

SERVICES-I BRANCH

Q 1 – What is the role of the Commission in disciplinary cases?

Answer - The Union Public Service Commission, a Constitutional Body, is mandated to carry out a wide range of functions under Article 320 of the Constitution of India. These functions are advising the Government(s) / Ministries/ Departments, on the subjects which *inter alia*, include disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters.

Q 2 – What are the cases that are exempted from consultation with the Commission?

Answer - The cases which are exempted from consultation with the Commission have been listed under Regulation 5 in Union Public Service Commission (Exemption from Consultation) Regulations, 1958. These Regulations are available on the website of DoP&T.

Q 3 – How are the disciplinary cases referred to the Commission?

Answer - For expeditious disposal of disciplinary cases in the Commission and to reduce avoidable delays, a Single Window System (SWS) is functioning in the Commission. Under this System, a Ministry/Department/State Government which refers a disciplinary case to the Commission for advice, is also required to authorize an officer, not below the rank of Under Secretary, to hand over the case in person, with prior appointment, to the designated officer in UPSC. The cases so received from the Ministries/Departments/State Governments are initially scrutinized at the Single Window itself to ensure that the requisite information/ documents provided are in accordance with the check-list issued by the DoP&T. Only those cases which are found complete, in conformity with the check list, are accepted by the Commission for further examination and advice.

Q 4 – How is an appointment at the Single Window made to bring the disciplinary cases?

Answer - Under the Single Window System the Ministry/Department/State Government are required to authorize an officer not below the level of Under Secretary to come in person to hand over the disciplinary case to the designated Under Secretary (S-I), UPSC with prior appointment (Tel:011-23098591, Extn: 4342) in Room No.10-A located in the Annexe Building of the Commission. Prior appointment under the Single Window is fixed with the concerned Department to ensure undivided attention in the scrutiny of the records and to minimize the waiting time.

Q 5 – Is it required that original/ authenticated copies of the case records are sent to the Commission?

Answer - It is a mandatory requirement that all the case records so received at the Single Window, are as per the proforma check list issued vide DoP&T OM No.39011/12/2009-Estt.(B) dated 10.5.2010, are legible and are either in original or duly authenticated copies.

Q 6 – If the case records are in any language other than English or Hindi, does the Commission accept them?

Answer - The Commission accepts authenticated versions of the documents either in English or in Hindi. The concerned administrative Ministry/ Department/ State Government is required to provide the authenticated translated version of the case records, in such cases, in which the original case records are in any other language other than English or Hindi.

Q 7 – Whether the Commission tenders its Advice in case the Relied upon Documents are missing or are not duly authenticated?

Answer - The Commission considers this as a documentary lapse and such cases are returned, after pointing out the deficiency at the Single Window itself.

Q 8 – What should be done in case the Charge Sheet, IO's Report, etc. contain a variety of acronyms specific to the Department concerned?

Answer - The Ministry/ Departments/ State Governments should provide to UPSC the full-form of all the acronyms referred in the case records.

Q 9 – Whether the Commission tenders its Advice in case the information pertaining to the amount of 'pension and gratuity (admissible/ provisional/ withheld)' is not provided in a disciplinary case involving a retired Government Servant?

Answer - The Ministry/ Department/ State Government is required to provide information relating to the admissible and provisional Pension along with the information regarding the gratuity admissible or withheld to the Government Servant while referring the case to the Commission for Advice.

Q 10 – In the minor penalty Disciplinary cases, is there any time limit for accepting the cases before retirement of the Charged Officer?

Answer - The Commission expects to receive minor penalty cases at least three months before the date of superannuation of the Charged Officer.

Q 11 – In major penalty Disciplinary cases, is there any time limit for accepting the cases before retirement of the Charged Officer?

Answer - DoP&T's O.M. No. 39011/12/2009-Estt.(B) dated 10.05.2010 provides that the complete reference is received in the Commission at least six months before the retirement of the Charged Officer in order to enable the Commission to consider and tender Advice timely so that all the required procedures can be completed before retirement.

Q 12 – What is the procedure for referring the case warranting cut in pension to the Commission?

Answer - In the Disciplinary proceedings relating to a pensioner, in accordance with the procedures as outlined under Rule 9 of the CCS(Pension) Rules, 1972 and other analogous Rules applicable to a pensioner, the President is required to come to a tentative conclusion that charges proved against the petitioner constitutes a "grave misconduct/negligence" warranting imposition of the penalty of withholding of pension.

Q 13 – When the case has been returned from the Single Window after pointing out any deficiency, is it necessary to again refer the case back through the Single Window only?

Answer - Yes.

Q 14 – What steps are to be taken by the Administrative Ministry/ Department/ State Government in disciplinary cases which are sub-judice and there is a direction to finalise the case within a given time frame?

Answer - In cases involving directions of Court/CAT, the Ministries/ Departments/ State Governments must clearly inform the Commission, while making a reference regarding the present status in the Court/ CAT case, so that due priority is accorded to such cases. Since the disciplinary proceedings are quasi-judicial in nature, and the Commission has to consider all the facts, circumstances and records of the case in detail before tendering its Advice, the Ministries/ Departments/ State Governments should seek sufficient extension of time from the respective Hon'ble Court/ CAT to ensure that a minimum of 3-4 months time is available for UPSC to consider and advise in a disciplinary case.

Q 15 – Is it necessary that the Commission should be informed of any new developments in a disciplinary case which is under reference to the Commission for Advice?

Answer - Any information having a bearing on the disciplinary case which has been referred to the Commission should be sent immediately with the related original/authenticated document and detailed observations/comments of the concerned Ministry/ Department/ State Government.

Q 16 – Whether the Commission keeps the copy of the case records or returns the same?

Answer - The case records so received from the Ministries/ Departments/ State Governments are returned to the respective Ministries/ Departments/ State Governments along with the Advice of the Commission. No case records in original or copies thereof are retained in the Commission.

Q 17 – Can the Disciplinary Authority indicate the quantum of penalty while referring a Disciplinary case to UPSC?

Answer - DoP&T's O.M. No. 39034/1/2009-Estt.(B) dated 12.01.2010 provides that the Disciplinary Authorities while referring the disciplinary cases to the UPSC for advice, should not propose the quantum of penalty.

Q 18 – What are the Minor penalties that can be imposed in disciplinary proceedings?

Answer - These are as prescribed in the relevant rules eg. Rule 11 of CCS(CCA) Rules, 1965.

Q 19 – What are the Major penalties that can be imposed in disciplinary proceedings?

Answer - These are as prescribed in the relevant rules eg. Rule 11 of CCS(CCA) Rules, 1965.

Q 20 – Whether a minor penalty can be imposed on a Charged Officer in a major penalty disciplinary case?

Answer - Any of the penalties under Rule 11 of the CCS(CCA) Rules, 1965 and analogues Rules can be imposed in a major penalty disciplinary proceeding.

Q 21 – Whether a major penalty can be imposed on a Charged Officer if the proceedings were initiated under minor penalty provisions?

Answer - No.

Q 22 – Whether ‘Warning’ can be imposed as a penalty?

Answer - The penalties which can be imposed on a delinquent Government Servant are prescribed in the relevant Rules eg. Rule 11 of the CCS(CCA) Rules, 1965.

Q 23 – Under what circumstances, is an Inquiry required in a Minor penalty proceeding?

Answer - In terms of Rule 16(1-A) of CCS(CCA) Rules, 1965, a Disciplinary Authority may hold an Inquiry under this rule [(manner laid down in sub-rules (3) to (23) of Rule 14)] only where the Disciplinary Authority is of the opinion that such Inquiry is necessary for imposition of certain penalties such as withholding of increments which is likely to affect adversely the amount of pension payable to the Government Servant or to withhold increments of pay for period exceeding three years or to withhold increments of pay with cumulative effect for any period.

Q 24 – Is it required to obtain the 2nd Stage Advice of the CVC in cases where UPSC is to be consulted?

Answer - DoP&T's O.M. No.372/19/2011-AVD-III(Pt.1) dated 26.09.2011 provides that in those cases where consultation with UPSC is required as per extant rules/instructions, the second stage consultation with CVC in disciplinary matters may be dispensed with.

Q 25 – Is it necessary to issue a Show Cause Notice to a pensioner who has been convicted by a Court of law before imposing a cut in pension?

Answer - Department of Pension & Pensioners' Welfare's O.M. No. 38/64/05-P&PW(A) dated 09.11.2006 provides that in order to meet the Principles of Natural Justice, it is a pre-requisite to issue a Show Cause Notice, on the basis of conviction by the Court, to the pensioner, before imposing any cut in his pension.

Q 26 – Can a penalty be imposed under Rule 9 of CCS(Pension) Rules, 1972 and other analogous rules, on a retired Government Servant who has been convicted and sentenced for a criminal offence and has filed an appeal in the Court against conviction/ sentence?

Answer - Department of Personnel and Training's O.M. No. 371/23/92-AVD.III dated 04.03.1994 provides that when a person is convicted by a criminal court, the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal. The mere filing of an Appeal and/ or stay of the execution of the sentence does not take away the effect of conviction. Therefore, an appeal in the appellate court against conviction/sentence does not put bar on imposing penalty on a retired government servant unless the appeal is allowed in the Appellate court and the conviction is set aside.

Q 27 - How much time does the Commission take in tendering its advice?

Answer - The Commission tenders its advice after a thorough, judicious and independent consideration of all the relevant facts and circumstances of the case which *inter-alia* include (i) Charge Memorandum , (ii) Evidence on record, (iii) Report of the Inquiry Officer , (iv) Representation of the Charged Officer, (v) Comments of the Disciplinary Authority, etc. that are made available by the Ministry in accordance with the DoP&T's O.M. N0.39035/01/2011-Estt.(B) dated 10.05.2011. The average time taken by the Commission in tendering advice in Disciplinary proceedings is about 3 to 4 months.

Q 28 – When is the copy of Advice to be provided to the Charged Officer and by whom?

Answer - DoP&T's O.M. No. 11012/8/2011-Estt.(A) dated 19.11.2014 & Gazette Notification G.S.R. No. 769(E) dated 31.10.2014 stipulates that on receipt of the UPSC's Advice, the Disciplinary Authority shall forward or cause to be forwarded a copy of the Advice to the Charged Officer who shall be required to submit, if he so desires, his written representation/ submission to the Disciplinary Authority within fifteen days.

Q 29 – Can an Officer directly approach the Commission for relief in the Disciplinary Proceedings initiated against him?

Answer - The role of the Commission is to tender its Advice to the President in accordance with the requirement of consultation as laid down in Article 320 (3) (c) of the Constitution of India read with Regulation 5 (1) of the UPSC (Exemption from Consultation) Regulations, 1958. Therefore, an officer can not directly approach the Commission seeking any relief in the Disciplinary Proceedings initiated against him.

Q 30 – Can an Officer submit a representation to the Commission directly, on the Advice of the UPSC, once a copy of the same is served upon him by the Administrative Ministry/ Department/ State Government in a Disciplinary Proceeding?

Answer - No representation lies to the Commission in this regard. The Officer can submit representations only to the concerned Disciplinary Authority.

Q 31 – Can a Charged Officer meet any functionary in the Commission to explain his case?

Answer - Since the Disciplinary proceedings are quasi-judicial in nature, the Officer is required to submit his representation during the course of Disciplinary proceedings to IO/DA as provided for, under the applicable Disciplinary Rules. Hence, any interaction between the CO and functionaries of the Commission is strictly prohibited.

Q 32 – What procedure is to be followed by the Ministries/ Departments in case of disagreement with the Advice of the Commission?

Answer - The procedure to be followed while disagreeing with the Advice of the Commission is stated in DoP&T's O.M. No. 39023/02/2006-Estt.(B) dated 05.12.2006.

Q 33 – What procedure is to be followed by the State Governments in case of disagreement with the Advice of the Commission?

Answer - According to Rule 11 of AIS (D & A) Rules, 1969, whenever there is any difference of opinion between a State Government and the Commission on any matter covered under these Rules, such matter shall be referred to the Central Government for its decision.

Q 34 – What happens when the Ministry/ Department/ State Government disagrees with the Advice of the Commission?

Answer - Such cases, where the Ministry/ Department/State Government disagree with the Advice of the Commission, are reflected in the Explanatory Memorandum along with the Annual Report of the Commission, which is laid before the Parliament.

Q 35 – Whether a copy of the final order is to be marked to the Commission?

Answer - Yes.

Q 36 – What will happen in the eventuality of the death of the Charged Officer before the imposition of the penalty?

Answer - The disciplinary proceedings are dropped against the Charged Officer on his death.

Q 37 – When are the Disciplinary Proceedings considered as closed?

Answer - The Disciplinary Proceedings come to a closure with the issue of the final Order imposing the penalty/ exoneration/ dropping of the Charges by the Disciplinary Authority.

Q 38 – Can a Government Servant approach the Commission when he/she comes across any new material or new evidence which could not be produced or was not available during the course of enquiry, at the time of passing of the order after consultation with the Commission?

Answer - No.

Q 39 – Does any Appeal lie if the Order is made by the President?

Answer - In terms of Rule 22 of CCS(CCA) Rules, 1965, no Appeal shall lie against any Order made by the President.

Q 40 –When is the President required to consult the Commission in the cases of Review, Memorial or Petitions?

Answer - In terms of MHA's OM No. 18/9/63-Estt(B) dated 4.8.1964, the Commission is required to be consulted only when the President proposes to pass an Order overruling or modifying, after consideration of any Petition or Memorial or otherwise, an Order imposing any of the penalties made by him or by a subordinate authority or an Order imposing any of the penalties in exercise of its powers of review and in modification of an Order under which none of the penalties has been imposed.

Q 41 – Which is the Nodal Ministry for any clarification on implementation of the penalty advised by the Commission?

Answer - Department of Personnel & Training (DoP&T) is the Nodal Ministry for seeking any clarification on the implementation of the penalty.

Q 42 – Which is the Authority to give clarification under CCS(CCA) Rules, 1965 and AIS(D&A) Rules, 1969?

Answer - The Department of Personnel & Training (DoP&T) is the Nodal Department with regard to interpretation and administration of CCS(CCA) Rules, 1965 and AIS(D&A) Rules, 1969.

Q 43 – Can the information regarding status of a Disciplinary case in the Commission, be sought under RTI Act, 2005?

Answer - As Disciplinary proceedings are quasi-judicial in nature, such information from the date of receipt of a case in the Commission, till final rendering of advice by the Commission, cannot be shared under Right to Information (RTI) Act.

Q 44 – Can the Charged Officer or a third party request for providing a copy of advice letter issued by UPSC under RTI Act, 2005?

Answer - In accordance with the extant rules, a copy of the Advice Letter is to be given to the Charged Officer by the Department/Disciplinary Authority to whom the Advice Letter is forwarded and therefore the concerned authority under the RTI to provide a copy of the Advice Letter would be the concerned Department/Disciplinary authority. However, a copy of the Advice Letter can be given to the applicant (Charged Officer in individual capacity or a third party) in such cases where final Order has been issued by the concerned Ministry/Department/Disciplinary Authority, and the relevant file is available with UPSC, as per the Record Retention Schedule. Advice of the Commission cannot be disclosed in such cases, where final Order has not been issued by the concerned Ministry/Department/Disciplinary Authority.

Q 45 – Where can one get the information regarding the total number of Disciplinary cases received by the Commission for advice and the number of cases in which the Commission has tendered its advice?

Answer - This information is contained in the Annual Report placed before the Parliament. Once the Annual Report is placed in Parliament, a copy of the same is also uploaded under the heading “Annual Reports” on the Official Website of UPSC (<http://upsc.gov.in>).

Q 46 – Can an Officer request under the RTI Act, 2005, for copies of the case records that were referred by Ministries/ Departments/State Governments for seeking advice of the Commission in a Disciplinary case?

Answer - The case records of every Disciplinary case are returned to the Ministries/ Departments/State Governments along with the Advice of the Commission. Therefore, Commission cannot provide copies of the case records pertaining to any Disciplinary case.

Q 47 – Where can one find the data relating to the number of cases in which the Commission has advised penalties?

Answer - The data relating to the number of cases received and the penalties advised by the Commission are published in the Annual Report of the Commission. The Annual Reports of the Commission are available in the public domain on the official website of UPSC (www.upsc.gov.in).

Q 48 – Can the Commission give clarification or interpretation in respect of Disciplinary Rules viz. CCS (CCA) Rules 1965, other Central Government service related rules in a Disciplinary case under RTI Act, 2005.

Answer - The applicants are advised to approach the concerned nodal Ministries for any such clarifications. For example in case of CCS (CCA) Rules, 1965, Ministry of Personnel, Pension and Public Grievances (Department of Personnel & Training) is the nodal Ministry.