

CHAPTER XVI

CONSULTATION WITH UPSC IN DISCIPLINARY MATTERS

1. Constitutional provisions

A(15) Article 320(3)(c) of the Constitution provides that the U.P.S.C. shall be consulted on all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials and petitions relating to such matters. The proviso to this Articles provides that the President may make regulation specifying the matter in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary to consult the UPSC. The President has under this proviso made the Union Public Service Commission (Exemption from Consultation) Regulations, 1958.

2. Matters in which consultation with UPSC is necessary.

It is necessary to consult the UPSC in the following type of cases:-

- a) an original order by the President imposing any of the penalties;
- b) an order by the President on an appeal against an order imposing any of the prescribed penalties made by a subordinate authority;
- c) an order by the President over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the prescribed penalties made by the President or by a subordinate authority;
- d) an order by the President imposing any of the prescribed penalties in exercise of his powers of review and in

modification of an order under which none of the prescribed penalties has been imposed.

3. Matters in which it is not necessary to consult the U.P.S.C.

It is not necessary to consult the U.P.S.C. in regard to the following matters:-

- i) disciplinary matters affecting person paid out of the Defence Services Estimates including civilians in defence services;
- ii) in any case where the President proposes to make an order of dismissal, removal or reduction in rank in the interest of the security of the State;
- iii) in any case where on conclusion of the disciplinary proceedings, it is proposed not to impose any punishment on the officer.

4. Procedure of consultation in minor penalty cases.

B(38)

4.1. In cases in which proceedings have been initiated under Rule 16(1) (a) of the C.C.A. Rules and where no oral enquiry has been held, a reference will be made to the U.P.S.C. after the representation, if any, of the Government servant against the proposal to take action against him has been received, in the form of an official letter, with which the following papers will be forwarded:-

- a) memorandum containing the allegation;
- b) Government servant's reply thereto;
- c) a self-contained factual note, where necessary, giving clarifications/comments to explain the point made in the

Government servant's explanation. The clarifications and comments should, however, be only factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case.

4.2. Cases in which proceedings were initiated under Rule 16(1) (b) of the C.C.A Rules and where an oral enquiry has been held, the U.P.S.C. will be consulted after the receipt of the report of the Inquiring Authority. The record of the case will be forwarded to the Commission with clarifications/comments, where necessary, to explain any factual/procedural points only in the light of any remarks contained in the inquiry report. This note will form part of the record.

5. Consultation in major penalty cases.

In cases where an enquiry has been held under Rule 14 and the Government consider that a major penalty is called for, the reference to the U.P.S.C. will be made after the receipt of the report of the inquiry officer. The record of the case will be forwarded to the Commission with a separate note, if necessary, giving clarificatory remarks on any factual or procedural points, only in the light of any remarks contained in the Inquiry report. The note should not however, discuss the merits of the case and should not record any findings on the charges or express and opinion regarding the penalty to be imposed on the Government servants. The note will form part of the record.

6. Cases of appeals

While forwarding an appeal to the Commission, no opinion should be expressed on the merits of the case.

7. Cases of revision or review on petitions/memorials or otherwise.

7.1. In terms of the U.P.S.C. (Exemption from consultation) Regulations, 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 the President or by a subordinate authority, or an order imposing any of the penalties in exercise of his powers of revision or review and in modification of an order under which none of the penalties has been imposed. In such cases there is no objection to the Ministry indicating in a separate note or in the forwarding letter the consideration on account of which a modification of the order already passed in the case is called for.

7.2. No order imposing or enhancing any penalty, shall be made by the reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties mentioned in Rule 16(1A) of the C.C.S. (CCA) Rules, 1965 of clauses (V) to (IX) of rule 11 of the said rules or to enhance the penalty imposed by the order sought to be reviewed to a penalty referred to in rule 16 (1A) or clauses (V) to (IX) of Rule 11 of the said Rules, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 14 of the CCS (CCA) Rules, 1965. In such cases, the Government's comments on any factual/procedural points raised by the Government servant in his representation should be forwarded to the Commission together with all relevant papers. The clarifications/comments should, however, be factual and procedural without expressing any opinion on the merits of the case. This note will form part of the record of the case. Where an inquiry has been held, the record of the case will be forwarded to the Commission with a separate note, if necessary, giving clarificatory remarks on any factual or procedural points only in the light of any remarks contained in the Inquiry report. This note will form part of the record.

8. **Proforma**

Whenever disciplinary case is referred to the UPSC it should be accompanied by a proforma giving full particulars about the Government servant and the case. The proforma should be signed by an Officer of the Ministry/Department making the reference. Meticulous care should be taken about the correctness of the entries made in the proforma and that they are complete in all respects. E(32)

9. Advice of the UPSC.

The UPSC will sent its advice with two spare copies.

10. Cases in which it is not proposed to accept the advice of the UPSC.

When it is proposed not to accept the advice of the UPSC, the case should be shown to the Department of Personnel and Administrative Reforms before orders are passed.

11. Effect of non-consultation in law.

While Article 311 of the Constitution confers a right upon the Government servant, Article 320 (3) (c) does not confer any such right. The consultation prescribed by the sub-clause is only to afford proper assistance to the Government in assessing the guilt or otherwise of the delinquent officer as well as the suitability of the penalty to be imposed.