwithstanding anything contained in Rule 10 of these Rules, where a Government servant under suspension dies before the conclusion of disciplinary or judicial proceedings initiated against him, the period between the date of suspension and the date of death shall be treated as time on duty for all purposes and his family shall be paid full pay and allowances for that period to which he would have been entitled had he not been suspended. In making such payment, adjustment of subsistence allowance and other allowances already granted and Government dues or debts shall be taken into account."

59) The explanation given on this subject by the Department of Personnel and Training, Government of India, vide letter number 11012/7/99-Stha.(A) is as follows:

".... After careful consideration of all the aspects, it has been decided that where Government Servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government Servant. {Deptt. Of Personnel & Training OM No. 11012/7/99-Estt.(A) dated 20th October, 1999}"

(60) Advice was also obtained from the learned Advocate General through the Law Department on the subject under consideration, which is as follows –

"In view of the aforesaid, I am of the considered view that Rule 11(2) of the Bihar Government servant CCA Rules, 2005 is very clear and unambiguous on the point in issue. The departmental proceeding instituted against a Government servant, shall stand abated and terminated on the date of death of that employee if the proceedings has not been concluded. The conclusion of a departmental proceeding in my opinion would coincide with the last act required to be done in the departmental proceeding as envisaged u/s 18 of the Bihar Govt. Servant CCA Rules 2005. Mere submission of enquiry report holding delinquent guilty in a departmental proceeding cannot give an assumption that the departmental proceeding stands concluded."

61) Therefore, in the context of the matter under consideration in the above situation, it is clarified that "In the course of conducting departmental proceedings, in the event of the death of the accused Government servant at any stage of

³⁶Circular No. 8811 dated 18.07.2017

consideration, the departmental proceedings against the concerned Government servant shall automatically abate and the concerned case of charges shall be closed after mentioning the information of death.”

XXV. Regarding providing information timely, regarding filing of a criminal case against a Government servant or submission of a charge sheet against a Government servant in a criminal case in a competent court³⁷

(62) "(i) If a criminal case is filed against a Government servant during his service or a charge sheet is filed in a criminal case in a competent court, it shall be mandatory for the Government servant concerned to provide factual information regarding the criminal case filed against him to his administrative department. Failure to do so shall be treated as misconduct on the part of the Government servant concerned.

(ii) If a charge sheet is filed in a criminal case against a Government servant by the prosecuting agency in a competent court, the concerned prosecuting agency must immediately provide information regarding the same to the appointing authority/head of office of the Government servant concerned.”

³⁷ Circular No.-8334 Dated-15.09.2020