

Part IX—Correction Department Proceeding.

विभागीय कार्यवाही

पत्र संख्या—३ / एल १-२०१ / ७६ का० २२९३ /

बिहार सरकार,

कानून विभाग ।

प्रेषक,

श्री सच्चिदानन्द सिन्हा,
सरकार के अपर सचिव ।

सेवा में,

सरकार के सभी विभाग/सभी विभागाध्यक्ष
.....सभी प्रमुखीय आयुक्त
.....

सभी जिला पदाधिकारी

पटना-१५, दिनांक ९ फरवरी, ७७

विषय :—संविधान (बेयालिसबां संशोधन अधिनियम, १९७६ संविधान के अनुच्छेद ३११ में संशोधन ।

महोदय,

निदेशानुसार मुझे कहना है कि संविधान (बेयालिसबां संशोधन) अधिनियम, १९७६ की धारा ४४ द्वारा संविधान के अनुच्छेद ३११ के खण्ड (२) का संशोधन हुआ है एवं भारत सरकार, विधि न्याय एवं करपनी कार्य मंत्रालय (वैधिक कार्य विभाग) की अधिसूचना संख्या जी० ए० आर० २ दिनांक ३ जनवरी, १९७७ द्वारा उपर्युक्त संशोधन दिनांक ३ जनवरी, १९७७ से प्रभावी है ।

२—संशोधन के बाद संशोधन के अनुच्छेद ३११ का उप-खण्ड (२) निम्न प्रकार है :—

“(2) No such person as aforesaid shall be dismissed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges:

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

Provided further that this clause shall not apply:—

उपयुक्त व्यवस्था के अनुसार प्रस्तावित दण्ड के विषय सम्बन्ध सरकारी सेवकों को द्वितीय कारण—पृच्छा (Second show—cause) के लिये बचसर देने की आवश्यकता नहीं रही।

३—मुझे अनुरोध करना है कि अपने अधीनस्थ सभी नियुक्त पदाधिकारियों को इससे अवगत करा दिया जाय। सिविल सर्विसेज क्लासिफिकेशन कंट्रोल एंड अपील रूल्स के नियम ५५ में आवश्यक संशोधन करने की कार्रवाई जलम से की जा रही है।

विश्वासभाजन,

ह०—/ सच्चिदानन्द सिन्हा
सरकार के अवर सचिव।

रजक

पत्र संख्या—३ / बार० १—१०२ / ७८ का० १३०४६

बिहार सरकार,
कार्मिक एवं प्रशासनिक सुधार विभाग।

प्रेषक,

श्री के० ए० रामासुब्रह्मण्यम्,
सरकार के मुख्य सचिव।

सेवा में,

सरकार के सभी प्रधान सचिव
सरकार के सभी सचिव
सभी विभागाध्यक्ष
सभी जिला पदाधिकारी।

मटना—१५, दिनांक ७ जुलाई, १९७८।

विषय :— विभागीय कार्रवाई का त्वरित निष्पादन करने के लिये नीति निर्धारण।

महोदय,

निदेशानुसार उपर्युक्त विषय पर निर्गत भूतपूर्व मुख्य सचिव, श्री एल० पी० सिंह के पत्र संख्या-१८८ दिनांक ९-१-५३ एवं इस सम्बन्ध में निर्गत पत्रांक ५५३२ दिनांक २९-४-१९६३ एवं पत्रांक १०१९२ दिनांक २३-८-६३ (प्रतिलिपि संलग्न) की ओर आपका ध्यान आकृष्ट करते हुए मुझे कहना है कि उपर्युक्त परिपत्रों में सरकारी सेवकों के विषय विभागीय कार्रवाई का निष्पादन शीघ्र हो, इसके लिये नीति निर्धारित कर विस्तृत आदेश दिया गया था। परन्तु, खेद है कि उपर्युक्त अनुदेशों का पालन दृढ़तापूर्वक नहीं किया जा रहा है। फलस्वरूप, विभागीय कार्रवाई के निष्पादन में अत्यधिक विलम्ब होता है जिसके चलते सरकारी सेवकों को काफी लम्बे अर्से तक निलंबन में रहना पड़ता है एवं इस अवधि के लिये जीवन यापन अनुदान पाते रहते हैं, जिससे सरकार को आर्थिक क्षति उठानी पड़ती है। इसके अतिरिक्त, अन्य समस्याएं भी,

उत्पन्न होती है जिनका उल्लेख भूतपूर्व मुख्य सचिव, श्री एन० पी० सिंह के पत्र संख्या-१८८ दिनांक १-१-५३ (प्रतिलिपि संलग्न) एवं श्री एम० एस० राव के ज्ञाप संख्या ४६९८ दिनांक ४-४-६० (प्रतिलिपि संलग्न) में दिया गया है। इन समस्याओं का मुख्य कारण विभागीय कार्यवाही के निष्पादन में अत्यधिक विलम्ब ही है। सरकार द्वारा निर्गत आवश्यक अनुदेशों के बावजूद भी विभागीय कार्यवाही का त्वरित निष्पादन नहीं हो रहा है। सरकार इसे गंभीर स्थिति मानती है।

अतः विभागीय कार्यवाही का निष्पादन त्वरित हो, इसके लिये सरकार ने पूर्व में निर्गत अनुदेशों के क्रम में निम्नांकित नीति निर्धारित की है जिसका अनुपालन दृढ़ता पूर्वक किया जाय: —

१- प्रायः प्रत्येक मामले में जांच पदाधिकारी नियुक्त कर पूरी विभागीय कार्यवाही करने का आदेश देने की प्रवृत्ति का जहांतक संभव हो सके, परित्याग किया जाय। पूरी विभागीय कार्यवाही करने का प्रश्न तभी उठना चाहिये जब अभियोग की गंभीरता देखते हुए असेनिक सेवाएँ (वर्गीकरण, नियंत्रण एवं अपील) नियमावली के नियम ५५ के अन्तर्गत कोई बृहत् दंड, यथा बर्खास्तगी, सेवा से हटाना, अनियमित सेवा निवृत्ति अथवा पदावनति अपेक्षित हो। अगर मामला ऐसा है कि पदाधिकारी के विरुद्ध आरोप प्रमाणित हो जाने के बाद भी दिया जानेवाला दंड निन्दन, वेतन वृद्धि, प्रोन्नति अथवा दक्षता अवरोध पर रोक लगाने जैसे लघुदंड ही दिये जाने की सम्भावना हो तो वैसे स्थिति में पूरी विभागीय कार्यवाही आरंभ करना आवश्यक नहीं है। ऐसे मामलों में असेनिक सेवाएं (वर्गीकरण, नियंत्रण एवं अपील) नियमावली के नियम ५५ के अनुसार लघु दंड देने की सरल प्रक्रिया अपनाई जाय। इन मामलों में संबंधित सरकारी सेवक को कदाचार अथवा दुराचरण के लक्षण के सम्बन्ध में, जिसके लिये कोई कार्रवाई करने का प्रस्ताव हो, अपना स्पष्टीकरण देने के लिये अधिक से अधिक १० दिनों का समय दिया जाय। यह स्पष्टीकरण उनके लिखित बचाव के रूप में होगा। इस स्पष्टीकरण पर विचार करने के पश्चात सक्षम पदाधिकारी उचित समझें तो, यथास्थिति इसे स्वीकार कर उन्हें आरोप से मुक्त कर दें या उनके स्पष्टीकरण को अस्वीकृत करते हुए ऊपर अंकित कोई लघु दंड दें। इस प्रकार स्पष्टतः अधिकांश मामलों में अनुशासनात्मक कार्रवाई करीब एवं महीने के अन्दर अवश्य निष्पादित कर दी जाय।

२- जिन मामलों में अन्तिम रूप से पूरी विभागीय कार्यवाही करने का निर्णय लिया जाता है, उसमें भी आरोप पत्र आदि तैयार करने में काफी बिलंब होता है। निगरानी विभाग द्वारा निर्गत अर्द्ध सरकारी पत्र संख्या-८१ दिनांक ७ जनवरी, ७३ एवं ज्ञाप संख्या-१४८८ दिनांक ८ जून, १९७८ में सरकार के प्रत्येक विभाग में निगरानी पदाधिकारी नियुक्त करने का प्रावधान है। निगरानी पदाधिकारी यह सुनिश्चित करने के लिये मुख्यतः उत्तरदायी होंगे कि अनुशासनिक मामलों के किसी चरण में विलम्ब न होने पाए। जिस विभाग में यह व्यवस्था औपचारिक रूप से नहीं की गयी है, वहां इसे तुरन्त स्थापित किया जाय। मुफ्तसिल कार्यालय विशेषकर, समाहरणालयों जैसे बड़े कार्यालयों में भी एक निगरानी पदाधिकारी नियुक्त किया जाय जिनकी यह जिम्मेवारी होगी कि आरोप पत्र का आरूप शीघ्र तैयार कर उसके साथ विश्वसनीय गवाहों तथा आवश्यक अभिलेखों की सूची आरोपित पदाधिकारी को उपलब्ध करा दें। जांच पदाधिकारी को विभागीय कार्यवाही संचालन तथा सम्पन्न करने हेतु सभी प्रकार की सहायता उपलब्ध कराएं ताकि अनावश्यक और लम्बी अवधि तक के लिये स्थगन आदेश देने की आवश्यकता न पड़े। विभागाध्यक्ष की यह जिम्मेवारी है कि आरोपों से संबंधित सभी, मूल अभिलेख तथा सक्षम विभागीय कार्यवाही संचालन करनेवाले पदाधिकारी को अबिलम्ब उपलब्ध करा दें।

३- ऐसे विभागों में जहां बड़ी संख्या में जांच लंबित है विशेष रूप से संवेदनशील विभागों, यथा लोक निर्माण विभाग, वित्त (वाणिज्य कर) विभाग, (आरक्षी) विभाग, उत्पाद विभाग आदि में विभागीय जांच आयुक्त के समान ही पूर्वकालीन जांच पदाधिकारी की व्यवस्था की जाय। इन पदाधिकारियों को विभागीय जांचों में अपनायी जानेवाली प्रक्रिया से पूर्णरूप से अवगत करा दिया जाय तथा साथ ही साथ उन्हें यह भी निदेश दे दिया जाय कि वैसे पदाधिकारियों के साथ जो ढेर लगाने तथा जांच को अधिक दिनों तक खींचते जाने की चाल चले, सख्ती से पेश आए।

४- वैसे मामलों में जिनमें जांच पूरी हो चुकी होती है, उनके परीक्षण में सचिवालय विभागों में महीनों का समय लग जाता है। इस अनावश्यक विलम्ब को दूर करने के लिये सरकार ने निर्णय लिया है कि जांच पदाधिकारी से प्रतिवेदन प्राप्त हो जाने के बाद विभागीय मंत्री के समक्ष सचिका प्रस्तुत करने के पूर्व सचिवालय में इसका परीक्षण दो स्तरों पर ही किया जाय। प्रथम स्तर पर अवर सचिव / उप सचिव हों एवं दूसरे स्तर पर अपर सचिव / सचिव एवं प्रधान सचिव हों। सचिवालय स्तर पर परीक्षण में किसी भी स्थिति में दो महीनों से अधिक का समय नहीं लगे, यह सुनिश्चित किया जाय।

१. सरकार का उपर्युक्त निर्णयों के दृढ़ता से अनुपालन को सुनिश्चित करने के उद्देश्य से यह भी आवश्यक है कि प्रत्येक विभाग अपनी स्थापना में संबंधित निर्लंबन तथा विभागीय कार्यवाही के मामलों की नियमित समीक्षा करें और यदि समीक्षा में यह पाया जाय कि किसी स्तर पर किसी पदाधिकारी द्वारा इन अनुदेशों के अनुपालन में देखाई बरती गयी है तो उस पर भी कार्रवाई की जाय। सरकार के सभी प्रधान सचिवों द्वारा ऐसे मामलों की प्रत्येक तिमाही में समीक्षा की जाय और समीक्षा के परिणाम से अवगत कराते हुए सम्बन्धित तिमाही के एक महीने के भीतर मुझे संलग्न प्रपत्रों में प्रतिवेदन भेजा जाय। यह समीक्षा सभी विभागों में तुरत प्रारम्भ की जाय और दिनांक ३०-६-७८ को अन्त होनेवाली तिमाही की समीक्षा का प्रतिवेदन जुलाई, १९७८ के अन्त तक मेरे अल्लोकनार्थ अवश्य भेज दिया जाय।

६- इस निदेश से अपने अधीनस्थ सभी पदाधिकारियों को अवगत करा दें।

७- कृपया इसे अत्यावश्यक समझें और इस पत्र की प्राप्ति स्वीकार करें।

विश्वासभाजन,

सरकार के मुख्य सचिव।

मुपना० —

प्रपत्र

विभागीय कार्यवाही के सम्बन्ध में दिनांक को समाप्त होने वाले त्रैमासिक प्रतिवेदन।

क्रम सं०-	सरकारी सेवकों का नाम तथा पदनाम।	विभागीय कार्यवाही आरम्भ करने की तिथि	वर्तमान स्थिति	विलम्ब का कारण
१	२	३	४	५

नोट :—राजपत्रित तथा अराजपत्रित सरकारी सेवकों के सम्बन्ध में प्रतिवेदन अलग-अलग भेजा जाय।

प्रपत्र

निलम्बित सरकारी सेवकों के संबंध में दिनांक—को
समाप्त होनेवाले त्रै मासिक प्रतिवेदन ।

क्रम संख्या	सरकारी सेवक का नाम तथा पदनाम	निलम्बन की तिथि	वर्तमान स्थिति	विलम्ब का कारण
१	२	३	४	५

नोट : राजपत्रित तथा अराजपत्रित सरकारी सेवकों के संबंध में प्रतिवेदन अलग-अलग भेजा जाय ।

(Confidential)

APPENDIX B (I)

No. III/RI-1026-63-A:10192.

Government Of Bihar
Appointment Department.

From

Shri S. J. Majumdar.
Chief Secretary To Government.

To

All Secretaries to Government/All Heads Of
Departments/Commissioners Of Divisions/All
District Officers.

Patna the 2nd August 1963.

Subject:—Speedy disposal of disciplinary cases against Government servants.

Sir.

I am directed to repeat with slight modifications the instruction issued with Shri L. P. Singh's letter No. A-189, dated the 9th January, 1953. Government desire that you should ensure that these orders are carried out properly; take firm action (including institution of departmental proceedings) against anyone neglecting to carry out these instructions; and report to Government any lapse serious enough to call for Government's notice. Government have noted with grave concern instances of inordinate delay in disposal of disciplinary cases against Government servants. Government attach great importance to prompt investigation and speedy disposal of disciplinary cases, and have issued instructions

from time to time emphasising the desirability of expeditious disposal of such cases, Yet these instructions are not being followed. Government, therefore desire that all officers entrusted with the conduct of disciplinary enquiries should meticulously follow the instructions contained in the following paragraphs.

2. Delays in the disposal of disciplinary cases are generally to be attributed to the tendency on the part of the enquiring officer to follow the same privileges to the accused in departmental proceedings as would be admissible to him in a criminal trial. Taking advantage of this the accused officer resorts to dilatory tactics and manages to prolong the enquiry and at times to tamper with the evidence.

Rule 2 of the subordinate services discipline and appeal rules and other rules on the subject should certainly be followed by the officers conducting departmental proceedings. The essential requirements of these rules are that the charges against the accused shall be reduced to writing that he shall be given an adequate opportunity of putting forward his defence both orally and in writing and that he shall be allowed to cross-examine the prosecution witnesses and to call witnesses in his defence. In cases where it is proposed to impose the penalty of dismissal, removal or reduction the accused has, after the completion of the enquiry to be given a further opportunity of showing cause against the particular penalty proposed to be imposed on him. In such cases after the enquiry against a Government servant has been completed and the authority empowered to pass final orders has arrived at a provisional conclusion in regard to the penalty to be imposed, the accused officer has to be supplied with a copy of the report of the enquiring authority and has to be given an opportunity to show cause against the penalty proposed to be inflicted. Government feel that expedition in the conduct of departmental proceedings can be secured without departing from the prescribed procedure or doing injustice to the accused, if all officers who have to deal with disciplinary cases adhere to the following time-table through the different stages of the proceedings:—

- (i) After the accused Government servant has been furnished with a copy of the charges on which it is proposed to take action against him, he should be required within four weeks to put in a written statement of his defence and to state whether he desires to be heard in person. Save for exceptional reasons no adjournment should be allowed if the accused fails to submit his written statement of defence within this time-limit,
- (ii) The enquiring officer will make sure that copies of all relevant documents required in defence are made available to the accused officer as quickly as possible. The head of the office will please ensure that there is no delay whatever in making copies of relevant papers available to the accused Government servant. Experience suggests that the head of the office may make someone personally responsible for seeing that this is done. Decision on which papers are to be made available should be arrived at quickly, bearing in mind that the proceedings are apt to be set aside and much time and trouble wasted if the accused is prejudiced in his defence. Detailed instructions on this subject were issued with Mr. B. K. Dubey's letter No. A-5532, dated the 29th April, 1963.
- (iii) If it is decided to hold an oral enquiry the examination and cross-examination of the prosecution and the defence witnesses should be completed within a month. Save for exceptional reasons to be recorded by the enquiring officer in writing cross-examination of witnesses must follow immediately their examination-in-chief. A date should be fixed by the enquiring officer within the time-limit on which the accused be asked to call his witnesses and he should be warned that if he does not produce his witness on the date fixed, the proceedings will be concluded. As in courts, list of witnesses should be obtained in advance and attempts to prolong the enquiry by calling useless witnesses at a later stage checked. Any witness under Government control neglecting to appear should be punished.
- (iv) After the completion of the evidence the enquiring officer must record his finding on each charge within a period of two weeks.

- (v) If it is provisionally decided to impose the penalty of dismissal, removal or reduction, the accused officer should immediately be supplied with a copy of the report of the enquiring officer and be called upon to show cause within two weeks against the penalty proposed to be inflicted.

In the interest of justice, the accused may have to be given slightly longer time, at some stages, than what the above programme prescribes. But this must be only under very exceptional circumstances, at the enquiring officer's discretion. The present drift in the proceedings must stop.

- (vi) Final orders should be passed within two weeks of the date on which cause is shown.
 (vii) Where orders of government are required in a disciplinary case the following procedure should be adopted by the secretariat Department concerned.

As soon as the report of the enquiring officer is received in the Department, the Registrar will scrutinise it to see that the correct procedure has been followed in the enquiry. He will also collect, and put up with the record, and previous papers and precedents, merely giving references to these and commenting on the merits of the case. The case will not be sent to the office for noting. The Registrar will then submit the case to the Secretary whose duty will be to comment on the findings of the enquiring officer and recommend the punishment to be awarded, noting whether or, not the public service commission has to be consulted. If a reference to another department is considered necessary, the case should be sent to the secretary of the Department with a clear indication of the precise points on which advice is sought, and a summary of the case, to save that Department from the trouble of going through all the papers. In that Department the secretary only will deal with the case. When a reference to the public service commission is not necessary it should normally, be possible for the orders of Government to be obtained and issued within one month of the receipt of the enquiring officer's report in the Secretariat. If consultation with the public service commission is required, it should be possible to issue final orders within 11 months. If these time-limits are exceeded, the Department should submit an explanation to the minister-in-Charge with a copy to the Additional secretary, Cabinet secretariat (O. and M.). These cases should be treated as 'immediate' at all stages.

3. Government desire that the time-limits indicated above, should be rigorously enforced, and in exceptional cases where an extension of the time is allowed, full justification for the extension should be recorded in the order-sheet of the proceedings. Inspecting officers will kindly make it a point to check some of the order-sheets during their inspections, and on other occasions.

Government also trust that all officers entrusted with the conduct of departmental proceedings will firmly resist any tendency on the part of an accused officer to adopt dilatory tactics, and will constantly bear in mind the necessity of disposal of the proceedings, particularly relating to the charges of bribery and corruption.

4. I am to request that these instructions may be communicated to all officers subordinate to you who have not been informed direct. I am also to request that whenever an officer is asked to conduct departmental proceedings, a copy of these instructions should be furnished to him. The Head of the office will kindly ensure that this is invariably done, and any negligence or slip is immediately corrected. I am to add that Government will take disciplinary action against any officer who delays the disposal of such proceedings. Heads of Departments are requested to pay personal attention to this matter and bring suitable cases to Government's notice for action under this paragraph, where the prescribed time-table cannot be adhered to and there is considerable delay, the enquiring officer must keep his superior authority fully informed of the reasons for the delay, and steps taken to expedite the proceedings. Government desire that the superior authorities should exercise proper check and give necessary directions so that the proceedings may be terminated as quickly as possible.

Yours faithfully,
 SD / S. J. MAJUMDAR,
 Chief Secretary to Government

APPENDIX B—(2)

No. III/RI-1026-61-A 5532

Government of Bihar
Finance Department.

From :

Shri B. K. Dubey,
Deputy Secretary to Government.

To

All Secretaries to Government / All Departments of Government,
All Heads of Departments / All Commissioners of Divisions,
All District Officers.

Patna, the 9th Vaisakha, 1985/29th April, 1963.

Subject :— Speedy disposal of disciplinary cases against Government servants — Supply of copies of documents to the delinquent Government servant.

Sir.

I am directed to invite your attention to Shri L. P. Singh's letter No. A.189, dated the 9th January, 1963, regarding speedy disposal of disciplinary cases against Government servants. Considerable time is usually taken in furnishing to the Government servant under proceeding with copies of relevant papers on which the charges against him are based. As a result the filing of written statement by the charged Government servants gets considerably delayed. Rule 55 of Civil services (Classification Control and Appeal) Rules provide that the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person under Proceeding, together with a statement of the allegations, on which each charge is based and of any other circumstances, which it is proposed to take into consideration in passing orders in the case. Accordingly all relevant papers are to be supplied while communicating the charge. It would cut short delay in disposal of proceedings if the appointing authorities supply quickly to the charged officers copies of such papers as are connected with the charges and / or any other papers regarding supply of which specific orders may be passed by the Enquiring Officer.

2. The State Government have carefully considered the question as to ;—

- (a) the categories of documents which should or which should not be supplied to Government servant under proceeding,
- (b) the stage of the proceeding at which copies of permissible documents should be supplied.

3. The following categories of documents are generally required by the charged Government servant :—

- (1) Documents to which reference has been made in the charge-sheet;
- (2) Documents and records not so referred to in the statement of allegations, but which the Government servant concerned considers relevant for the purpose of his defence;
- (3) Statement of witnesses recorded in the course of :—
 - (a) a preliminary enquiry conducted by the Department,
 - (b) investigation made by the Police;
- (4) Reports submitted to Government or competent authority by an officer appointed to hold a preliminary enquiry to ascertain facts.
- (5) Reports submitted to Government or other competent authority by the Police after investigation.

4. The right of access to official records is not unlimited and it is open to Government to deny such access if in its opinion such records are not relevant to the case or it is not desirable in the public interest to allow such access. The question of relevancy should be looked at from the point of view of the defence and if there is any possible line of defence to which the document may, in some way be relevant the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. It has to be remembered that serious difficulties will arise when the Courts do not accept as correct the refusal on this ground by the disciplinary authority of access to document. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

5. The list of documents which are proposed to be relied upon to prove the charge and the facts stated in the statement of allegation should be drawn up at the time of framing the charge. The list should normally include documents like the First Information Report if there be any on record. Anonymous and pseudonymous complaints on the basis of which enquiries were started need not be included in the list. The list so prepared should be supplied to the Government servant along with the charge-sheet.

9. If the Government servant requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated in paragraph 4 above.

7. Doubt very often arises whether official records include the documents mentioned at items 3, 4 and 5 in paragraph 3 above, Reports made after a preliminary enquiry, or the reports made by the Police after investigation other than those referred to in clause (a) of sub-section (1) of section 173 of the Code of Criminal Procedure, 1898, are usually confidential and intended only to satisfy the competent authority whether further action in the matter of a regular departmental enquiry or any other action is called for. The reports are not usually made use of or considered in the enquiry. Ordinarily, even a reference to what is contained in these reports will not be made in the statement of allegations. In that case it is not necessary to give access to the Government servant to these reports. It is necessary to strictly avoid any reference to the contents of such reports in the statement of allegations because if any reference is made, copies of these reports should be supplied to the Government servant proceeded against.

8. The next point is whether access should be given to the statements of witnesses recorded in course of the preliminary enquiry conducted by the department or investigation made by the Police. The Government servant concerned need not be given access to the statements of all witnesses examined in the preliminary enquiry or investigation made by the Police and access should be given to the statements of only those witnesses who are proposed to be examined in proof of the charges on the facts stated in the statement of allegations. In some cases the Government servant may require copies of the statements of some witnesses on which no reliance is proposed to be placed by the disciplinary authority on the ground that he proposes to examine such witnesses on behalf of his defence and that he requires the previous statement to corroborate the testimony of such witnesses before the enquiring authority. Previous statements made by a person examined as a witness is not admissible for the purpose of corroboration and access to such statements can safely be denied. However, the law recognises that if the former statement was made at or about the time when the fact took place and the person is called to give evidence about such facts in any proceedings, the previous statement can be used for purposes of corroboration. In such cases, it will be necessary to give access to the previous statements.

9. The further point is the stage at which the Government servant should be permitted to have access to the statements of witnesses proposed to be relied upon in proof of the charges or of the facts stated in the statement of allegation. As stated earlier, the copies of the statements of the witnesses can be used only for the purpose of cross-examination and, therefore, the demand for copies must be

made when witnesses are called for examination at the oral enquiry. If such a request is not made, the inference would be that the copies were not needed for that purpose. The copies can not be used at any subsequent stage as those statements are not to be taken into consideration by the enquiring authority also. Copies should be made available within a reasonable time before the witnesses are examined. It would be strictly legal to refuse access to the copies of the statement prior to the evidence stage in the departmental enquiry. However, if the Government servant makes a request for supply of copies of statements referred to in sub-paragraph (3) of paragraph 3 above before he files a written statement, the request should be acceded to.

10. Government servant involved in departmental proceedings when permitted to have access to official record, sometimes seeks permission to take photostat copies thereof. Such permission should not normally be acceded to specially if the officer proposes to make the photostat copies through a private photographer and thereby, third party would be allowed to have access to official records which is not desirable. If, however the documents of which Photostat copies are sought or are so vitally relevant to the case (e. g., where proof of the charge depends upon the proof of the handwriting or a document, the authenticity of which is disputed), Government should itself make photostat copies and supply the same to the Government servant. In cases which are not of this or similar type (the example given above is only illustrative and not exhaustive) it would be sufficient if the Government servant is permitted to inspect the official records and take extracts thereof. If any record is required for inspection by the charged Government servant on the orders of enquiring officer in cases where record is bulky and supply of copy thereof is not possible, such records should be produced by the authority concerned before the enquiring officer.

11. The above instructions may kindly be brought to the notice of all appointing authorities and it may be impressed upon them that they should keep themselves alert in this regard. Serious notice should be taken if the disposal of the departmental proceedings is delayed beyond the prescribed time-limit due to non-availability of relevant papers to the charged Government servant. Every enquiring officer should be supplied with a copy of these instructions and he should report direct to the appointing authority any case of delay in order that suitable action may be taken against those who are responsible for such delay.

12. Receipt of this letter may kindly be acknowledge.

Yours faithfully,
Sd./— R. K. Dubey,
Deputy Secretary to Govt.

APPENDIX C (2)

Memo No. III/R 1-209/60A-4698.

GOVERNMENT OF BIHAR.
APPOINTMENT DEPARTMENT

TO

ALL DEPARTMENTS OF GOVERNMENT,
ALL HEADS OF DEPARTMENTS / DISTRICT OFFICERS.

Patna-15, the 15 th chaitra 1882/4th April 1960,

Sub : Principles to be followed in ordering suspension.

The undersigned is directed to say that in supersession of all previous instructions on the above subject the state Government have been pleased to order that the following principles should be followed while taking a decision to suspend a Government servant :-

- (1) If a Government servant is facing trial in a criminal court, he should be suspended if he has been refused bail and committed to prison.
- (2) If a criminal charge made against him is such that on being found guilty, he is likely to be sentenced to a term of imprisonment, or on which he is likely to be dismissed or removed in a departmental enquiry, he should be suspended immediately after charges have been framed.
- (3) In cases where a Government servant is being proceeded against departmentally, if there are good reasons to believe on the basis of materials available at the time of initiation of the proceedings that he has been guilty of gross misconduct or corruption which, if proceed, will lead to dismissal or removal, he should be suspended even if the suspension is likely to continue for a long time.
- (4) In all cases where there are reasons to believe that a Government servant if allowed to continue in active service might tamper with the evidence, he should be required to proceed on leave as may be due to him, or if there be no leave to his credit, on extraordinary leave. If he refuses to proceed on leave, he may be suspended.
- (5) Even in cases which do not fall into any of the categories mentioned above, the power and discretion of Government or of the appointing authority to order suspension will remain unimpaired if there are special circumstances warranting such action.
- (6) Although suspension during the pendency of an enquiry is not a punishment, there is a stigma attached to it which is not wholly removed, even if the officer is later exonerated. An order of suspension should, therefore, be passed only after very careful consideration. Care should also be taken to see that the period of suspension is not unduly prolonged because of delay in the disposal of the enquiry or proceedings. Attention is invited in this connection to Rule 28 (ix) of the Rules of Executive Business, according to which any proposal to suspend a gazetted officer is to be submitted to the Chief minister through the Chief secretary before the issue of orders.

The above instructions should be followed carefully in future and should be brought to the notice of all officers subordinate to you

Sd/ M. S. RAO
Chief Secretary to Govt.

APPENDIX C (1)

No. III/ R1-2033/52 A -185.

Government of Bihar
Ministry of Home Affairs

From :

L. P. Singh, Esq., I. C. S.,
Chief Secretary to Government.

To

All Departments of Government / All Heads of Departments,
All District Officers (Including the Additional Deputy Commissioners,
Dhanbad and Chaibassa and the Additional District Magistrate, Saharsa).

Patna, the 9th January, 1953.

Subject :— Principles to be followed in ordering suspension.

Sir,

I am directed to say that instances have come to the notice of Government in which Government servants required to answer charges in Courts of Law or in departmental enquiries had to remain under suspension for inordinately long periods. The procedure prescribed for conducting departmental proceedings is elaborate and makes some delay in their disposal inevitable. While Government are anxious that departmental proceedings should be disposed of speedily, they are equally keen to ensure that a Government servant should not be placed under suspension for inadequate reasons, or kept under suspension for a long period. The practice of keeping Government servants under prolonged suspension is not in the interests of the public service. Some of the disadvantages of this practice are noted below :—

- (i) Under the rules, the vacancy caused by the suspension of a Government servant can not be filled up substantively, with the result that no stable arrangement can be made for the disposal of work.
- (ii) Prolonged suspension of a Government servant even if followed by dismissal or removal entails considerable financial loss to Government, as he receives subsistence allowance until final orders are passed in the proceedings.
- (iii) Where the suspended Government servant is finally acquitted of the charges against him, his prolonged suspension causes needless harassment to him. The strigma attached to suspension is not wholly removed even if the Government servant is finally exonerated. To the public, he appears as something of an exconvict, with the result that his utility to Government is reduced, if not for his whole service, at least for some years.
- (iv) If a Government servant is under suspension for a long time, he becomes to receive sympathy which, in most cases, considering the nature of the offence, he does not deserve; and it sometimes happens that the authority passing final orders is, consciously or unconsciously influenced by this sympathy, and awards a lenient punishment. The net result is the continued association with the public service of a person who is not really fit to be retained in the public service.

2: While the prolonged suspension of a Government servant is undesirable, it is often difficult for the competent authority, while placing him under suspension, to anticipate whether or not the period of his suspension would be prolonged. There have also been cases in which Government servants were suspended as a matter of routine when proceedings against them were ordered, without regard to the nature of the charges against them and the evidence available to support the charges. With a view to

ensure that suspension is ordered only in cases where it is fully justified, the State Government have been pleased to order that the following principles should be followed while taking a decision to suspend a Government servant :—

I. Cases in which a Government servant is facing trial in a criminal court—

- (i) If a Government servant is being prosecuted on a criminal charge, he should be placed under suspension if he has been refused bail by the court and has been committed to prison.
- (ii) In cases of criminal prosecution, a Government servant should be suspended if the charge against him is such that on being found guilty of it, he is likely to be sentenced to a term of imprisonment, or on which he would be dismissed or removed from service, in a departmental enquiry. In such cases, however, the order of suspension need not be passed in every case immediately after cognizance has been taken. In suitable cases it may be passed after charges have been framed.

II. Cases in which Government servants are proceeded against either departmentally or under the Public Servants' (enquiries) Act, 1850 :—

- (i) Where a Government servant is being proceeded against departmentally or under the provisions of the Public Servants (Enquiries) Act, 1850 on charge of gross misconduct or bribery or corruption, the question of suspension should be considered with reference to the prima facie evidence available against him. If there are good reason to believe on the basis of the material available at the time of the initiation of the proceedings, that the Government servant has been guilty of gross misconduct or of bribery or corruption, which, if proved, would lead to dismissal or removal he should be placed under suspension. In cases in which such prima facie evidence is lacking at the start, the question of suspension of the Government servant may be kept pending till the findings of the enquiring officer are available. In such cases it should be considered whether the accused officer should be required to proceed on such leave as may be due to him, and if there is no leave to his credit, on extraordinary leave. On the conclusion of the enquiry, if it is found that the Government servant is guilty of gross misconduct, or of bribery or corruption which would entail his dismissal or removal from service, he would be immediately placed under suspension.

3. In all cases where there are reasons to believe that the Government servant, if allowed to continue in active service, might attempt to tamper with the evidence, he should be required to proceed on such leave as may be due to him, or if there be no leave to his credit, on extraordinary leave. If he refuses to proceed on leave, he may be suspended.

4. I am to request that these instructions should be carefully followed in future and should be brought to the notice of all officers subordinate to you who have not been informed direct.

Yours faithfully,
Sd./—L. P. Singh,
Chief Secretary to Government,