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A COMPENDIUM OF LAWS AND RULES CONTAINING EFFICIENCY AND DISCIPLINE RULES

**PAKISTAN PUBLIC ADMINISTRATION RESEARCH
CENTRE
ESTABLISHMENT DIVISION
CABINET SECRETARIAT
ISLAMABAD
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PREFACE

Pakistan Public Administration Research Centre (PPARC), Establishment Division, publishes various government publications like Estacode, Civil Establishment Code, Compendium of Laws & Rules, Instructions and Statistical Bulletin of Federal Government Employees *etc.*

2. The compendium includes all amendments/drafts and new instructions issued by concerned authorities during the period 2007-2011. The material included in this book is applicable to Federal Government Civil Servants. Apart from the chapter on efficiency and discipline, it also contains rules relating to Federal Investigation Agency(FIA), National Accountability Ordinance and Wafaqi Mohtasib Ordinance. It is hoped that this book would definitely serve the users and stakeholders.

3. I would like to express my thanks to those persons who helped us in the preparation of the compendium especially Establishment Division, FIA, National Accountability Bureau and Wafaqi Mohtasib for providing a valuable technical assistance to PPARC.

4. In addition, I specially appreciate the efforts made by PPARC and its Manuals Section for their contribution and interaction with other Ministries and Divisions in the compilation and printing of this valuable book.

5. Any suggestion for further improvement of the Manual will be welcome which may be addressed to Director General, Pakistan Public Administration Research Centre, M.S.Wing, Establishment Division, Islamabad.

**(Raja Hasan Abbas)
Additional Secretary
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Islamabad 21st March,2012.

FOREWORD

Pakistan Public Administration Research Centre (PPARC), Establishment Division is responsible for compilation, revision, updating and publication of the official codes and manuals.

The book titled “A Compendium of Laws and Rules Containing Efficiency and Discipline Rules” will prove to be of immense utility to the users.

I acknowledge the dedicated efforts and hard work done by the Manuals and Publications team of PPARC comprising Mr. Muhammad Mauzzam Mirza, Director, Mr. Abdul Majeed Naich, Deputy Director, Mr. Shabir Ahmad, Assistant Director, Mr. Ghulam Haider, Printing Officer, Mr. Ghous Bux, Stenographer, Ms. Shaheena Saeed, Assistant Incharge, Mr. Abdul Rauf (Late), Stenotypist and Mr. Wajid, Proof Reader deserve deep appreciation. I would like to appreciate the efforts of Mr. Abdul Latif Leghari, former Director General, PPARC to conceive this idea. I also want to express my profound gratitude to Raja Hasan Abbas, Additional Secretary, Establishment Division for his inspiration and encouragement.

(Nizamuddin Laghari)
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CHAPTER-I

EFFICIENCY AND DISCIPLINE

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CHAPTER-I

EFFICIENCY AND DISCIPLINE

SI. No. 1 Government Servants (Efficiency and Discipline) Rules, 1973

In exercise of the powers conferred by section *25 of the Civil Servants Ordinance, 1973 (No. XIV of 1973), the President is pleased to make following rules, namely:–

1. **Short title, commencement and application.**–These rules may be called the Government Servants (Efficiency and Discipline) Rules, 1973.

**[(2) They shall come into force at once and shall apply to every civil servant].

2. **Definitions.**–In these rules, unless the context otherwise requires,–

(1) "accused" means a Government servant against whom action is taken under these rules;

(2) ***["authority" means the appointing authority prescribed in rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973]:

@[Provided that in the case of disciplinary proceedings already initiated against a Government servant before 14th June 2000, the powers of "authority" shall be exercised by the officer designed as such before the aforesaid date:]

(3) "authorised officer" means an officer authorised by the authority to perform functions of an authorised officer under these rules^{@@} or, if no officer is so authorised, the authority;

(4) "misconduct" means conduct prejudicial to good order or service discipline or contrary to Government Servants (Conduct) Rules, 1964 or unbecoming of an officer and, a

* Now Civil Servants Act, 1973.

** Subs. vide Establishment Division Notification S.R.O. No.1809 (I)/73, dated 31-12-1973.

*** Subs. vide Establishment Division Notification S.R.O. No. 336(I)/2000, dated 14-6-2000.

[@] Added vide Establishment Division Notification S.R.O. No. 470(I)/2000, dated 7-7-2000.

^{@@} Added vide Estt. Division Notification No. 4/2/77-DI, dated 3rd July, 1978.

gentleman and includes any act on the part of a Government servant to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Government servant; and

- (5) "penalty" means a penalty which may be imposed under these rules.

3. **Grounds for penalty.**—Where a Government servant, in the opinion of the authority—

- (a) is inefficient or has ceased to be efficient; or
- (b) is guilty of misconduct; or
- (c) is corrupt, or may reasonably be considered corrupt because—
 - (i) he is, or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his ostensible means; or
 - (iii) he has persistent reputation of being corrupt; or
- (d) is engaged, or is reasonably suspected of being engaged, in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorised person, and his retention in service is, therefore prejudicial to national security, the authority may impose on him one or more penalties.

4. **Penalties.**—(1) The following are the minor and major penalties, namely—

(a) **Minor Penalties:**

- (i) censure;
- (ii) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post;
- (iii) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar;
- (iv) recovery from pay of the whole or any part of any pecuniary loss caused to Government by negligence or breach of orders;

(b) **Major Penalties:**

- (i) reduction to a lower post or time-scale, or to a lower stage in a time-scale;
- (ii) compulsory retirement;
- (iii) removal from service; and
- (iv) dismissal from service.

(2) Removal from service does not, but dismissal from service does, disqualify for future employment.

(3) In this rule, removal or dismissal from service does not include the discharge of a person—

- (a) appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
- (b) appointed, otherwise than under a contract, to hold a temporary appointment, on the expiration of the period of appointment; or
- (c) engaged under a contract in accordance with the terms of the contract.

5. **Inquiry Procedure.**—(1) The following procedure shall be observed when a Government servant is proceeded against under these rules:—

- (i) In case where a Government servant is accused of subversion, corruption or misconduct, the authorised officer may require him to proceed on leave or, with the approval of the authority suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every three months.

*[Provided further that where the authority is President **[or Prime Minister], the powers of the authority under this clause shall be exercised by the Secretary, Establishment Division].

- (ii) The authorised officer shall decide whether in the light of facts of the case or the interests of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. If he so decides, the procedure indicated in rule 6 shall apply.

- (iii) If the authorised officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall—

- (a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of the action; and
- (b) give him a reasonable opportunity of showing cause against that action:

Provided that no such opportunity shall be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

- (iv) On receipt of the report of the Inquiry Officer or Inquiry Committee or, where no such Officer or Committee is

* See footnote * proviso (b) rule 5 (1) (i).

** Added *vide* Establishment Division Notification S.R.O No.43(I)/86, dated 7-1-1986.

appointed, on receipt of the explanation of the accused, if any, the authorised officer shall determine whether the charge has been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority alongwith the charge and statement of allegations served on the accused, the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed. The authority shall pass such orders as it may deem proper.

^{*}[(2) The exercise of powers under clauses (i) and (iv) of sub-rule (1) by the authorised officers in the Pakistan Missions abroad shall, unless already so provided, always be subject to the approval of the authority].

6. Procedure to be observed by the Inquiry Officer and Inquiry Committee.— Where an Inquiry Officer or Inquiry Committee is appointed, the authorised officer shall—

- (1) Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.
- (2) Require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.
- (3) The Inquiry Officer or the Committee, as the case may be, shall enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.
- (4) The Inquiry Officer or the Committee, as the case may be, shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing. However, every adjournment, with reasons therefor shall be reported forthwith to the authorized officer. Normally no

* Added *vide* Establishment Division Notification No.7/5/75-DI, dated 14-5-1975.

adjournment shall be for more than a week.

- (5) Where the Inquiry Officer or the Committee, as the case may be, is satisfied that the accused is hampering, or attempting to hamper, the progress of the enquiry he or it shall administer a warning, and if thereafter he or it is satisfied that the accused is acting in disregard of the warning, he or it shall record a finding to that effect and proceed to complete the enquiry in such manner as he or it thinks, best suited to do substantial justice.
- (6) The Inquiry Officer or the Committee, as the case may be, shall within ten days of the conclusion of the proceedings or such longer period as may be allowed by the authorized officer, submit his or its findings and the ground thereof to the authorized officer.

6-A. ***[Revision.]**—(1) Subject to sub-rule (2), the authority may call for the record of any case pending before, or disposed of by, the authorized officer and pass such order in relation thereto as it may deem fit;

(2) No order under sub-rule (1) shall be passed in respect of an accused unless the authorized officer to be designated by the authority has informed him in writing of the grounds on which it is proposed to make the order and has been given an opportunity of showing cause against it, including an opportunity of personal hearing if requested by the accused or is otherwise necessary in the interest of justice, in particular, when the authority contemplates to pass an order adverse to the interest of the accused:

Provided that no such opportunity shall be given where the authority, for reasons to be recorded in writing, is satisfied that, in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity].

7. Powers of Inquiry Officer and Inquiry Committee.—(1) For the purpose of an inquiry under these rules, the Inquiry Officer and the Inquiry Committee shall have the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:—

* Subs. vide Establishment Division Notification S.R.O. No.74(I)/2001, dated 2-2-2001.

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents.

(2) The proceedings under these rules shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code (Act XLV of 1860).

8. **Rule 5 not to apply in certain cases.**—Nothing in rule 5 shall apply to a case—

- (a) where the accused is dismissed or removed from service or reduced in rank, on the ground of conduct which has led to a sentence of fine or of imprisonment; or
- (b) Where the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that, for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

*[8-A. **Action in respect of government servant required to proceed on leave.**—If a government servant proceeding on leave in pursuance of an order under sub-rule (1) of rule 5 is not dismissed, removed from service, reduced in rank or compulsorily retired, he shall be required to rejoin duty and the period of such leave shall be treated as duty on full pay].

9. ****[Procedure of inquiry against government servants serving in Provincial Governments or working on deputation outside their department or service to which they belong.**—When a government servant, to whom these rules apply, is serving under a Provincial Government or in a department, outside the department or service to which he belongs, or in a statutory organization, corporate body, or local authority, and the borrowing authority wants to initiate disciplinary proceedings against such government servant under these rules, the borrowing authority shall forward to the concerned lending authority a report with supporting documents, on the basis of which disciplinary proceedings are proposed, and if considered necessary, it may with the

* Added *vide* Establishment Division Notification No.2/14/73-DI, dated 12-3-1975.

** Subs. *vide* Establishment Division Notification S.R.O. No.74(I)/2001, dated 2-2-2001.

approval of the lending authority place him under suspension or send him on forced leave. On receipt of report from the borrowing authority, the lending authority shall take action as prescribed by these rules].

10. **Appeal.**—A person on whom a penalty is imposed shall have such right of appeal as may be prescribed under *[the Civil Servants (Appeal) Rules, 1977]:

Provided that, where the penalty is imposed by order of the President, there shall be no appeal but the person concerned may apply for review of the order.

[10-A. **Appearance of Counsel.—No party to any proceedings under these rules before the authority, the authorised officer, and Inquiry Officer or an Inquiry Committee shall be represented by an advocate].

11. **Repeal.**—The Government Servants (Efficiency and Discipline) Rules, 1960 in their application to the Government servants to whom these rules apply ***[and the Civilian Employees in Defence Services (Classification, Control and Appeal) Rules, 1961] are hereby repealed but the repeal thereof shall not affect any action taken or anything done or suffered thereunder.

[Authority.— Estt. Div.'s Notification No. S.R.O. 1213(1)/73, dated 18-8-1973] [No. 7/1/73-D-I]

Sl. No. 2 Disciplinary Proceedings against Accused Government Servants

During a high level meeting chaired by the Chief Executive, it was noted that the designated 'Authorized Officers' have adequate powers under the Government Servants (Efficiency and Discipline) Rules, 1973 to departmentally proceed against government servants involved in the alleged charges of misconduct, inefficiency, corruption etc. They have all the powers to take following actions: —

- (a) To send such officers on forced leave for a period of three months or to recommend suspension from service and extension in forced leave and suspension, in terms of rule 5(1)(i) of the said rules;

* Subs. *vide* Establishment Division Notification S.R.O. No.55(l)/77, dated 18-1-1977.

** Added *vide* Establishment Division Notification No.7/3/74-D.I., dated 14-11-1974.

*** Added *vide* Establishment Division Notification No. S.R.O. 1809(l)/73. dated 31-12-1973.

- (b) To frame charges/allegations and to initiate disciplinary action in terms of rule 5(1)(ii) & (iii) and to impose one or more minor penalties prescribed in the rules with due process of law after giving a reasonable opportunity of showing cause;
- (c) To recommend to the 'Authority' award of any of the major penalties prescribed in the rules after due process of law.

2. The designated 'Authorities' also have the original, as well as, revisional powers under rule 5(1)(iv) and rule 6-A of the Government Servants (Efficiency and Discipline) Rules, 1973 which include powers to call for record of any case pending before or disposed of by the 'Authorized Officer' and to pass such order in relation thereto as it may deem fit. Similarly, the appellate authorities under the Civil Servants (Appeal) Rules, 1977 have full powers to modify the orders passed by the departmental authority or the 'Authorized Officer' in cases of appeal where the penalty imposed upon the accused officer is considered inadequate.

3. The Chief Executive of Pakistan, in the light of the above, has been pleased to direct that in order to enforce the Government Servants (Efficiency and Discipline) Rules, 1973 and the Civil Servants (Appeal) Rules, 1977 in true spirit, the designated 'Authorities' 'Authorized Officers' and the 'Appellate Authorities' shall invoke the above mentioned provisions of law/rules whenever such a situation arises, without any leniency or hesitation for conclusion of disciplinary proceedings strictly on merit. It is desired that the aforementioned directions of the Chief Executive be fully implemented and due care taken to strictly observe the provisions of rules, prescribed procedures and instructions issued on the subject from time to time.

4. All Ministries/Divisions/Departments are advised to ensure that upto date lists of all disciplinary cases (initiated, pending and finalized) shall be sent periodically to the Discipline Wing of the Establishment Division for scrutiny/re-assessment *etc* on the proforma already prescribed vide Establishment Division O.M. No.1/3/70-D.I, dated 7th May, 1970.

5. The above instructions may kindly be communicated to all concerned for proper guidance and strict compliance in future.

[Authority.-Establishment Division's D.O. letter No.11/5/2000/D.I, dated 26-2-2000].

Sl. No. 3. Disciplinary Proceedings under Government Servants (Efficiency & Discipline) Rules, 1973 against Accused Government Servants: Furnishing of Case Material

Instances have come to the notice of the Establishment Division that the Ministries/Divisions and Provincial Governments, while forwarding the cases for obtaining the orders of the competent authority *i.e.* Establishment Secretary *under rule 5 (1) (i) of the Government Servants (E&D) Rules, 1973, do not generally observe the provisions of said rules, laid down procedure and earlier instructions issued on the subject matter. It has particularly been observed that the copies of relevant documents and case material against the accused officers are not enclosed as annex alongwith the Summary/Note for the Establishment Secretary, duly signed by the respective authorized officers on the subject.

2. All the Secretaries/Additional Secretaries Incharge of Ministries/ Divisions and Chief Secretaries of the Provincial Governments are requested to kindly ensure that, while forwarding the cases of BPS-17 and above Federal Government servants for obtaining the orders of the Establishment Secretary under rule 5 (1) (i) of the Government Servants (E&D) Rules, 1973, following information and copies of documents be enclosed alongwith the Summary/Note:–

- (i) In case of the proposal for placing BPS-17 and above Federal Government servants under suspension, copies of all relevant documents/case material including biodata of the accused officer and copies of documents on the basis of which suspension of the officer is necessitated *viz.* any complaint or fact finding inquiry/probe *etc.* be provided.
- (ii) In case of a request for extension in suspension period of a government servant under suspension or extension in forced leave period, on expiry of current sanction after three months, the present position of the disciplinary case, including the stage of inquiry if it is in progress, may invariably be stated in the said proposals.
- (iii) In case of recommendation for reinstatement in service of a government servant under suspension or termination of forced leave period, the copies of complete record of proceedings *viz.* charge sheet alongwith statement of allegations, show cause notice if issued instead of charge sheet, report of the Inquiry Officer and final orders of the Authorized Officer *etc.* be provided.

* For subsequent order on the subject and the cases after the promulgation of Removal from Service (Special Powers) Ordinance, 2000.

3. The above instruction may kindly be communicated to all the concerned quarters for guidance and compliance in future.

[Authority.– Establishment Division O.M. No.11/5/2000-D.1, dated 4-5-2000].

Sl. No. 4 Applicability of Disciplinary Proceedings Against Dismissed, Removed or Compulsorily Retired Civil Servants

On a directive from the Chief Executive Secretariat, the question, as to whether any order under the Government Servants (Efficiency and Discipline) Rules, 1973 can be passed against a civil servant who already stands dismissed from service, has been examined in consultation with Law, Justice & Human Rights Division. It has been clarified that if a person is dismissed or removed from service or compulsorily retired, he does not retain the status of a civil servant for the purpose of any other disciplinary proceedings or imposition of any other penalty. There is a concept of law that the process of appeal is the continuation of the original proceedings, therefore, if a dismissed, removed or retired employee moves a departmental appeal or representation or files an appeal before the appropriate judicial forum he is deemed to be a civil servant for that particular matter only under the said concept of continuation of status during the process of appeal.

2. Where an appeal is filed, the appellant may be treated as a civil servant for the purpose of disposal of that appeal only and the result of any other inquiry that may have been conducted may be held in abeyance. However, if the dismissed, removed or retired person does not file any appeal, the order of dismissal, removal from service or compulsory retirement will attain finality and the result of the other inquiry will become infructuous.

[Authority: Estt. Div.'s O.M.No.SCE/6/97, dated 14.1.2002].

Sl. No. 5 Review of Rule Framework on Efficiency and Discipline of Autonomous Bodies etc. for Incorporation of the Provisions at Par with Article 194 of Civil Services Regulations, as Amended

The Prime Minister's Office, while examining the report in a case of criminal offence committed by an employee of an autonomous body, has observed that departmental proceedings and actions under the criminal law are not mutually exclusive and could be taken simultaneously without prejudice to the outcome in either proceeding. Despite this legal position, the organization's report shows that the court was successfully

persuaded in this case by the accused officer to grant bail, *inter alia*, for the reason that no departmental proceedings had been initiated against him; thereafter, on their part the organization also proceeded further and reinstated the officer to his substantive position on the basis of bail grant order in his favour, to reinforce and obviate any legal challenge. It was obvious then that the relevant authorities of the organization did not apply their own mind to the facts and merits of the case leading to the registration of the case, and to determine the desirability or otherwise of initiating the Efficiency and Discipline proceedings against the accused officer. Such indifference and apathy also reflects connivance on the face of record, was unjustified and hence unacceptable. Prime Minister's Office has requested the Establishment Division to examine the matter in detail; also to advise all Ministries/Divisions to direct the State Enterprises/Autonomous Bodies under their administrative control/responsibility to review their rule-framework on Efficiency and Discipline for incorporation of the provisions at par with Article 194 of the Civil Service Regulations, as amended.

2. The instruction printed at Serial No.118 (pages 542-543 of ESTACODE 1989 edition) provide as under:—

- (i) There is no legal bar to the holding of a departmental inquiry against a government servant who is being prosecuted in a criminal court. However, departmental inquiry can be deferred till the termination of criminal proceedings where the holding of departmental inquiry may have effect of impeding the course of justice or of prejudicing the trial.
- (ii) In case the accused government servant has been acquitted from a criminal case on technical grounds, the departmental proceedings on the same facts can be started.
- (iii) In case the accused government servant cannot be criminally prosecuted in a Court of law for some reasons or others, it does not bar the government for inquiring into the truth of a charge against a government servant by means of departmental inquiry.

It has been observed that to above instructions are not fully followed by the Ministries/Divisions while dealing with criminal cases.

3. In view of the above, all Ministries/Divisions are requested to strictly follow the instructions contained in Establishment Division's

Office Memorandum vide Establishment Division O.M No. 4/5/69-D.I, dated 17th June 1969. They are also advised that above instructions may be brought to the notice of Heads of all Attached Departments/Subordinate Offices/Autonomous Bodies/State Enterprises etc., and the staff working under them for their strict compliance.

*[4. Ministries/Divisions are further advised to direct the State Enterprises/Autonomous Bodies under their administrative control/responsibility to review their existing rule-framework on Efficiency and Discipline and suitably incorporate following provisions of the Civil Service Regulations** in their service rules.

Article 194: A Government servant who has been charged for a criminal offence or debit and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a Government servant is not arrested or is released on bail, the competent authority may suspend him, by specific order, if the charge against him is connected with his position as Government servant or is likely to embarrass him in discharge of his duties or involves moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under FR-53.

Article 351: Future good conduct is an implied condition of every grant of a pension. The Local Government, and the Government of Pakistan, reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the Governor General*** on any question of withholding or withdrawing the whole or any part of a pension under this Regulation shall be final and conclusive.

Article 351-A: The Governor-General*** reserves to himself the right to order the recovery from the pension of an officer who entered service, of any amount on account of losses found in judicial or departmental proceedings to have been

* Subs. vide Establishment Division Corrigendum No.3/1/99-R.3, dated 8-6-1999.

** Commonly known as CSR.

*** In the present context, President/Prime Minister.

caused to Government by the negligence or fraud of such officer during his service:

Provided that—

- (1) such departmental proceedings, if not instituted while the officer was on duty:—
 - (i) shall not be instituted save with sanction of the Governor General;
 - (ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty whichever is later;
 - (iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty; and
 - (iv) shall be conducted by such authority and in such places whether in Pakistan or elsewhere, as the Governor General* may direct;
- (2) all such departmental proceedings shall be conducted, if the officer concerned so request in accordance with the procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and
- (3) such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

Article 351-B: The government may, within one year from the date of issue of Pension Payment Order, recover any of its dues from the pension granted to a civil servant, subject to the condition that no recovery shall be made from the pension without the personal order of the Head of the Ministry or Division or Head of the Department, declared as such under S.R. 2(10) and included in Appendix No.14 Vol. II of the Compilation of the Fundamental Rules and Supplementary Rules as the case may be].

[Authority: Estt. Div.'s O.M.No.3/1/99-R.3, dated 30-4-1999].

* In the present context, President/Prime Minister.

Sl. No. 6 Designation of 'Authority' and 'Authorized Officer' under Rule 2 of the Efficiency and Discipline Rules in Respect of Employees of the Federal Secretariat

In exercise of the powers conferred by sub-rules (2) and (3) of rule 2 of the Government Servants (Efficiency and Discipline) Rules, 1973 and in supersession of the Establishment Division's Notification No. S.R.O. 1562(I)/73, dated 7.11.1973*, the President is pleased to designate the officers specified in column (3) of the table below to be the authority, and to authorise the officers specified in column (4) of the said table to be the authorised officer, in respect of the government servants specified in column (2) of that table employed in the Federal Secretariat or serving in a post, or belonging to a service or cadre, administratively controlled by a Ministry or Division:-

TABLE

Sl. No. (1)	Government Servant (2)	Authority (3)	Authorized Officer (4)
**1.	Government Servants in [Basic Pay Scales] @ 21 and above and Provincial Chief Secretaries @ []	@Prime Minister@@	-
3.	Government Servants in ***[Basic Pay Scale] 17 to 20	Prime Minister	@@@Secretary]
4.	Government Servants in ***[Basic Pay Scale] 16 (Superintendent and equivalent)	@@Secretary	@Additional Secretary
5.	Government Servants in *** [Basic Pay Scale] 3 to 15(Lower Division Clerk, Upper Division Clerk Assistant, Stenographer and equivalent)	@@Secretary	Joint Secretary

* See Annex.

** Table amended vide Estt. Div.'s Notification No.S.R.O.1011 (I)/85, dated 20-10-1985.

*** Subs vide Estt. Div.'s Notification No. S.R.O. 96(I)/84, dated 28-1-1984.

@ Subs vide Estt. Div.'s Notification No. S.R.O. 96(I)/84, dated 28-1-1984.

@@ Note.- In the existing rules, for the allocation and transaction of the business of the Federal Government, wherever the words "Prime Minister" occurred the same was deemed substituted by the word "Chief Executive" vide Order No.7 of 1999, dated 30-10-1999. The position has reversed, as the Prime Minister is now the authority. Ref. rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 as subs. Vide Estt. Div. Notification SRO No. 1(1)/2003, dated 1.1.2003, w.e.f. 23.11.2002.

@@@ Secretary includes Secretary General, Acting Secretary and Additional Secretary Incharge of a Division. (Subs vide Estt. Div.'s Notification No. S.R.O.1336 (I)/81, dated 14-12-1981).

6.	Government Servants in * [Basic Pay Scale] 1 and 2(Quasid, Naib Quasid and equivalent)	Deputy Secretary	Section Officer
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Explanation 1.- For the purpose of this notification, Secretary, Additional Secretary, Joint Secretary, Deputy Secretary or Section Officer designated as authority or authorized officer means the Secretary, Additional Secretary, Joint Secretary, Deputy Secretary or Section Officer of the Ministry or Division in which the government servant is for the time being employed.

Explanation 2.- For a government servant serving outside the Federal Secretariat, whether in a Provincial Government or in an autonomous body, who is serving in a post, or belongs to a service or cadre, administratively controlled by a Ministry or Division, the Secretary, Joint Secretary, Deputy Secretary or Section Officer designated as authority or authorized officer means the Secretary, Additional Secretary, Joint Secretary, Deputy Secretary or Section Officer of that Ministry or Division.

** [Explanation 3.-The words "Basic Pay Scale", wherever occurring in column 2 of the table means appointment to the post in that Basic Pay Scales].

[Authority.- Estt. Div.'s Notification No. S.R.O. 615(1)/79, dated 5-7-1979].

Sl. No. 7 Designation of Appointing Authority under Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and Designation of Authorized Officer Under the Government

In pursuance of government policy of decentralization and devolution of powers the following amendments have been made in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973** and Government Servants (Efficiency and Discipline) Rules, 1973: -

- (i) Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 has been amended *vide* Notification SRO No. 276(1)12000, dated 25.05.2000 under which

* Subs.vide Estt.Division Notification No.S.R.O.96(l)/84,dated 28-01-1984.

** Added vide Estt.Div.'s Notification No.S.R.O.1227(1)/91,dated 2-12-1991.

Secretaries of the Ministries/Divisions concerned have been authorized to make appointments to posts in BPS 17-19, and they have also been authorized to notify appointing authorities for posts in BPS-16 and below.

- (ii) Sub-rule (2) of rule 2 of the Government Servants (Efficiency and Discipline) Rules, 1973 has been amended *vide* Establishment Division Notification SRO No. 336(I)/2000, dated 14.06.2000 under which appointing authority prescribed in rule-6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973* has been designated as 'authority' under the aforesaid rules.

2. In terms of the above mentioned amendments, the Secretaries of the Ministries/Divisions are required to: -

- (i) notify appointing authorities for posts in BPS-16 and below in the Ministries/Divisions, Attached Departments and Subordinate Offices under their administrative control. These appointing authorities will become authority under rule 2(2) of Government Servants (Efficiency & Discipline) Rules, 1973 ; and
- (ii) designate 'authorized officers' for civil servants in BPS 17-19 in Ministries/Divisions, Attached Departments and Subordinate Offices.

[Authority: Estt. Div.'s DO No. 16/18/2000-R.2, dated 27th June, 2000]

Sl. No. 8 Designation of Authority and Authorized Officer in Attached Departments and Subordinate Offices

A reference is invited to Government Notification forwarded to all Ministries/Divisions etc. *vide* Establishment Division endorsement of even number dated 7-11-1973* wherein Authority/Authorized Officers in respect of government servants in the Federal Secretariat have been designated under sub-rules (2) and (3) of rule 2 of Government Servants (Efficiency and Discipline) Rules, 1973. It may be stated that similar action is required

* Establishment Division Notification No. SRO 1562/73, dated 7th November, 1973.

to be taken in respect of government servants in various Attached Departments and Subordinate Offices of the Federal Government.

2. It is, therefore, requested that Ministries/Divisions may kindly take action for designation of Authority and Authorized Officer for government servants in the Attached Departments and Subordinate Offices under them. The Establishment Division may be consulted before formal notification is issued.

[Authority.- Estt. Div.'s O.M.No.7/1/73-D.I., dated 17-11-1973].

Sl. No. 9 Designation of Authority/Authorized Officers for Government Servants in BPS-16

According to the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the appointing authority for government servants in Grade 16, is now Secretary of the Ministry or Division concerned or the Head of Department *[or an officer notified by Head of the Department or Head of Subordinate Office].

2. It is requested that the amendment in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973** quoted above may please be kept in view by the Ministries/Divisions while formulating their proposals for designation of 'Authority' and 'Authorised Officer' in respect of government servants in Attached and Subordinate Offices under them.

3. In some cases, "Authority" and "Authorised Officer" have been notified by the Ministries/Divisions in respect of government servants in the Attached / Subordinate Offices, under them. It is requested that position in this regard may kindly be reviewed, especially with respect to government servants in Grade 16.

[Authority.- Estt. Division O.M.No.7/1/73-D.I., dated 2-4-1974].

Sl.No.10 Clarification Regarding Authority (Authorized Officers) for Government Servants Belonging to Groups/Services or Serving in Departments/Offices

A doubt is being felt by some Ministries/Divisions whether the Establishment Division's Notification No. S.R.O. 615 (I)/79, dated the 5th July, 1979, notifying 'authority' and 'authorised officer' in respect of government servants employed in the Federal Secretariat or serving in a

* Subs. Vide Estt. Div. Not. No. SRO 34(1)/99, dated 18-1-1999.

** Establishment Division Notification No. SRO. 1562/73, dated 7th November, 1973.

post, or belonging to a service or cadre administratively controlled by a Ministry or Division, is also applicable to government servants serving in the Attached Departments and Subordinate Offices. Explanation-2 below the aforementioned Notification covers a government servant serving outside the Federal Secretariat whether in a Provincial Government or in an autonomous body, who is serving in a post, or belongs to a service or cadre administratively controlled by a Ministry or Division e.g. officers of Police Group* administratively controlled by the Establishment Division or of Military Lands and Cantonments Group similarly controlled by the Ministry of Defence. In that case, officers of controlling Ministry/Division designated as 'authority' and 'authorised officer' vide Notification No. S.R.O. 615(I) 79, dated the 5th July, 1979 will be the 'authority' and 'authorised officer'. But in so far as government servants belonging to Attached Departments and Subordinate Offices are concerned, they are not covered by the Establishment Division aforementioned Notification. In their case, Ministries/Divisions concerned are required to notify 'authority' and 'authorised officer' separately in accordance with the Government Servants (Efficiency and Discipline) Rules, 1973, as already envisaged in the Establishment Division O.M. No. 7/1/73-D I, dated the 17th November, 1973.

[Authority.- Estt. Division O.M.No.3/3/80-D.1, dated 1-1-1981].

Sl.No.11 Designation of 'Authority' and 'Authorised Officer' Under Rule 2 of the Efficiency and Discipline Rules in Respect of Employees of an Attached Department or a Subordinate Office of the Federal Government

In exercise of the powers conferred by clauses (2) and (3) of rule 2 of Government servants (Efficiency and Discipline) Rules, 1973, the President is pleased to designate the officers specified in column (3) of the table below to be the authority and the officers specified in column (4) of that table to be the authorised officers in respect of the government servants, specified in column (2) thereof, employed in an attached department or a sub-ordinate office of the Federal Government.

* Renamed as Police Service of Pakistan.

S. No.	Government Servants	Authority	Authorized Officer
(1)	(2)	(3)	(4)
1.	Government servants holding posts in Basic Pay Scale 21 or equivalent and above.	*Prime Minister	To be designated by Prime Minister
2.	Government servants holding posts in Basic Pay Scale 17 to 20 or equivalent.	Prime Minister	Secretary of the Ministry of Acting Secretary or Senior Joint Secretary /Joint Secretary Incharge of the Division concerned.
3.	Government servants holding posts in Basic Pay Scale 3 to 16 or equivalent.	Head of the attached department or Head of the subordinate office, *** [or an officer not below the appointing authority designated by the Head of subordinate office].	An officer, **[] designated by the authority specified in Column (3).
4.	Government servants holding posts in Basic Pay Scale 1 to 2 or equivalent.	An officer, ***[not below the appointing authority] designated by the Head of the attached department or head of Subordinate Office].	An officer, **[] to be designated by the authority specified in Column (3).
[@] 5.	Government servants holding posts in BPS 19-20.	Prime Minister.	Chairman, Pakistan Ordnance Factories Board.
6.	Government servants holding posts in BPS 17-18.	Chairman, Pakistan Ordnance Factories Board	To be designated by the Authority in column 3].

* Note.- For the allocation and transaction of the business of the Federal Government, wherever the words "Prime Minister" occurred the same was deemed substituted by the word "Chief Executive" vide Order No.7 of 1999, dated 30-10-1999. May now be read 'Prime Minister' as in the table.

** Omitted vide Estt. Div. Notification No. SRO 35(1)/99, 18-1-1999.

*** Added *ibid*.

[@] Added vide Estt. Division Notification No. 128(I)/99, dated 01-03-1999.

S. No.	Government Servants	Authority	Authorized Officer
(1)	(2)	(3)	(4)
(In the Chief Ehtesab Commissioner's Secretariat)*			
**[7.	Government servants holding posts in Basic Pay Scale 20 and above.	Prime Minister	Establishment Secretary.
8.	Government servants holding posts in Basic Pay Scale 17-19.	Prime Minister	Secretary, Ehtesab Commission
9.	Government servants holding posts in Basic Pay Scale 3-16.	Secretary, Ehtesab Commission	To be designated by the Authority in column (3).
10.	Government servants holding posts in Basic Pay Scale 1 and 2.	Director (BPS-19) in Ehtesab Commission	(//)
(In the Secretariat Training Institute, Islamabad)			
11.	Government servants holding posts in Basic Pay Scale 17 to 20.	Prime Minister	***[Establishment Secretary]
(1)	(2)	(3)	(4)

*Under section 6 (ba) of NAB Ordinance, 1999 (as modified upto 22nd January, 2003), the Chairman, NAB is to be a retired Chief Justice or a Judge of the Supreme Court or a Chief Justice of a High Court or a retired officer of the armed forces equivalent to a Lieutenant General or a retired Federal Government officer in BPS 22 or equivalent Chairman. NAB Employees Terms and Conditions of Service (TCS), 2002, determined in exercise of the powers conferred by section 28-C of NAB Ordinance, 1999 contain the following Table in TCS 11.01.

11.01. Competent Authority

For the purpose of provisions in this Chapter, the officers specified in column 3 of the table below are designated as "Competent Authority" and those in column 4 as "authorized officer" in respect of the employees specified in column 2 of the table.

Table

S. No.	Description of Employees	Competent Authority	Authorized Officer
(1)	(2)	(3)	(4)
(a)	Basic Pay Scale 20 and above	President	Chairman
(b)	Basic Pay Scale 16 to 19	Chairman	Director General (Administration)
(c)	Basic Pay Scale 1 to 15	Director General (Administration)	Director (Admn.) of HQ or Incharge of RNAB

**Added vide Estt.Div.'s Notification No.S.R.O. No.1178(I)/99,dated 4-10-1999.

*** Added vide Estt. Division Notification No. S.R.O. No. 174(I)/96, dated 29-2-1996.

S. No.	Government Servants	Authority	Authorized Officer
(1)	(2)	(3)	(4)
*[12.	Basic Pay Scale 17 to 18	(//)	(//)
13.	Basic Pay Scale 1 to 16.	Director, Secretariat Training Institute].	(//)
(In the Office of the Auditor General of Pakistan and Subordinate Offices of the Pakistan Audit Department)			
**[14.	Government servants who are members of the Accounts Group* holding posts in Basic Pay Scale 21 and above.	@Prime Minister	To be designated by the Prime Minister
15.	Government servants holding posts in Basic Pay Scale 17 to 20 borne on the Inter Departmental Cadre in the Accounts Group***.	Prime Minister	Auditor General
16.	Government servants holding posts in Basic Pay Scale 17 borne on the Departmental Cadre in the Pakistan Audit Department.	(//)	(//)
17.	Government servants holding posts in Basic Pay Scale 17 to 20 in the Pakistan Audit Department excluding Government servants holding cadre posts in the Inter Departmental Cadre or Departmental Cadre.	(//)	(//)

* Added *vide* Estt. Division Notification No. S.R.O. No.1121(I)/95, dated 7-11-1995.

**Added *vide* Estt. Division Notification No. S.R.O. No.1013(I)/98, dated 3-10-1998. For 'Accounts Group', read 'Pakistan Audit & Accounts Service, *vide* Estt. Div. OM No. 1/17/92-CPII dated 10th December, 2002. Ref. Chapter 8.

*** Now Pakistan Audit & Accounts Service. Chapter 8, Sl. No. 12, Vol. I.

@ Note.- For the allocation and transaction of the business of the Federal Government, wherever the words "Prime Minister" occurred the same was deemed substituted by the word "Chief Executive" *vide* Order No. 7 of 1999, dated 30-10-1999. May now be read 'Prime Minister' as in the table.

2. For the purpose of the entry in column (4) against serial No.3 and the entries in column (3) and (4) against Sl. No.4, more than one officers may be designated as authority and authorized officers.

3. Notwithstanding anything to be contrary hereinbefore contained, all notifications or orders issued by any Ministry or Division specifying 'authorities' and 'authorised officers' in respect of the government servants to whom this notification shall apply and in force before the issuance of this notification shall continue and remain in force till finalization of disciplinary proceedings initiated against any such Government servant.

[Authority: Estt. Div.'s Notification No. S.R.O. No. 429(1)98, dated 30-4-1998].

Sl. No. 12 Procedure for Obtaining Orders of the President or Prime Minister in Disciplinary Cases

It has been decided that in future, all the summaries for the President/Prime Minister in disciplinary cases should invariably be accompanied by the information desired in the enclosed *proforma*. The cases/ summaries received without this information will be returned back to their respective Ministries and Divisions.

[Authority.- Estt. Division d.o.letter No.3/4/83-D-2, dated 24-3-1983].

BIO-DATA

(TO BE USED IN DISCIPLINARY & OTHER CASES)

1. Name of the Officer_____

(a) Grade*

(b) Date of Birth & Age on
(Years Months Days)
.....

(c) Date of Joining & Length of Service.
(Years Months Days)
.....

(d) Date of Absence from duty. (if applicable)
.....

(e) Total ACRs** V.Good, Good,Average, Below Average
(Years to be shown against Average & Below Average
ACRs).

Note:

(1) Any missing ACRs with reasons.

(2) Photo of the Officer is affixed in the C.R.dossier or
not and reasons if missing.

(f) Adverse Remarks.
.....

(g) Service (Showing Appointments held).
.....

* BPS.

** Annual Confidential Report (ACR) renamed as Annual Restricted Report (ARR)

Sl. No. 13 Powers of the 'Authorized Officer' to Suspend a Government Servant or to Send Him on Leave

Rule 5(1) of the Government Servants (E&D) Rules, 1973 provides that in case where a government servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of "authority", suspend him, provided that any continuation of such leave or suspension shall require approval of the "authority" after every 3 months. Rule 5(4) of above rules further provides that if on receipt of the report of inquiry officer or inquiry committee, or, where no such officer or committee is appointed, on receipt of the explanation of the accused, the "authorized officer" proposes to impose a minor penalty, he shall pass orders accordingly. Following questions have accordingly arisen in the context of above rules:-

- (a) Whether specific approval of the "authority" will be required for reinstatement of the government servant concerned if the "authorized officer" imposes upon him a minor penalty before expiry of the current period of suspension or whether an order for the reinstatement of government servant can be passed by the "authorized officer" himself?
- (b) Whether the order of suspension or forced leave under rule 5(4) of above rules will automatically abate if the approval of "authority" to the continuation of such forced leave or suspension of a government servant is not obtained after every 3 months?

2. The matter has been recently examined in the Establishment Division in consultation with the Law Division. The conclusion reached is given below *ad-seriatim*:-

- (a) Since under rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, the 'authorized officer' can only suspend a government servant after obtaining the approval of the "authority", on the basis of the principle embodied in section 25 of the General Clauses Act, 1897 the "authorized officer" would be competent to reinstate the government servant only with the approval of the "authority".
- (b) Since continuation of forced leave or suspension beyond a period of three months again requires the approval of the "authority" it would appear that on expiry of the said period of three months the government servant who has been

placed under suspension or forced to proceed on leave would be deemed to have been reinstated unless before the expiry of the said period the approval of the "authority" to the government servant continuing to be under suspension or on leave has been obtained.

[Authority.- Estt. Division O.M. No.7/2/75-DI. dated 22-2-1975].

Sl. No. 14 Approval of Competent Authority for Extension in Suspension

A reference is invited to the Establishment Division Office Memorandum of even number, dated the 22nd February, 1975, wherein the legal position with regard to suspension, extension of suspension period and reinstatement of the civil servants was explained.

2. It has come to the notice of the Establishment Division that, on the basis of the above instructions, civil servants under suspension are being re-instated on the ground that approval of the authority for their continued suspension was not obtained before the expiry of three months of their suspension or the extended period of suspension.

3. It may be clarified that the intention of the Establishment Division in circulating the legal position contained in the O.M. referred to above was to impress upon the Ministries/Divisions the importance of obtaining the approval of the authority for the continued suspension of a civil servant well in time. As has been stated in para 2 (b) of O. M. referred to above, it is necessary to obtain orders of the authority for the reinstatement of a civil servant who is under suspension.

4. Ministries/Divisions are requested to take necessary steps to obtain the approval of the authority for suspension of a civil servant after every three months well in time before the expiry of the period of suspension. In no case should a government servant under suspension be re-instated without the approval of the authority.

[Authority.- Estt. Division O.M.No.7/2/75-DI, dated 16-3-1976].

Sl. No. 15 Authority Competent to Suspend Officers of *Grade-17 and Above

It has been brought to the notice of the Prime Minister that some officers of the rank of *Grade-17 and above have been suspended by the Ministers as a measure of disciplinary action. While it is not the intention

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that action should not be taken against a government servant guilty of misconduct, corruption or for inefficiency, it is a matter of some importance that the correct procedure should be followed in each case. Observance of correct procedure is essential not only in the interest of justice but also to ensure that Government Servants (Efficiency and Discipline) Rules, 1973 are complied with. The position is further clarified in the following paragraphs:-

2. Under rule 3 of the above rules, action against a government servant can be taken if he -

- (a) is inefficient or has ceased to be efficient; or
- (b) is guilty of misconduct; or
- (c) is corrupt or may reasonably be considered corrupt because –
 - (i) he is or any of his dependents or any other person through him or on his behalf is, in possession (for which he cannot reasonably account) of pecuniary resources or of property disproportionate to his known sources of income; or
 - (ii) he has assumed a style of living beyond his ostensible means; or
 - (iii) he has a persistent reputation of being corrupt; or
- (d) is engaged, or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and retention in service is, therefore, prejudicial to national security.

3. In case where a government servant of Grade 17 to 20 is accused of subversion, corruption or misconduct, the competent authority may require him to proceed on leave or with the approval of the authority (i.e. Prime Minister) suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every three months. A government servant against whom action is proposed to be taken under the rules for inefficiency, he cannot be sent on leave or placed under suspension. The following factors should be considered in deciding

whether or not to suspend the accused:–

- (a) There must be a strong, *prima facie*, case against the delinquent.
- (b) If the offence is such a serious nature that dismissal will be the probable punishment, or such that it is inadvisable that the offender should be allowed to continue to perform the duties of his office, pending decision on the case, suspension is justifiable.
- (c) Unless there is some very strong reason why the offender should not be allowed to continue to work until the case has been decided, suspension should not be resorted to.

*4. Under sub-rule (2) of rule 2 of the rules, the authority for the officers of Grade** 17 to 20 is the Prime Minister as notified in the Establishment Division Notification No. S.R.O.1562 (I)/73, dated the 7th November, 1973. If it is desired to suspend an officer of Grade** 17 to 20 the approval of the Prime Minister for his suspension will have to be obtained.

5. It should be decided whether, in the light of facts of the case, or the interests of justice, an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. The orders of the Minister may be obtained before a decision is taken. If it is decided that it is not necessary to have an inquiry conducted, the accused should be informed of the action proposed to be taken in regard to him and the grounds of the action and give him a reasonable opportunity of showing cause against that action. However, no such opportunity may be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

6. If it is decided to hold an inquiry against an accused officer through an Inquiry Officer or Inquiry Committee, the following action should be taken:

- (1) Charge sheet be framed and communicated to the accused together with statement of the allegations explaining the

* Note: See sub rule (2) of rule 2, as amended *vide* Estt. Div. Notification SRO 336(1)/2000 dated 14.6.2000 under which the authority means the appointing authority prescribed in rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973. The appointing authority of the officers in BPS 17 to 19 is now the Secretary of the Ministry/Division or Head of the Department administratively controlling the Occupational Groups/Services/Cadres. The Prime Minister is the appointing authority in respect of officers in BPS 20 and above.

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charge and of any other relevant circumstances which are proposed to be taken into consideration.

- (2) The accused be required within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.
- (3) The Inquiry Officer or the Committee, as the case may be, shall enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witnesses against him.
- (4) The Inquiry Officer or the Committee, as the case may be, shall, within ten days of the conclusion of the proceedings or such longer period as may be allowed by the authorized officer, submit his or its findings and the grounds thereof to the Secretary/ Additional Secretary.

7. On receipt of the report of the Inquiry Officer or Inquiry Committee or, where no such officer or committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer should determine whether the charge has been proved. If it is proposed to impose a minor penalty he should pass orders accordingly. If it is proposed to impose a major penalty, he should submit the case to the Prime Minister along with the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed.

8. As stated above, the authority for officers of *Grade 17 to 20 is the **Prime Minister. If it is intended to suspend an officer in those Grades approval of the Prime Minister is necessary. It is requested that approval of the Prime Minister may kindly be obtained through the Establishment Division in such cases. The rules do not provide for obtaining of ex-post facto sanction for suspension.

[Authority.- Estt. Secretary's D.O. letter No.F.4/21/74-DI, dated 19-11-1974].

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(ANNEX)

[Copy of Establishment Division Notification No. SRO 1562 (1)/73, dated 7th November, 1973].

The President is pleased to decide that the following officers shall be designated as Authority/Authorized Officer under sub-rule (2) and (3) of rule-2 of Government Servants (Efficiency and Discipline) Rules, 1973 (Sl. No. 85) in respect of the Government Servants employed in the Central Secretariat:-

	Particulars	Authority	Authorized Officer
(1)	Government Servants in **Grades 23 & 22 (i.e., Secretary General and Secretary or equivalent rank).	Prime Minister	Nil.
(2)	Government Servants in *Grade 21 (Additional Secretary or equivalent).	“	Nil.
(3)	Government Servants in *Grade 20 to 17 (Joint Secretary, Deputy Secretary, Section Officer or equivalent).	“	**Secretary
(4)	Government Servants in *Grade 16 (Superintendents and equivalent).	***Secretary	Secretary
(5)	Government Servants in *Grades 11 to 15 (Assistants, Stenographers etc. or equivalent).	Secretary	Joint Secretary
(6)	Government Servants in *Grades 3 to 10 (Upper Division Clerks, Lower Division Clerks and equivalent).	Joint Secretary	Deputy Secretary
(7)	Government Servants in *Grades 1 and 2 (Peons and equivalent).	Deputy Secretary	Section Officer.

[Authority: Estt. Div.'s SRO 1562(I)/73, dated 7th November, 1973].

Note 1. Reference Establishment Division (Administrative Reforms Cell), Acts, Rules, Regulations, Instructions, etc. published by Establishment Division on 30th November, 1973.

* BPS.

** Additional Secretary, where there is no Secretary.

*** Additional Secretary or Joint Secretary, as the case may be, where there is no Secretary.

Sl.No.16 Appointment of an Inquiry Officer Under the Government Servants (Efficiency & Discipline) Rules, 1973

Under rule 5 (1) (ii) of the Government Servants (Efficiency and Discipline) Rules, 1973, the "Authorised Officer" has the powers to order holding of inquiry against an accused government servant through an Inquiry Officer or Inquiry Committee. It has been noticed that sometimes the Ministries/ Divisions/ Departments appoint Inquiry Officers who are junior to the accused government servant.

2. It is clarified that it is not appropriate to appoint an "Inquiry Officer" junior to the officer being proceeded against under the aforementioned rules as that could lead to administrative and legal complications at a later stage. All Ministries/Divisions are, therefore, advised to keep this aspect in view while appointing inquiry officers in cases involving disciplinary cases under the E&D Rules*.

[Authority.- Estt. Division O.M. No. 16/61/94-R.2, dated 24-1-1995].

Sl. No. 17 Grant of Personal Hearing to the Accused Government Servant under Rule 5 (1) (iii) of the Government Servants (Efficiency & Discipline) Rules, 1973

Rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules, 1973, provides that if the authorised officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall –

- (a) by order, in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of action, and
- (b) give him a reasonable opportunity of showing cause against that action.

2. A question has arisen as to whether a reasonable opportunity of showing cause against the proposed action includes grant of personal hearing to the accused. The matter has been considered in consultation with the Law and Justice Division and it has been decided that in order to safeguard against the possibility of the disciplinary proceedings being vitiated at later stage, the show cause notice should contain a reference asking the accused if he wishes to be heard in person.

* Government Servants (E&D) Rules, 1973.

3. All Ministries/Divisions are accordingly advised that, henceforth, every show cause notice to be issued in terms of rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules 1973, must contain a specific reference asking the accused to state whether he wishes to be heard in person.

4. The above decision is circulated for the information of Ministries/Divisions with the request to also bring it to the notice of the Attached Department/Subordinate Offices, etc. under the administrative control for necessary action.

[*Authority*.- Estt. Division O.M.No.16/29/96-R.2, dated 17-6-1996].

Sl. No. 18 Authority and Authorised Officer Under the Government Servants (Efficiency and Discipline) Rules, 1973 for the Officers Who are Drawing Pay in a Higher Pay Scale by Virtue of Move-Over or Selection Grade

A question has arisen as to who should be the 'Authorised Officer' or 'Authority', under the Government Servants (E&D) Rules, 1973 in respect of an employee who is drawing pay in a pay scale higher than the pay scale of his substantive appointment by virtue of move-over* or grant of selection grade.

2. The issue has been examined in the Establishment Division. According to the instructions issued by the Finance Division, the following condition is, *inter alia*, laid down for grant of move-over:

"The move-over shall not be construed to be a promotion to be post of higher Basic Pay Scale, but the higher pay scale will be treated to be an extension of the existing Basic Pay Scale of the post held by the employees. Therefore, the incidence of move-over shall not be notified."

Similarly, an officer who is placed in the selection grade of a particular post continues to perform the duties of the same post. He cannot, therefore, be treated to have been promoted to a higher post. Moreover, the name of an employee who is allowed to move-over to the next higher pay scale or is granted selection grade in a particular cadre, continues to be placed in the seniority list of employees belonging to the same cadres.

3. In view of the position stated above, it is clarified that the substantive post of a government servant and not his pay scale on account of move-over or selection grade should be taken into account for the

* Selection Grade and Move-Over Scheme discontinued in BPS Scheme, 2001 w.e.f. 4-9-2001.

purpose of disciplinary proceedings against him. By stepping into a higher pay scale, by virtue of move-over, or selection grade, the 'Authority', and 'Authorised Officer' will not change but will remain the same as in previous scale. For example, the 'Authority' and 'Authorised Officer' in respect of a Superintendent, a BPS-16 post, would remain respectively the Secretary and Additional Secretary, even if the incumbent has been placed in BPS-17, by move-over or selection grade.

4. The position as explained above may be brought to the notice of all concerned.

[Authority.- Estt. Division O.M.No.16/24/94-R.2, dated 22-6-1995].

**Sl. No. 19 Continuance of Suspension Period beyond 3 Months -
Procedure for Submission of Summaries to the
*President**

Rule 5 (1) of the Government Servants (Efficiency and Discipline) Rules, 1973 provides that in a case where a government servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of the authority, suspend him, provided that any continuation of such leave or suspension shall require approval of the authority after every 3 months.

2. It has been observed that the Secretaries of the Ministries/Divisions concerned do not submit summaries for the President for the continuation of the period of suspension of Government Servants where the President is the authority, after every three months well in time. At times they do not at all move the proposal for further continuation of the period of suspension after a government servant has been initially suspended for a period of three months.

3. As it is mandatory under the rules to obtain the approval of the authority to the continuation of the period of suspension after three months, it is imperative that in cases where the President is the authority the proposals for extension of suspension period should reach the Establishment Division in the form of "Summary for the President" addressed to COS to the President at least a fortnight before the expiry of initial/extended period of suspension.

4. It is, therefore, requested that action should be initiated in good time to avoid complications later on.

[Authority.- Estt. Division D.O.letter No.10/6/79-C.II(B), dated 30-10-1979].

* After the word "President" the words "or Prime Minister" stand added *vide* Estt. Division Notification No. S.R.O. 43(1)/86, dated 7-1-1986. The Chief of Staff (COS) would, in the present context, imply the Principal Secretary to the Prime Minister.

Sl. No. 20 Extension in Period of Suspension

It has been observed that, while making a request for extension in the suspension period of a civil servant under suspension on expiry of the current sanction after three months, the Ministries/Divisions do not mention the stage of disciplinary proceedings/inquiry *etc.* against the accused.

2. It has, therefore, been decided that, whenever such a request is made by the Ministries/Divisions, the present position of the disciplinary case including the stage of inquiry, if it is in progress, may invariably be stated in the proposals for extension in the period of suspension of the accused officer.

[Authority.- Estt. Division O.M. No. 2/26/86-D.I., dated 30-8-1987].

Sl. No. 21 Stoppage of Increment under Government Servants (Efficiency and Discipline Rules), 1973

Instances have come to the notice of the Establishment Division where the penalty of stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973, has been imposed on government servants, who have reached the maximum of the pay scale thus making the penalty ineffective. It is, therefore, necessary that the stage of the pay scale at which a government servant is drawing pay is kept in view by the competent authority before imposing the penalty of stoppage of increment under the above rules.

[Authority.- Estt. Division O.M.No.31/46/86-R-3, dated 7-12-1986].

Sl. No. 22 Imposition of Major Penalties under Rules 4 (1) (b) (i) of the Government Servants (Efficiency and Discipline) Rules, 1973

Reference rule 4 of the Government Servants (Efficiency & Discipline) Rules, 1973 which provides for minor and major penalties. The minor penalties include withholding of promotion or increments and stoppage (at an efficiency bar) in the time scale. These penalties have to be for a specific period. On the other hand, major penalties, *inter alia*, include reduction to a lower post or time scale or to a lower stage in a time scale. It is clear that, in the case of minor penalties i.e. of withholding of promotion or increments or stoppage in time scale the same have to be imposed for a specific period. In case of major penalties, however, the promotion earned, increment or stage in the time scale already in force is reversed. In view of this, there is no mention of period in respect of major penalties in contradistinction to minor penalties. Hence no period is required to be specified while imposing major penalties as laid down in rule 4 (1) (b) (i) of the rules.

[Authority.- Estt. Division O.M. No. 1/1/89-R.3, dated 5-8-1991].

**Sl. No. 23 Competency of the Punishing Authority to Re-try Cases
or to Revise Punishments Already Imposed**

The following questions have arisen:-

- (a) whether an original punishing authority can, on his own accord, re-try a case in which he has already passed orders on the grounds that some flaws in the statutory procedure have been detected by him after the issue of orders but before any appeal has been preferred to the appellate authority against these orders; and
- (b) whether a punishing authority can, merely on reconsideration, modify and revise the penalties already imposed by him in a case in which there has been no flaw in the statutory procedure.

2. The reply to both questions is in the negative. An original punishing authority cannot revise its own punishing orders whether merely on reconsideration or on discovery of some flaw in the statutory procedure after the original orders are passed but before any appeal has been preferred against these orders. In either case, if no appeal has been preferred, only the Governor General-in-Council* in exercise of his revisional powers can order a re-trial of the case or a modification of the original orders.

3. In this connection it may be added that the intention of the orders contained in para 2(b) of this office letter No. ESB, III-I/36, dated the 29th May, 1936, is that the appellate authority can order retrial of a case on the ground of flaw in procedure only on receipt of an appeal from the appellant. If no appeal has been preferred or if an appellate authority has already passed his order on an appeal the only authority competent to order retrial in a case on the grounds of flaw in procedure is the Governor General-in-Council.

[Late D.G.P.&T. New Dehli letter No. E.III- 18/41, dated the 30 January, 1941 to all Heads of Circles]

Note.- The clarification given by the late D.G.P.&T. in his above letter is valid in the present context.

[Authority.- Estt. Division U.O.Note No.1012/66-DI, dated 21-2-1967].

* Now it would mean the competent authority under the Government Servants (E&D) Rules, 1973.

Sl. No. 24 Competency of the Punishing Authority to Re-try Cases or to Revise Punishments Already Imposed – Clarification.

As per Establishment Division's instructions issued *vide* u.o. No. 1012/66-D-1 dated 21-02-1967, original punishing authority cannot revise its own punishing orders whether merely on reconsideration or on discovery of some flaw in the statutory procedure after the original orders are passed.

2. The instructions referred to above also hold good in cases whether punishing orders are passed under the Removal from Service (Special Powers) Ordinance, 2000 and it is reiterated that the competent authority, after awarding the penalty and notifying the same, cannot review/revise its own orders under the ordinance, *ibid*.

[Authority: Estt. Div's OM No. 8/13/2003-D-3, dated 10th February 2007]

Sl. No. 25 Powers of the Authority under Rule 6-A of the Efficiency and Discipline Rules.

Under the provisions of rule 6-A of the Government Servants (Efficiency and Discipline) Rules, 1973, the authority may call for the record of any case pending before or disposed of by the authorized officer and pass such order in relation thereto as it may deem fit.

2. To enable the 'Authority' to perform its function more effectively under the provision of said rule, it has been decided that in future, whenever the disciplinary proceedings are completed against a civil servant of the Federal Government in BPS 17 and above, copies of the record of the proceedings *viz.* charge sheet alongwith statement of allegations; show cause notice, if issued instead of charge sheet; report of the Inquiry Officer and the final orders, be endorsed to Establishment Division, Joint Secretary (Discipline).

3. The above decision may also be brought to the notice of all Attached Departments/Subordinate Offices' for strict compliance in future.

[Authority.- Estt. Division O. M. No. 2/83/80-C. II(B), dated 17-11-1980].

Sl. No. 26 Initiation of Proceedings against Officers Screened and Cleared in the Past.

The President has been pleased to direct that his prior approval must invariably be obtained before any proceedings are initiated against an officer on the same facts on which he was screened and cleared wholly or partially in the past.

[Authority.- Estt. Secretary D.O. No. 4/14/60-SR, dated 18-11-1960].

**Sl. No. 27 Disciplinary Procedure to be Followed in Cases Where
No Inquiry Officer/ Committee is Appointed**

Rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules, 1973 provides that if the authorized officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall:-

- (a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of action, and
- (b) give him a reasonable opportunity of showing cause against that action.

2. Both the provisions mentioned at (a) and (b) in the preceding paragraph are mandatory. On an appeal filed by a government servant against the order of his compulsory retirement, the Service Tribunal has recently set aside the order of his compulsory retirement on the grounds that neither the action to be taken was specifically mentioned in the Show Cause Notice nor was he given a reasonable opportunity of showing cause against the proposed action. It has been pointed out by the Services Tribunal that there are decisions of the superior courts on the point that whenever any discretion is given to an authority, it has to be exercised not arbitrarily but honestly, justly, and fairly in the spirit of rules, and on judicial grounds and for substantial reasons. For this purpose, the nature of allegations against the accused has to be considered. In a case where it is clear to the authorized officer that the accused can be given reasonable opportunity of showing cause against the action proposed to be taken e.g. where the allegations could be decided by reference to record in a summary manner, the procedure under sub-rule (iii) of rule 5(1) may be adopted. Otherwise, the ends of justice would be served by ordering an inquiry through an Inquiry Officer or Inquiry Committee.

3. In a Show Cause Notice, the proposed action is required to be specified, and no general mention is to be made by reference to all the minor or major penalties in the rules.

4. Further, serving of a Show Cause Notice and mere reply thereto in denial of allegations or mere questions and answers do not amount to affording the accused a reasonable opportunity of showing cause as required by clause (b) of rule 5 (1) (iii) of the Government Servants (Efficiency and Discipline) Rules, 1973. The requirement of reasonable opportunity of showing cause against proposed action will only be satisfied

if particulars of the charge or charges, substance of evidence in support of the charges and specific punishment which would be called for after the charge or charges are established are communicated to the civil servant who is given reasonable time and opportunity to show cause.

[*Authority*.- Estt. Division O.M. No. 6/8/79-D.I., dated 10-7-1979].

Sl. No. 28 Specification of Penalty In the Charge-Sheet/Show Cause Notice Under The Government Servants (Efficiency & Discipline) Rules, 1973

Under rule 5 of the Government Servants (Efficiency and Discipline) Rules 1973, in case a government servant is accused of subversion, corruption and misconduct, the authorized officer shall, *inter alia*, decide whether in the light of facts of the case or interest of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. If he so decides, the procedure indicated in rule 6 thereof shall apply. The charge-sheet accompanied by the statement of allegations, shall accordingly be framed by the authorized officer and got served on the accused. If, however, the authorized officer decides that it is not necessary to have an inquiry conducted he shall serve on him a show cause notice in terms of rule 5 (1) (iii) of the said rules, specifying therein the penalty proposed to be imposed upon the accused.

2. A reference to rule 6 of the Government Servants (Efficiency & Discipline) Rules, 1973 will show that in a charge sheet, the penalty or penalties which may be imposed if the charge or charges are established are not required to be specified. The proposed penalty or penalties are specified in the:

- (i) Show cause notice issued in terms of rule 5 (1) (iii) of the Government Servants (Efficiency & Discipline) Rules, 1973, or
- (ii) Show cause notice issued in terms of rule 5 (1) (iv) of the Government Servants (Efficiency and Discipline) Rules, 1973, after the authorized officer has considered the inquiry report and arrived at a provisional conclusion as the penalty to be imposed as required *vide* para 3 of the Establishment Division O.M. No. 4/20/82-R.I. dated 20th July, 1982 in pursuance of Supreme Court's judgement in the case of the Mir Muhammad V/s *NWFP (PLD 1981 SC-179).

* Now Khyber Pakhtunkhwa.

3. The above instructions may also be brought to the notice of attached departments/subordinate offices for compliance in future.

[Authority.- Estt. Division O.M. No. 2/1/82-D-2, dated 11-1-1982 as modified vide Estt. Division O.M. of even number dated 3-7-1985].

Sl. No. 29 Requirement to Issue a Fresh Show Cause Notice If the Penalty Imposed Under Government Servants (Efficiency and Discipline) Rules, 1973, or Proposed to be Imposed is Greater than that Specified in the Show Cause Notice, or is Proposed to Be Enhanced by the Appellate Authority

As a result of disciplinary action taken against a government servant, the appellate authority considered the penalty imposed by the authorized officer to be inadequate and enhanced the penalty. The government servant filed an appeal against enhancement of penalty before the Services Tribunal (Appeal No. 2(K) of 1980). The Services Tribunal, while accepting the appeal, observed that the penalty was enhanced without giving the appellant an opportunity of being heard which was against natural justice and further observed that "we are of the firm opinion that even if the rules are silent on the subject, any time an appellant's punishment is enhanced, he will be given a show cause and a hearing. This requirement of natural justice shall always be read into the rules." The Division concerned referred the observation of the Services Tribunal to the Ministry of Law who confirmed that, while it was open to the appellate authority to revise the sentence upward, it would be appropriate for the appellate authority to give a show cause notice to the appellant and hear him before passing the order. They advised that the order of the Tribunal should, therefore, be obeyed:

2. The observations of the Service Tribunal and the advice of the Justice Division mentioned in para 1 is brought to the notice of all Ministries/Divisions and Departments for guidance and compliance.

3. The cases in which a penalty is enhanced may be as follows:-

- (i) Where the authority decides to enhance the penalty proposed by the authorized officer and which is greater than the maximum penalty shown in the show cause notice issued by the authorized officer in terms of rule 5 (1) (iii) of the Government Servants (Efficiency & Discipline) Rules, 1973, or in the show

cause notice issued by the authorized officer in terms of rule 5(1) (iv), after considering the inquiry report, as the case may be; or

- (ii) Where the authority in exercise of its revisionary powers under rule 6-A of the rules, decides to enhance a penalty already imposed in a case already disposed of or which, in a pending case, is greater than the penalty shown in the show cause notice; or
- (iii) Where the appellate authority, in exercise of its appellate jurisdiction, decides to enhance the penalty already imposed on the appellant.

4. The Ministries, Divisions and Departments are advised to ensure that in all such cases as are mentioned above, before the penalty is enhanced a show cause notice is invariably issued and the accused/appellant is given an opportunity of being heard in person.

[Authority.- Estt. Division O.M. No. 4/42/83-D.2, dated 29-7-1985]

Sl. No. 30 Specification of Major Penalty in the Show Cause Notice Issued Under Government Servants (Efficiency and Discipline) Rules, 1973

Attention is invited to para 3 of Establishment Division O.M.No.2/1/82-D.2, dated 11-1-1982 as corrected vide para 1 of O.M. of even number dated 3rd July 1985, wherein advice was conveyed that while issuing a show cause notice to an accused government official under the Government Servants (Efficiency and Discipline) Rules, 1973, mention of imposition of the penalty of "dismissal from service" should, invariably, be made. Once an accused official has been served with a show cause notice for the highest penalty of "dismissal from service" under the said rules, there can be no legal objection to the imposition of a lesser penalty/penalties on him, if subsequently so warranted on finalisation of the disciplinary proceedings.

2. Attention is also invited to this Division O.M. No.4/42/83-D.2, dated 29.7.1985, wherein it was laid down that if a penalty is enhanced in the following cases, a show cause notice should invariably be issued, and the accused/appellant be provided an opportunity of being heard in person:

- (i) Where the 'authority' decides to enhance the penalty proposed by the 'authorised officer' and which is greater

than the maximum penalty shown in the show cause notice issued by the 'authorised officer' in terms of rule 5 (1) (iii) (b) of Government Servants (Efficiency and Discipline) Rules, 1973, or in the show cause notice issued by the authorised officer in terms of rule 5 (1) (iv), after considering the inquiry report, as the case may be; or

- (ii) Where the authority in exercise of its revisionary powers under rule 6-A of the rules, decides to enhance a penalty already imposed in a case already disposed of or which, in a pending case, is greater than the penalty shown in the show cause notice, or
- (iii) Where the appellate authority, in exercise of its appellate jurisdiction, decides to enhance the penalty already imposed on the appellant.

3. It has been observed that in some cases due regard was not paid to the above instructions. All Ministries and Divisions are requested to ensure that the above instructions are strictly observed in all cases to preclude legal/procedural objections.

[Authority.- Estt. Division O.M.No.16/8/98-R.2, dated 19-3-1998].

Sl. No. 31 Publication of Notices in the Newspapers

It has come to the notice of the government that the procedure of publication of notices in the press in the cases of unauthorized absence/abscondment from duty is being frequently resorted to without taking into consideration the provisions of rule 8(b) of the Government Servants (Efficiency and Discipline) Rules, 1973 which provides for the dispensation of adopting even formal procedure in such cases. This not only results in undue delay in finalization of these disciplinary cases but also undue wastage of government money on publication of such notices.

2. The matter has, therefore, been considered in the Establishment Division in consultation with Law Division. It is clarified that under the Government Servants (Efficiency and Discipline) Rules, 1973, there is no provision making it obligatory or mandatory for the authority/authorized officer to publish a notice in the newspaper in the cases of unauthorized absence/abscondment from duty. The requirement of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973, is that the accused may be informed of the action proposed to be taken in regard to him and the grounds of such action and that he may be given a reasonable opportunity of showing cause against the action. This

information can be conveyed to him by different means, *i.e.* by registered post at his last known address or by affixation of a notice at that address, *etc.* Same is the position under rule 6(2) in respect of service of a charge-sheet. According to rule 8 of the said rules nothing in rule 5 shall apply if the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that, for reasons to be recorded, in writing, by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause, for instance, if it is reported that the accused has left his place of abode without leaving an address or he has gone out of the country and his whereabouts are not known. If the authority mentioned in rule 8(b) is satisfied about the genuineness of the report, it may invoke the provision contained in the said rule. The publication of a notice in newspapers may not be resorted to.

3. The publication of notice in the newspapers, in such cases should, however, be resorted to in very rare cases where the competent authority is not in a position to record reasons for its satisfaction as to the practicability of affording the accused an opportunity of showing cause. There a lack of response to such a notice may induce that authority to be so satisfied.

4. The above instructions may please be brought to the notice of all concerned for strict compliance in future.

[Authority.- Estt. Division O.M.No.4/18/83-D-2, dated 15-2-1984].

Sl. No. 32 Publication of Charge Sheet or Show Cause Notice in Newspaper

A case has come to notice where long leave granted to a postal clerk was cancelled and he was asked to resume duty immediately. When he failed to do so, a notice was published in the newspaper directing him to resume duty within seven days otherwise *ex-parte* proceedings under the Government Servants (Efficiency and Discipline) Rules, 1973 could be taken against him which might result in his removal from service. He failed to resume duty. He was accordingly dismissed from service. His departmental appeal was rejected. Thereafter, he filed an appeal in the Services Tribunal (Appeal 2 (P) of 1984). The Services Tribunal accepted the appeal and set aside the order holding as follows:

"It is manifestly evident that the impugned order was passed without taking any proceeding under the Efficiency & Discipline Rules though in the notice published in the

newspaper it was categorically stated that in case of failure of the appellant to resume duties, *ex-parte* proceedings under the E& D Rules would be taken against him. In any case, the punishment of dismissal from service could be awarded only after taking proceedings under the E&D Rules which was not done and the impugned order was passed in an arbitrary and unlawful manner. The position being so clear, the impugned order cannot be sustained and we have no option but to set it aside."

2. The observations of the Services Tribunal are brought to the notice of all Ministries, Divisions and Departments who should ensure that due care is taken in observing the requirements of Government Servants (Efficiency and Discipline) Rules, 1973 in taking disciplinary action against civil servants. In this case, what was published was merely a notice or a warning that if the clerk did not resume duty, action under Government Servants (Efficiency and Discipline) Rules, 1973 would be taken. However, on his failure to resume duty as directed, order to dismissal was straightway passed without initiating disciplinary action on the ground of misconduct.

3. In this connection, a reference is also invited to the Establishment Division O.M. No. 4/18/83-D.2, dated 15th February, 1984, bringing out the requirement of rule 8, clause (b) and the circumstances in which that rule can be involved. According to rule 8(b), nothing in rule 5 (containing inquiry procedure) will apply to a case where the competent authority is satisfied that for reasons to be recorded, in writing, it is not reasonably practicable to give the accused an opportunity or showing cause. If all efforts to communicate with the accused through normal channels (like sending him the notice or charge sheet by registered post to his known addresses) fail, that may induce the authority to be so satisfied. For this purpose, publication of charge sheet or show cause notice, as the case may be, in the national press is certainly not required. However, in rare cases, the competent authority is unable to satisfy itself that it is not reasonably practicable to communicate with the accused, the competent authority may publish the notice *i.e.* show cause notice in terms of rule 5 (1) (iii) of the Government Servants (E&D) Rules, 1973 or rule 5 (I) (iv) or charge sheet in terms of rule 6 (as the case may be) in the newspapers and any lack of response to it may satisfy the competent authority that it is not responsibly practicable to give the accused an opportunity of showing cause.

[Authority.- Estt. Division O.M.No.4/18/83-D.2, dated 9-7-1985].

Sl. No. 33 Disciplinary Action - Need to Observe Strictly the Rules and Procedure Relating to Check List

It has been observed that in dealing with disciplinary cases, care is not generally taken to observe the procedure laid down in the Government Servants (Efficiency and Discipline) Rules, 1973. Such omissions vitiate the case and if the government servant concerned goes in appeal to the Services Tribunal, the appeal is sometime accepted on this account. It is, therefore, necessary that extreme care is taken to ensure that the cases are dealt with according to the prescribed rules and procedure.

2. The Establishment Division has been issuing instructions from time to time drawing attention of all concerned to specific requirements of rules and procedure or to omissions generally noted in disciplinary action. In this connection a reference is invited to the Establishment Division O.M. No.7/2/79-D-I, dated 18th November, 1979 with which a check list for guidance of authority, authorized officer and inquiry officer was circulated to ensure that all procedural requirements are met. This was followed by a circular d.o. letter No. D-553/80-JS (Rev & D) dated 22nd October, 1980 from Establishment Secretary to all Secretaries, drawing attention to some irregularities noticed in the disciplinary cases submitted to the Establishment Division. In Establishment Division O.M. No. 4/20/82-R.I, dated 20th July, 1982, it was further laid down that, in future, after the authorized officer has considered the inquiry report and arrived at a provisional conclusion as to the penalty to be imposed on the accused, the accused should be supplied with a copy of the inquiry report and asked to show cause, within a specified time, as to why the particular penalty should not be imposed on him and any representation submitted by the accused in his behalf should be taken into consideration before final orders are passed.

3. It is requested that the instructions issued from time to time and particularly the instructions in the Office Memoranda quoted in para 2 may strictly be followed in future by the Ministries/Divisions and by departments and offices under their administrative control. For facility of reference, the instructions contained in the three office memoranda quoted in para 2 have been consolidated in a fresh check list, which is attached to this letter as **Annex**. It should always be consulted while processing disciplinary cases.

[Authority.- Estt. Secretary's d.o. letter No.3/1/85-D.2, dated 26-3-1985].

(ANNEX)

**CHECK-LIST OF REQUIREMENTS TO BE NOTED WHILE TAKING
ACTION UNDER GOVERNMENT SERVANTS (EFFICIENCY &
DISCIPLINE) RULES, 1973**

➤ Authority. - To ensure that:-

The President has been pleased to designate the officer or authority to exercise his powers as Authority under rule 2(2).

➤ Authorized Officer. - To ensure that:-

1. The officer exercising the powers of Authorized Officer has been authorized by the Authority to act as such in terms of rule 2(3).
2. The Authorized Officer while exercising his discretionary powers of suspension under rule 5(1) (i) has obtained prior approval of the Authority in writing before issuing orders suspending the accused officer. The summaries for authority seeking its approval for suspension or extension of suspension period are signed by the authorized officer and not by any other officer. Further, an officer can be suspended only if he is accused of subversion, corruption or misconduct rule 5 (1) (i).
3. Formal approval of the Authority is available for continuation of the suspension period after every three months rule 5 (1) (i).
4. Formal approval of the authority is available for extending the period of forced leave after every three months rule 5 (1) (i).
5. No officer other than the Authorized Officer has decided that in the light of the facts of the case or in the interest of justice an inquiry should be conducted through an Inquiry office or Inquiry Committee, rule 5(1)(ii).
6. Considering the nature of charges and other facts, the decision not to hold an inquiry has been taken judiciously and not arbitrarily. Before taking such a decision, the authorised officer has taken into consideration the nature of charges and other facts and has satisfied himself that the allegations against the accused could be decided without holding an enquiry.[Rule 5(1)(iii)]. (Though it is not a

requirement of the rule that the reasons for not holding an inquiry be recorded, yet the check-point is necessary to ensure that the decision is in the interest of justice as required by rule and that there is no violation of the law of natural justice).

7. The procedure prescribed in rule 6 is followed in case the Authorized Officer in exercise of his discretionary power under rule 5 (1) (ii) has decided to hold an inquiry through an Inquiry Officer or Inquiry Committee.
8. Formal order regarding appointment of Inquiry Officer or Inquiry Committee, as the case may be, has been issued by the Authorized Officer and not by any other officer. [Rule 6 read with rule 5 (1) (ii)].
9. A formal charge-sheet together with a statement of allegations has been framed and communicated to the accused officer by the Authorized Officer under his signature. (The statement of allegations should also be authenticated by the authorized officer). [Rule 6 (1)].
10. The charge sheet requires the accused:
 - (i) to put in written defence within a reasonable time which is not less than 7 days or more than 14 days from the day the charge has been communicated;
 - (ii) to state whether he desires to be heard in person, [Rule 6 (2)].
11. The procedure laid down in Rule 5 (1) (iii) is followed in case the Authorized Officer in exercise of his discretion has decided to dispense with holding an inquiry through an Inquiry Officer or Inquiry Committee.
12. In the show cause notice issued under Rule 5 (1) (iii), the proposed action and the grounds of the action including particular or particulars of charges and substance of evidence in support of the charges has been specified; the grounds for penalty in terms of rule 3 have been specifically mentioned; the penalty or penalties which would be called for if the charges are established have been specified and

no general mention has been made by reference to all minor or major penalties. The description of penalties should conform to the description given in the rules. The show cause notice must be signed by the authorized officer.

13. On receipt of the report of the Inquiry Officer or Inquiry Committee or on receipt of explanation of the accused officer under rule 5 (1) (iii), the Authorized Officer has determined whether the charge or charges against the accused officer has been proved or not [rule 5 (1) (iv)].
14. After the authorised officer has considered the inquiry report and arrived at a provisional conclusion as to the penalty to be imposed, the accused shall be supplied with a copy of the inquiry report and asked to show cause, within a specified time, which should not be less than 7 days and more than 14 days from the date of receipt of inquiry report, against the particular penalty to be imposed and any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed.
15. In case the Authorized Officer has proposed imposition of a major penalty on the accused officer, he has referred the case to the Authority with his recommendation and with all the documents mentioned in the rule [rule 5 (1) (iv)].
16. When the accused has desired to be heard in person, the authorized officer has duly heard him in person before deciding to impose a minor penalty or make recommendations to the authority for a major penalty. [rule 6 (2)].
17. In case the authorized officer in respect of civil servants holding posts in basic pay scales 17 and above decides to forward a disciplinary case to the President*, where he is the authority, he should invariably submit his proposal to the Establishment Division in the form of a "summary for the President*" marked to the "**COS to the President through Establishment Secretary" alongwith complete CR dossier. The summary should also contain the following information:-

* Prime Minister.

** Principal Secretary to Prime Minister.

- (i) date of the birth of the accused;
- (ii) date of his entry into service; and
- (iii) the length of qualifying service for pension as on the date on which summary is forwarded.

➤ Inquiry Officer/Committee.- To ensure that:-

1. The procedure laid down in rule 6(3) to (6) is strictly adhered to during the inquiry proceedings.
2. The inquiry proceedings being of judicial nature in terms of rule 7, the Inquiry Officer has recorded the statement of witnesses on oath [Rule 7 (a)].
3. The accused officer is allowed to cross-examine the witnesses produced against him during the proceedings. [Rule 6 (3)].
4. The accused officer is afforded a reasonable opportunity to produce his defence. [Rule 6 (3)].
5. The case is heard from day to day and no adjournment is given except for reasons to be recorded in writing which should be reported to the authorized officer. No adjournment should exceed a week. [Rule 6 (4)].
6. The findings are recorded after due analysis and appreciation of evidence on record.

Sl. No. 34 Approval for Placing a Government Servant under Suspension

A detailed check-list stands circulated to all the Ministries/Divisions vide Establishment Secretary's D.O. letter No. 3/1/85-D.2, dated 26-3-1985 which is required to be strictly followed while taking action under the Government Servants (Efficiency and Discipline) Rules, 1973. This check-list has been carefully prepared and provides detailed guidance to the authorities concerned regarding the various stages/aspects of the E&D proceedings, including preparation of charge-sheet, statement of allegations, etc. to avoid what may otherwise lead to such proceedings

being declared totally or partially irregular at a later stage by the competent authority/forum.

2. Despite these detailed instructions, however, instances are not lacking where due to serious lapses on the part of the authorities concerned, the accused civil servants have escaped punishment or where such proceedings had to be re-initiated. All this is avoidable if the detailed instructions on the subject are strictly followed.

3. One of the major failures which has been noted is in respect of suspension of the defaulting civil servants. Not infrequently, references seeking approval of the competent authority for placing a civil servant under suspension or for extension in the period of his suspension are forwarded under the signatures of some one other than the "Authorised Officer". Since the Efficiency & Discipline proceedings have a legal connotation and all orders, including suspension, are liable to judicial scrutiny upto the Supreme Court's level, it is vital that all such proposals are signed by the competent authority himself as these powers cannot be delegated to anyone else.

4. The instructions on the subject may be strictly adhered to which would not only safeguard the State's interests but would also save the Ministries/Divisions concerned from avoidable loss of time and energy.

[Authority:- Estt. Division O.M.No.2/52/94-D-I, dated 26-12-1994].

Sl. No. 35 Irregularities in Dealing with Disciplinary Cases

The following irregularities have come to the notice of Establishment Division, in dealing with the disciplinary cases submitted by the Ministries and Divisions in respect of the Civil Servants of Basic Pay Scale 17 and above.

- (i) Under rule 5 (1) of the Government Servants (Efficiency and Discipline) Rules, 1973, it is the "authorized officer" [designated as such under sub-rule (3) of rule of the said rules] who can obtain the approval of "authority" [designated as such under sub-rule (2) of rule 2 of the said rules] to the suspension of a civil servant. The summaries proposing the suspension of the civil servants in grades* 17-20 are some

* BPS

time received under the signatures of an officer other than 'authorized officer'.

- (ii) Rule 5 (1) (ii) makes it incumbent upon the "authorized officer" to decide that in the light of the facts of the case or in the interest of justice an inquiry should be conducted through an Inquiry Officer/Inquiry Committee or a "Show Cause Notice" should be served on the accused official in terms of sub-rule 5 (1) (iii), it has been noticed that in some cases either this decision has been taken by a person other than 'authorized officer' or the "authorized officer" has not shown to have applied his independent judgement.
- (iii) In case the Authorized Officer has decided to serve a "Show Cause Notice" to the accused official, under rule 5(iii), sometimes it is not served under his signatures. Similarly, in a large number of cases it has been noticed that the action proposed to be taken against the accused and grounds thereof are not incorporated in the show cause notice. Instead of that a general reference is invited to one of the major penalties, which is not correct.
- (iv) In case the "Authorized Officer" decides to hold an inquiry through an Inquiry Officer/Inquiry Committee, formal orders regarding the appointment of Inquiry Officer/Inquiry Committee have to be issued by the "Authorized Officer" and not by any other officer.
- (v) In terms of rule 6, it is the "Authorized Officer" who has to frame a charge-sheet together with a statement of allegations and then communicate these to the accused official. It has been observed in some of the cases that (a) charge sheet has been signed by an officer other than the "authorized officer" (b) the charge-sheet is not accompanied by the statement of allegations, elaborating the charge; (c) the statement of allegations has not been authenticated by the "authorized officer".
- (vi) In terms of rule 6 (4), the Inquiry Officer or the Inquiry Committee, as the case may be, shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing. However, every adjournment with reasons shall be reported forthwith to the 'authorized officer'. No adjournment shall be for more than a

week. In spite of clear provisions of the rules, it has been generally noticed that (a) the inquiry proceedings are not conducted by the Inquiry Officers from day to day; (b) the reasons of adjournments, if any, are not regularly reported to the "authorized officer" (c) the period of adjournment goes beyond a week. These delays must be avoided, particularly in cases where the accused officer is under suspension.

- (vii) Under rule 6 (2), the authorized officer has to afford the opportunity of personal hearing to the accused officer, if such opportunity is claimed, before deciding to impose a minor penalty or recommending to the authority the imposition of major penalty, in terms of rule 5 (1) (iv). It has been often observed that this opportunity of personal hearing is confused with the hearing given by the inquiry proceedings. This is not correct.
- (viii) Under rule 5 (1) (iv), on receipt of the report of the Inquiry Officer or an Inquiry Committee on receipt of the explanation of the accused to the show cause notice, if any, the authorized officer has to determine whether the charge/charges have been proved. If it is proposed to impose a minor penalty, he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority alongwith the charge-sheet, statement of allegations, the explanation of the accused, the findings of the Inquiry Officer or Inquiry Committee, if appointed, and his own recommendations regarding the penalty to be imposed. It has been generally found that (a) the Inquiry Officer at times besides giving his findings on the charges also makes his recommendation regarding the imposition of a major or minor penalty, (b) the authorized officer does not make use of his independent judgement, (c) the recommendations of the authorized officer to the authority are not accompanied by all the documents mentioned above.

2. The irregularities detailed above are grave in nature and a failure to fully comply with the requirements of the Government Servants (Efficiency and Discipline) Rules, 1973 impairs and at times vitiates the disciplinary proceedings and the order imposing a penalty on an accused is frequently set-aside by the appellate authority or the Services Tribunal. This not only results in loss of prestige for the government but also in the

loss of unnecessary expenditure which the government has to incur in defending the appeals of the aggrieved government servants in the courts of law.

3. It may kindly be ensured that provisions of the Government Servants (Efficiency and Discipline) Rules, 1973 are fully complied with in future by the officers responsible for discharging their duties under the said rules before and during the currency of the disciplinary proceedings against the civil servants as 'Authority', 'Authorized Officer' or 'Inquiry Officer'.

[Authority.- Estt. Div.'s D.O. letter No. 553/80-JS(Rev. & D), dated 22-10-1980].

Sl. No. 36 Supply of Copies of Inquiry Reports to the Accused Officials

A reference is invited to rule 5 and 6 of the Government Servants (Efficiency and Discipline) Rules, 1973. The Supreme Court of Pakistan in their Judgment in Mir Muhammad Vs. NWFP (All Pakistan Legal Decisions. 1981 SC. 179) observed as follows in respect of corresponding rules 5 and 6 in the *NWFP Government Servants (Efficiency and Discipline) Rules, 1973.

"It seems to us, therefore, that on a proper construction of rules 5 and 6 read together it is a statutory requirement that if a formal inquiry is held, then the authorized officer should, after he has tentatively decided upon the action he proposes to recommend to the Authority, give an opportunity to the accused officer to offer his explanation against the proposed action in the light of the findings of the inquiry officer or inquiry committee, before sending his recommendations to the Authority. This would, of course, necessitate that a copy of the inquiry report be furnished to the accused officer at this stage, and he should be apprised of the action proposed against him."

2. In view of the Supreme Court Judgement, it is now necessary that in a case where a formal inquiry is held, a copy of the inquiry report is furnished to the accused official to enable him to offer his explanation with regard to adverse finding, if any, recorded against him by that Inquiry Officer or the Inquiry Committee, as the case may be.

* Now Khyber Phkhtunkhawa.

3. It has been decided that after the authorized officer has considered the report and arrived at a provisional conclusion as to the penalty to be imposed, the accused shall be supplied with a copy of the inquiry report and asked to show cause, within a specified time, which shall not ordinarily exceed *[fourteen days], against the particular penalty to be imposed and any representation submitted by the accused in this behalf shall be taken into consideration before final orders are passed.

4. The procedure described in para 3 may also to be followed in those disciplinary cases which are in progress and have not been finally closed. Even in cases where the matter has been pending before the Services Tribunal or the Supreme Court, the proceeding may be started *de novo* in consultation with the Law Division, from the stage from which the error could be corrected in the light of the aforesaid Judgement. Cases finally closed need not be reopened.

[Authority.- Estt. Division O.M. No. 4/20/82-RI, dated 20-7-1982].

Sl. No. 37 Grant of Personal Hearing to the Accused Official

According to instructions contained in the Establishment Division circular O.M.No.4/20/82-R.I, dated 20th July, 1982, in a case where a formal inquiry is held, the authorized officer, on receipt of the inquiry report, shall arrive at a provisional conclusion as to the penalty to be imposed and shall supply a copy of the inquiry report to the accused and ask him to show cause within a specified time, against the penalty to be imposed. A question has arisen at what stage the accused will be given personal hearing by the authorized officer whether it will be given after the receipt of the inquiry report and before the accused is supplied with the inquiry report and, asked to show cause against the particular penalty to be imposed or it will be given after this action is completed and the reply of the accused to the Show Cause has been received.

2. The matter has been considered in the Establishment Division in consultation with the Law Division and the view held is that the right stage for giving personal hearing to the accused by the authorized officer, if the accused had asked for such opportunity, comes after the accused has submitted his reply to the show cause notice and before the authorized officer finally makes up his mind as to the penalty to be

* The words "one month" have been substituted by the words "fourteen days" *vide* Estt. Division O.M. No. 3/1/85-D-2 dated 3-7-1985.

imposed, and gives orders to that effect or submits the case to the authority, as the case may be.

[Authority.- Estt. Division O.M. No. 4/24/82-RI, dated 8-11-1982].

**SI. No. 38 Disciplinary Proceedings against Government Servants
Belonging to All-Pakistan Unified Grades and Those
Holding the Posts of Section Officer**

Instances have come to the notice of the Establishment Division, where Provincial Governments have taken disciplinary action against officers of the All-Pakistan Unified Grades without consulting this Division. Government servants belonging to the All-Pakistan Unified Grade are under the administrative control of the Establishment Division. It follows that appointments, promotions and matters pertaining to disciplinary cases of such government servants is the responsibility of the Establishment Division. It is, therefore, reiterated for the information of all concerned that disciplinary cases against government servants belonging to the All-Pakistan Unified Grades and also those holding the posts of Section Officers will, henceforth, be initiated and processed in the Establishment Division on receipt of reports and recommendations of the Ministry or Division or Government to which they are attached at the time of commission of the alleged offence.

2. It is further decided that the cases which have already been initiated but not yet finalized may be sent to the Establishment Division for taking further necessary action.

[Authority.- Estt. Division O.M. No. 9/9/73-CII, dated 19-3-1974].

SI. No. 39 Disciplinary Action against APUG/OMG Officers

It has been observed that some time an officer of APUG/OMG, posted in or under a Ministry/Division against whom some disciplinary action is contemplated by that Ministry or Division, is reverted to the Establishment Division without prior consultation. Thereafter the details of charges against such an officer are sent to the Establishment Division for initiation disciplinary action under the Government Servants (Efficiency and Discipline) Rules, 1973.

2. This practice creates many administrative complications. The relevant documents and other evidence are not available in the Establishment Division. The Ministry/Division where the documentary/oral

evidence is available is always in a better position to draw up disciplinary proceedings and where necessary conduct an inquiry. It was in this context that the Secretary and other officers of a Ministry or Division, in which an officer is for the time being serving, were declared as authorized officers *vide* Establishment Division notification No. S.R.O. 615(1)/79, dated 5-7-1979. Similarly, in respect of federal civil servants in pay scale 17 and above lent to the provinces, the President had delegated powers to the Governors and Chief Secretaries of the provinces to act as authorities and authorized officers respectively to the extent of placing the lent officers under suspension, sending them on forced leave or initiating disciplinary proceedings without obtaining prior approval of the President *vide* Establishment Division Notification No. 4/23/83-D. 2, dated 3rd May 1984 amending the second proviso to rule 9(1) of the Government Servants (Efficiency and Discipline) Rules, 1973. The reversion to the Establishment Division of officers against whom disciplinary action is contemplated defeats the object outlined in that notification. It also results in considerable delay in finalization of the disciplinary case.

3. In view of the above position, it is requested that, in future, a civil servant posted in a province, Ministry, Division or Department against whom some disciplinary case is contemplated or in progress should not be transferred outside the province, Ministry, Division or Department concerned until the disciplinary case is initiated and finalized against him.

[Authority.-Estt. Secretary's d.o. letter No.3/17/84-D.2, dated 26-11-1984].

[Note: The addition to the E&D Rules referred to in para 2 was omitted *vide* Estt. Division Notification No. SRO 246(I)/8 dated 16-3-1989. Ref. footnote * at page 557, Estacode Edition 2000. Rule 9 has been subs. *vide* Estt. Div. Notification SRO No. 74(1)/2001, dated 2.2.2001. Ref. footnote w.r.t. rule 9. The position, in nutshell, is that, till 3rd May, 1984, the powers in respect of the federal civil servants in BPS 17 and above lent to the provinces were delegated to Governors and Chief Secretaries to act as authorities and authorized officers, respectively to the extent of placing the lent officers under suspension, sending them on forced leave or initiating disciplinary proceedings without prior approval of the President *vide* Estt. Div. Notification No. SRO (246)/(I)/89, dated 16.3.1989, page 557, Estacode Edition 2000). Prior approval of the Prime Minister by the borrowing authority was to be obtained before taking any action against the aforementioned officers. This has been substituted *vide* Estt. Div. Notification SRO No. 74(1)/2001 dated 2.2.2001 (See rule 9). Paras 2&3 in this OM dated 26.11.1984, therefore, stand and may be read in light of rule 9, as substituted, meaning thereby that in cases of lent civil servants, whether on deputation or posted outside their cadre or serving under the

Provincial Governments, the borrowing authority is to forward to the lending authority a complete report on the basis of which disciplinary proceedings are proposed to be taken and place such civil servants under suspension or send them on forced leave with the prior approval of the lending authority. The lending authority, on the basis of the report received from the borrowing authority, shall take action under these rules].

Sl. No. 40 Government Servants to Be Placed under Suspension when Really Necessary

Cases have come to the notice of the Establishment Division in which government servants have been kept under suspension unduly long, the period in some cases extending over six months thereby subjecting them to unnecessary mental and other hardships.

2. The matter was considered at the Secretaries' meeting, held on the 7th July, 1949. It has been decided, in the first place, that no government servant should be placed under "suspension" except when this is really necessary, and that the following factors should guide an officer in deciding whether or not to issue orders of suspension:

- (a) There must be a strong '*prima-facie*' case against the delinquent;
- (b) If the offence is of such a serious nature that dismissal will be the probable punishment, or such that it is inadvisable that the offender should be allowed to continue to perform the duties of his office pending decision on the case, suspension is justifiable;
- (c) Unless there is some very strong reason why the offender should not be allowed to continue to work until the case has been decided, suspension should not be resorted to;
- (d) No one should be suspended for petty breaches of discipline and for minor departmental offences;
- (e) No one should be suspended unless:
 - (i) he wilfully and obstinately refuses to carry out an order;
 - (ii) during the course of an enquiry his retention in his

appointment would hamper or frustrate such enquiry;

- (iii) he is in police custody;
- (iv) he is charged with an offence of a nature which, if proved against him, would ordinarily result in his dismissal.

Note.- Where documentary and oral evidence has already been collected and the risk of an official tampering with evidence (documentary or oral) no longer exists, the order of suspension should be cancelled. Where, however, there is still such a risk, he should be transferred. In cases where the police have intervened and the official is under arrest, the order of suspension must remain in force until the official is released on bail or until sentence has been pronounced.

[Authority.- Estt. Division O.M. No. F. 32/48-Estt. (SE), dated 21-7-1949].

Sl. No. 41 Leaving Station by Government Servants under Suspension

It has been observed that, on being placed under "suspension", an officer is generally prohibited from leaving the station. This is desirable where it is felt that, unless he is confined to a particular station, he might tamper with the evidence likely to be produced against him, but such prohibition should not be enforced if there is no cause for such apprehension. He should simply be required to inform the authority concerned of his movement.

[Authority.- Para 3 Estt. Division O.M. No. F. 32/48-Estt.(SE), dated 21-7-1949].

Sl. No. 42 Bar against Use of Government Stationery and Service Postage Stamps by Accused Government Servants in Disciplinary Proceedings

The question whether an accused government servant is entitled to use government stationery and service postage stamps in replying to the charges framed against him and in making other correspondence in connection with his defence has recently been examined and it is decided that an accused government servant is not entitled to use government stationery and service postage stamps in replying to the charges or making other correspondence in connection with his defence. Cost of stationery and postage stamps required by him in connection with his defence has, in

all cases, to be borne by the accused government servant himself.

[Authority.- Estt. Division O.M. No. 2/29/67-D.I., dated 8-1-1968].

Sl. No. 43 Payments and Amenities Admissible to Government Servants under Suspension

F.R.53 (b): In the case of a government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension.

[Authority.- Finance Division Notification No.F.1(6)R.4/93(1), dated 21-9-1994]

Sl. No. 44 Filling Up of Suspension Vacancies

The question, whether a vacancy caused by suspension of a government servant can be filled-up like other ordinary vacancies, has been recently examined in consultation with the Ministry of Finance and the Law Division. It has been decided that though a vacancy caused by suspension of an officer cannot be filled-up substantively, it can be filled up on an officiating basis, and that no supernumerary post need be created in such case.

2. This supersedes Establishment Division's O.M.No.2/14/67-C.III, dated the 19th September, 1968.

[Authority.- Estt. Division O.M. No. 6/2/71-D.I., dated 20-9-1971].

Sl. No. 45 Termination of Services of Temporary Government Servants under Suspension

Attention is invited to Establishment Division's O.M. Nos. 21/11/61-D.I, dated 22 December, 1962 (**Annex-I**) and 18th April, 1963 (**Annex-II**) on the subject of "Speedy Disposal of Disciplinary Cases-Policy Regarding Government Servants undergoing Criminal Prosecution before Departmental Action". It is stated that the advice of the Justice Division was sought whether it was possible to terminate the services of an employee, who was arrested on a criminal charge of murder and had been undergoing trial for a long time, without any notice and without assigning any reasons, in accordance with the terms and conditions of his service as contained in his letter of appointment. The position as per advice of the

Justice Division*, is as follows:-

2. A civil servant is not necessarily in temporary employment merely because of a statement in the order of appointment that his appointment will be purely temporary and liable to termination at any time without any notice or reasons being assigned. No civil servant is a temporary employee as long as the employment is for an indefinite period or against a post which continues to exist for an indefinite period. It is extremely difficult to attribute to the legislature an intention to clothe the authorities concerned with arbitrary power of terminating the service of a civil servant in their discretion without assigning any reason. The courts have always been reluctant to interpret these provisions in a manner as would justify the externment of an employee without any justification.

3. Further after the enactment of Civil Servants Act, 1973, the services of a civil servant can either be terminated under section 11 of the Act or under Government Servants (Efficiency & Discipline) Rules, 1973. It is not possible to spell out any power to terminate the services of an employee without notice and without assigning any reason from the provisions of sub section (3) of section 11 of Civil Servants Act, 1973, especially in the presence of the provisions of sub-section (1) thereof regarding termination of service during the initial or extended period of probation. If an employee has passed through the period of probation to the satisfaction of the competent authority, he is no longer a temporary employee with the meanings of sub section (3) if his employment is for an indefinite period or against a post which continues to exist for an indefinite period.

4. In the light of the above advice of the Justice Division, services of an employee can no more be terminated without notice and with assigning reason [on the basis of the contents of Establishment Division's O.M. dated 22nd December 1962 (**Annex I**) and 18th April 1963 (**Annex II**) referred].

[Authority.- Estt. Division O.M.No.31/64/86-R3 dated 20-4-1987].

(ANNEX I)

[Copy of Establishment Division O.M. No.12/11/61-D.I, dated 22nd December, 1962].

Instances have come to the notice of the government that there are still a number of cases pending in courts against officials for unusually long periods without departmental proceedings having been ever resorted to. It

* Law & Justice Division.

has also been found that, in some cases, the accused officials have, while continuing under suspension, been absconding for long and sometimes for years, presumably with intent to frustrate or delay the court proceedings. With a view to meeting such situations, it has been decided that, whenever such an instance comes to the notice of the government, the accused official, whether permanent or temporary, should be asked by his last known address to report to his official superior/court. If he does not comply with the order, government should take up the formalities of his dismissal from service on charge of misconduct under the Government Servants (Efficiency and Discipline) Rules. *[If he turns up and is a temporary hand, his services should be terminated after serving him with the requisite notice or paying him salary in lieu thereof, without assigning any reasons for the action].

2. There may still be cases of temporary government servants undergoing long-drawn court proceedings even if they have not absconded. If in any individual case of this nature, the appointing authority considers that irrespective of the outcome of the court proceedings, the accused official should not be allowed to continue any longer on the pay roll of the government, such authority may recall the official to duty and terminate his services after serving him with the requisite notice or paying his salary in lieu thereof without assigning any reasons for the action. *[The course of action discussed in this paragraph should be resorted to unless, of course, there is any direction of the court to the contrary in any particular case].

3. It is requested that all Ministries/Divisions, etc., may kindly check up the position of their employees involved in court proceedings and deal with the individual cases in the light of the suggestions contained in preceding paragraphs.

(ANNEX II)

Copy of Establishment Division O.M. No. 12/11/61-D-I date the 18th April, 1963].

Reference.- Establishment Division O.M. No. 12/11/61-D.I, dated the 22nd December, 1962 **(Annex I)**

A question has arisen as to whether it was necessary to recall a suspended temporary government servant to duty before serving him with

* Note: This applies to temporary employments made on or after 08-06-1962.

the requisite notice of discharge on the ground that his services were no longer required. The point has been further examined in Establishment Division in consultation with Law Division and it has been held that a suspended temporary government servant can be served with service termination notice in accordance with the terms of the appointment during the period of suspension and discharged after the notice period without requiring him to resume duty.

2. Utmost precaution should, however, be taken to see that no reason is assigned for the termination except saying that his services are no longer required by the government.

Sl. No. 46 Bar against Mentioning of Unfinalised Departmental Proceedings in Confidential Reports

It has been noticed that in some annual confidential reports* of officers received from various Ministries, a reference is made to departmental proceedings which are still in progress against the officers concerned.

2. The Establishment Division feel that until and unless the result of such proceedings has been known and final orders, awarding punishment, if any, have been passed by the competent authority, it would not be correct to make any such reference as may have the effect of creating doubts about the conduct and character of the officers concerned. It can hardly be controverted that such a reference, although factually correct, if inadvertently made, cannot fail to damage the officer's record even if in the long run he is completely exonerated.

3. In the circumstances it is requested that, in the case of an officer against whom departmental proceedings are in progress, no mention, whatsoever, should be made about it in his annual confidential reports*. Only when such proceedings have been finalized, and the punishment, if any, has been awarded, should a mention about it be made in his confidential report. In such a case, a complete copy of the final order may be placed, as is usually done, on his character roll.

[Authority.- Estt. Secretary's D.O. letter No. 9(1)/58-S.E.III, dated 8-5-1958].

* Now Annual Restricted Reports.

**Sl. No. 47 Promotion of an Officer to a Higher Post during
Pendency of Disciplinary Proceedings**

References are being received in the Establishment Division enquiring whether there is any bar to an officer being considered for promotion to a higher post during the pendency of departmental proceedings against him. A similar question was examined in the past on a reference from the Home Affairs Division* and it was decided that there is no bar to an officer being considered for promotion to a higher post during the pendency of investigation regarding alleged corruption etc. and all concerned were advised accordingly under this Division O.M. No. 2/10/62-DI, dated 13th February, 1962 (**Annex**). This question has been further examined and it has been decided that the instructions contained in the above O.M. should apply, *mutatis mutandis*, to all types of disciplinary cases. In the cases of departmental proceedings, a copy each of the charge-sheet and the statement of allegations should be put before the Central Selection Board or the Departmental Promotion Committee, as the case may be.

[*Authority.-Estt. Division O.M.No.2/20/67-DI, dated 13-11-1967.*]

(ANNEX)

[Copy of Establishment Division O.M. No. 2/10/62-D I., dated the 13th February, 1962].

Cases of corruption against government servants are normally investigated by the Special Police Establishment** and are registered after preliminary inquiries only when a '*prima facie*' case appears to have been made out. A copy of the First Information Report is sent to the Ministry or Department in which the government servant concerned is serving, by way of intimation of such registration. A question has arisen whether a government servant against whom a case of corruption has been registered by the police and is under investigation should be promoted to a higher rank during the pendency of such investigation, if he is otherwise considered suitable and his turn or chance for promotion has come.

2. After a careful consideration of the matter, it has been decided with the concurrence of the Ministry of ***Home Affairs that in cases where a government servant, against whom a case is under investigation by the Special Police Establishment*, is proposed to be promoted, a copy of the F.I.R. should invariably be put up to the Selection

* Interior Division.

** Special Police Establishment; now FIA.

*** Ministry of Interior.

Board or the Departmental Promotion Committee, as the case may be. It will then be for the Board or the Committee to take cognizance of the report and ask for a progress report, postpone consideration of the case or ignore it.

SI. No. 48 Apprising DPC/CSB of Disciplinary Proceedings

A reference is invited to the Establishment Division's O.M. No. 9/1/58-SE III, dated the 8th May, 1958, according to which no mention should be made in the confidential report of a government servant, of the departmental proceedings which may be in progress against him, unless such proceedings have been finalized, and the punishment, if any, has been awarded. There is no bar to a government servant being considered for promotion during the pendency of departmental proceedings against him. However, in such cases, a copy of each of the charge sheet and the statement of allegations should be placed before the Central Selection Board or the Departmental Promotion Committee as the case may be, *vide* Establishment Division's O.M. No. 2/20/67-D.I. dated the 13th November, 1967.

2. A case has recently been brought to the notice of the Establishment Division where copies of the charge sheet and the statement of allegations were not put up to the Departmental Promotion Committee and a government servant, against whom departmental proceedings were pending, was promoted, although as a result of the disciplinary proceedings, he was awarded a minor punishment. Thus, the government instructions referred to in the last sentence of para 1 above were not observed.

3. It is the responsibility of the departmental representatives who attend the meetings of the Departmental Promotion Committee/Central Selection Board to apprise the Committee/Board whether or not any departmental proceedings are pending against the government servants whose cases are being considered by the Committee/Board. A serious view should be taken if the departmental representatives do not give this information to the Committee/ Board and it later comes to notice that a government servant was promoted notwithstanding the fact that disciplinary proceedings were pending against him. The Ministries/Divisions are requested to strongly impress upon the officers who serve as members of Departmental Promotion Committees or who attend meetings of the Central Selection Board as departmental representatives, to scrupulously observe these instructions.

[Authority - Estt. Division O.M. No.6/4/74-A II, dated 6-7-1974].

**Sl. No. 49 T.A. Admissible to Witnesses and Accused Government
Servant Summoned By an Inquiry Officer**

A government servant summoned by an Inquiry Officer should be allowed TA as admissible to him under S. R.* 154 'et seq' ** and he should draw it on a regular TA bill from his own department on the strength of the Attendance Certificate furnished by the Inquiry Officer and this should be debited against the office at whose instance the inquiry was being conducted, by book adjustment. In the case of a witness who is not a government servant, travelling expenses should be determined by the Inquiry Officer with reference to the status of the witness and should be paid on the basis of the orders passed by the Inquiry Officer, by the department at whose instance the inquiry was being conducted. The TA to be paid to a non-government servant should, however, in no case exceed the maximum TA admissible to a government servant of the highest grade. The provisions of S.R. 190 'et seq' should also be kept in view in such cases.

[*Authority.* - Estt. Division O.M. No. 2/41/62-D.I, dated 28-2-1963].

Sl. No. 50 Admissibility of TA to Witness in Disciplinary Cases

In continuation of the Establishment Division O. M. No. 2/41/62 D. I, dated the 28th February, 1963, a further question has since arisen as to whether the aforesaid provision of TA should equally apply to the defence witness summoned by the Inquiry Officer in departmental proceedings. The point has been examined in this Division in consultation with the Ministry of Finance. The position of the defence witnesses regarding summoning them and paying them TA is as explained hereunder.

2. It is for the Inquiry Officer to consider if any particular witness cited by the accused as a defence witness is likely to be as essential witness for the purpose of defence or in other words, for the determination of truth. If the Inquiry Officer agrees that the examination of the witness will be essential, he may summon him and as soon as he summons him, he will take upon himself the obligation to allow the witness reasonable TA. If the witness is an official, he is to draw the TA from his parent department on the strength of the attendance certificate furnished by the Inquiry Officer, the amount being debited by book adjustment against the office at whose instance the inquiry was conducted.

3. If, however, the Inquiry Officer is not satisfied whether the examination of a particular witness will be essential for the determination of

* Supplementary Rules.

** *et seq* (abbr.), and what follows; Latin '*et sequentia*'.

truth he may at his discretion, refuse to summon such a witness. He may, however, agree to summon him on condition that the accused will bear the travelling expenses of the witness and he may accordingly require the accused to deposit with him the anticipated amount of the TA of the witness, in advance, so that the witness could be paid therefrom. In that case, the attendance certificate to be furnished to the witness by the Inquiry Officer should contain the endorsement that the witness has been paid his travelling expenses. This will debar the witness from claiming the TA again from the government.

[Authority.- Estt. Division O.M. No. 2/41/62-DI, dated 13-4-1963].

Sl. No. 51 Admissibility of TA to Government Servants under Suspension

A question has since arisen as to whether a government servant under suspension who was required to perform official journey as a witness or as an accused, would be entitled to TA. The question has been examined in this Division, in consultation with the Ministry of Finance, and it has been held that such a government servant would be entitled to TA in such cases and his *grade and salary for that purpose would be taken as if he was not under suspension.

[Authority. - Estt. Division O.M. No. 2/41/62-DI, dated 19-7-1963].

Sl. No. 52 Framing of an Additional Charge During Currency of the Disciplinary Proceedings

Instances have come to the notice of the Establishment Division that in cases where the main charge of "corruption" or "subversion" was not proved, but there was sufficient evidence to establish the charge of "misconduct" the accused could not be punished because he had not been charged with "misconduct", although the offences of "corruption" and "subversion" are the graver forms of "misconduct". To meet such exigencies, it has been decided in consultation with the Law Division, that in all suitable cases where an accused is charged with "corruption" or "subversion", an additional charge of "misconduct" may be added to the main charge.

[Authority.- Estt. Division O.M. No. 2/5/66-D.I., dated 11-6-1966].

* BPS.

Sl. No. 53 Scope of Departmental Proceedings under the Efficiency & Discipline Rules in Cases Referred to the Courts

References are very often received in the Establishment Division on the above subject in various forms. The questions generally posed by the Ministries/Divisions are as under:-

- (i) Whether departmental proceedings can be started against a government servant who is being prosecuted in a criminal court;
- (ii) Whether departmental inquiry can be conducted against a government servant on the same charges after his acquittal by a court;
- (iii) Whether any departmental action lies against a government servant who cannot be prosecuted in a court of law due to technical grounds.

2. The matter has been examined in consultation with Law Division. Each case has to be decided on its merits and in the light of its facts and circumstances. However some guidelines can be laid down in the matter and the following general guidelines are indicated for deciding such matters:-

- (i) There is no legal bar to the holding of a departmental inquiry against a government servant who is being prosecuted in a criminal court. It may, however, be pointed out that where the holding of departmental inquiry side by side with the criminal proceedings may have the effect of impeding the course of justice or of prejudicing the trial, the inquiry should be deferred till the termination of criminal proceedings.
- (ii) An acquittal from a criminal case may be on technical grounds or on the ground that all the ingredients of the offence are not proved by the evidence produced in court. But in departmental proceedings even one of the ingredients, if proved, may be sufficient to reach a conclusion that the accused has misconducted himself or has acted in a grossly negligent way or has shown inefficiency in the discharge of his official duties. As an example, to illustrate this point, a recent case may be cited. An officer employed in the Registry of the Supreme Court was charged and tried for embezzlement. He was, however,

acquitted by the High Court in criminal appeal No. 676 of 1965. Subsequently, he was dismissed on the same allegations which were found proved in a departmental inquiry initiated by the Supreme Court. Thus departmental proceedings on the same facts may be started even if the person concerned has been acquitted in criminal proceedings.

- (iii) In some cases, a government servant cannot be criminally prosecuted on technical grounds. But this does not bar the government from inquiring into the truth of a charge against a government servant by means of a departmental inquiry. Therefore, there is no bar to proceed against a government servant departmentally, when he cannot be criminally prosecuted in a court of law for some reason or other.

[Authority. - Estt. Division O.M. No. 4/5/69-D.I., dated 17-6-1969].

Sl. No. 54 Speedy Disposal of Disciplinary and Suspension Cases

It has been decided that the responsibility of seeing that a disciplinary case is disposed of expeditiously should rest with the Secretary in each Ministry. Fortnightly statements showing the stage in respect of each case of persons placed under suspension should be submitted by each Ministry to the Secretary to enable him to watch the progress of such cases. Quarterly statements, showing the particulars of persons under suspension and the stage of each case, should also be forwarded to the Establishment Division for the information of the government. These reports should be supplied in the beginning of January, April, June and September each year.

[Authority.- Estt. Division O.M. No. F.32/48-Ests (SE), dated 21-7-1949].

Sl. No. 55 Speedy Disposal of Disciplinary Cases – Submission of Reports to Establishment Division

In spite of the instructions issued *vide* Establishment Division's O.M.No.F.32/48-Estt-(SE), dated 21-7-1949, instances have been brought to the notice of government where disciplinary cases have been pending for as long as two years or even more. The question of speedy disposal of disciplinary cases has, therefore, been considered by government again and it has been decided that the following instructions should be strictly observed by the Ministries/ Divisions.

2. As stated in paragraph 2 of the Establishment Division Office Memoranda dated the 21st July, 1949 quoted above, no government servant should be placed under suspension except when it is really necessary. When, after due consideration and care, it is decided to suspend an officer, it should be the primary responsibility of the Head of the Ministry/Division/Department to see that the case against the government servant is disposed of as expeditiously as possible. In order to enable the Head of the Ministry/Division to watch the progress of each case where a government servant has been suspended and issue necessary directions for its speedy disposal, the fortnightly statements as prescribed in paragraph 2 of the Office Memorandum dated the 21st July, 1949, referred to above should, invariably, be submitted to him by the office concerned.

3. Disciplinary proceedings against government servants placed under suspension should be finalized within two months of the date of suspension. If, in any case, it is not possible to finalize (within the time limit of two months), departmental proceedings against a government servant under suspension, the matter should be reported to the Establishment Secretary giving the following details:—

- (i) Particulars of the case;
- (ii) Reasons for delay; and
- (iii) The period within which the case is expected to be finalized. The Establishment Secretary, after scrutinizing the report, will offer such advice to the Ministry/Division/Department as he may consider necessary with regard to the speedy disposal of the case. If the Establishment Secretary is satisfied in any case that the suspension of the government servant concerned is no longer justified or necessary, he may recommend to the competent authority to cancel the order of suspension. In cases relating to government servants other than *Grade 17 and above, orders of suspension may also be cancelled by the Head of the Ministry or other competent authority if he is satisfied, at any time, before the finalization of the disciplinary proceedings against him that the suspension of the government servant concerned is no longer justified or necessary.

4. The quarterly statements as prescribed under

* BPS.

Establishment Division Office Memorandum dated the 21st July, 1949 showing particulars of government servants under suspension and the stage of such case should continue to be forwarded to the Establishment Division.

[Authority.- Estt. Division O.M. No. 3/53/58-SE II, dated 17-1-1959].

SI. No. 56 Submission of Statements in Disciplinary Cases Including Those Facing Criminal Charges

Reference.- Establishment Division Office Memorandum No. 3/53/58- SE II, dated the 17th January, 1959.

2. A question has arisen whether cases of those government servants who are facing trial in the courts of law on criminal charges, should also be included in the statement mentioned in paragraph 2 of the said Memorandum. The matter has been carefully considered and it has been decided that cases of those government servants, who are criminally involved, should also be included in the prescribed statements. This will provide an opportunity to government to watch the progress of such cases so that in cases of extreme hardship, or where circumstances permit, government may consider withdrawing suspension order, even before the case is decided in the court.

[Authority.- Estt. Division O.M. No. 3/53/58-SE II, dated 26-5-1959].

SI. No. 57 Records of Disciplinary Cases – Submission of Periodic Progress Reports

It has come to the notice of the President that a large number of cases of disciplinary nature are pending final disposal since long and in some cases for over years. This is obviously contrary to the dictates of justice, and inevitably, results in undue hardship to the affected persons, particularly those in the lower income groups. Besides these delays, invariably subject the administration to unnecessary criticisms.

2. It is, therefore, advised that each Ministry/Division/ Department and semi-autonomous body under the Federal Government should maintain suitable records of all cases of Gazetted and non-Gazetted staff wherein investigations/inquiries have been instituted and disciplinary action is proposed to be initiated or has been initiated showing the reasons for initiation of such action. Periodic progress in the disposal of each case should be recorded therein to facilitate authorities concerned to conduct quick scrutiny for assessing delays, their causes and to pursue their expeditious disposal.

3. All Ministries/Divisions/Departments and semi- autonomous bodies are requested to prepare an up-to date list of all disciplinary cases pending with them in the enclosed proforma (Annex) and forward it, in duplicate, to the Establishment Division.

[Authority.- Estt. Division O.M. No. 1/3/70-D. I, dated 7-5-1970].

Sl. No. 58 Quick Disposal of Disciplinary Cases

In a case of disciplinary proceedings against an officer, the President has observed that the progress of disciplinary cases is very slow and has desired that such cases should be disposed of expeditiously. All Ministries and Divisions are requested to make a note of the President's observation and ensure that all disciplinary cases are disposed of as quickly as possible.

[Authority.- Estt. Division O.M. No. 1/21/65-C.I, dated 15-7-1967].

Sl. No. 59 Delay in Process of Disciplinary Cases

It has been observed that inquiry proceedings against civil servants under E&D Rules tend to be unduly protracted for various avoidable reasons, causing hardship to the affected officers, on one hand, and defeating the purpose of speedy disposal of cases, on the other.

2. It has, therefore, been decided that in all disciplinary cases, in addition to strict observance of the provisions of rule 6 of Government Servants (Efficiency & Discipline) Rules, 1973 and the instructions already issued with my D.O. No. 553/80-JS (Rev. & D), dated 22nd October, 1980, the following measures should be strictly observed:—

- (a) The Inquiry Officer be carefully selected for his competence and capability to hold the inquiry.
- (b) A time-limit should be prescribed for completion of the inquiry.
- (c) Until the inquiry is completed, the Inquiry Officer, the accused as well as the witnesses concerned should not be permitted to proceed on leave, training course or on transfer in or outside Pakistan.
- (d) A check-sheet, recording the day to day progress, should be maintained by the Inquiry Officer.
- (e) The inquiry proceedings once started should be held without interruption, as far as possible, on day to day basis.

- (f) On receipt of the inquiry, the case should be processed expeditiously by the Ministry concerned.
- (g) It should be impressed upon the Inquiry Officer that the quality of work produced by him will reflect on his efficiency, which will be recorded in his *ACR.
- (h) The initiating officer should record his assessment of the Inquiry Officer's performance in the *ACR.

[Authority.- Estt. Secretary's D.O. letter No. 5/1/81-C.II (A), dated 6-6-1981].

* Now Annual Restricted Report

(ANNEX)

STATEMENT SHOWING PARTICULARS OF DISCIPLINARY CASES PENDING OR PROPOSED TO BE INITIATED IN THE MINISTRIES/DIVISIONS/DEPARTMENTS/SEMI-AUTONOMOUS BODIES

Name of Division/Department *etc.*

Name and particulars of the official Concerned	Date of receipt of complaint/ allegation etc	Whether investigations/ inquiries have been instituted or disciplinary action is proposed to be initiated	Reasons in brief for instituting or proposing disciplinary action	Date of initiating departmental Action	Whether the person concerned is under suspension if so from what date	Present position of the case	Reasons for delay	The period by which the case is expected to be finalised	Remarks
1	2	3	4	5	6	7	8	9	10

**Sl. No. 60 Quick Disposal of Disciplinary Proceedings Pending
Against Government Servants who are About to
Superannuate**

It has come to the notice of government that inquiry proceedings against civil servants under the Government Servants (Efficiency and Discipline) Rules, 1973 tend to be unduly protracted for various avoidable reasons causing hardships to the affected government servants on the one hand and defeating the purpose of speedy disposal of cases in others. This is obviously against dictates of justice.

2. The disposal of disciplinary proceeding assumes vital importance, especially in cases against government servants who are about to attain the age of superannuation. It goes without saying that delay in disposal of such cases not only causes hardships to the affected persons but also puts the administration to unnecessary criticism.

3. It is, therefore, requested that disciplinary proceedings against government servants nearing the age of superannuation in future should be disposed of before they superannuate. All the agencies working under the administrative control of the Ministry concerned should be advised accordingly.

[Authority:- Estt. Division O.M. No.12/2/88-R.3, dated 3-10-1988]

**Sl. No. 61 Disposal of Disciplinary Cases Against Government
Servants Nearing Superannuation**

Reference Estt. Division's O.M.No.12/2/88-R.3, dated the 3rd October, 1988 on the subject mentioned above, wherein all the Ministries/Divisions were requested that disciplinary proceedings against government servants nearing the age of superannuation should in future be disposed of before they superannuate. Despite this, instances have come to the notice of this Division wherein the disciplinary cases have been delayed to such an extent that these stood abated due to non-finalisation thereof before the age of superannuation of the accused civil servants, which is not a happy state of affairs.

2. In order to guard against recurrence of such instances, it is once again requested that the instructions may please be brought to the notice of all concerned for strict compliance to ensure that the State's interests are fully protected and the civil servants really guilty of misdemeanor of any sort do not go unpunished due to the inefficiency and/or connivance of the departmental personnel in finalising the Efficiency and Discipline cases before the accused's superannuation.

[Authority:- Estt. Division O.M.No.6/14/94-D.I, dated 19-12-1994].

SI. No. 62 Censure, Reprimand and Warning

From references received, it appears that some authorities are not clear regarding the procedure to be followed where punishment of Censure is awarded and regarding the distinction between 'Censure' and 'Warning'.

2. Censure is one of the punishments mentioned in rule 4 (1) (a) of the Efficiency and Discipline Rules*.

3. There is essentially no difference between 'Censure and reprimand', but as the official term is 'Censure', it seems preferable that normally this term should be used.

4. [Not reproduced]

5. According to rule 3 of the Civil Servants (Appeal) Rules, 1977, every civil servant is entitled to appeal to the appellate authority from an order of Censure passed by an authorized officer or an authority provided that, where the penalty is imposed by an order of the President, the civil servant has no right to appeal but he can apply for review of the order.

6. A warning, whether oral or written and whether given ad hoc or in annual confidential report, is not a censure and does not constitute a punishment, provided that it is genuinely a warning and not a censure distinguished as such.

[Authority. - Estt. Division O.M. No. 3/1/52-SE. II, dated 12-4-1952 with necessary adaptations in the light of prevailing circumstances].

SI. No. 63 Participation of Government Servants in Drinking Parties

It has been reported that a number of persons organize drinking and other parties in Rawalpindi/Islamabad, which are attended by civil as well as military officers, and where views on government policies are expressed without reservations.

2. While drinking is a manifest violation of the law of the country and the sanctity of Islam, criticism of government by its functionaries, particularly at such gatherings, is a serious offence.

* Government Servants (E&D) Rules, 1973; rule 4 (1) (a) (i).

3. Under the Prohibition (Enforcement of Hadd) Order, 1979, alcoholic drinks are available to only non-Muslim foreigners and non-Muslim Citizens of Pakistan. As such, all government servants are asked to strictly follow the aforesaid Order and desist from such vices.

4. It is requested that severe disciplinary action may be taken against the defaulters, irrespective of their status; and they may also be debarred from employment under the government, semi-government organizations, and autonomous bodies.

5. These instructions may kindly be brought to the notice of all officers/employees, serving in your Ministry, including those in attached/subordinate offices as well as autonomous bodies/ corporations etc. under your Ministry.

[Authority. - Estt. Secretary's D.O. letter No.5/1/79 DIV, dated 17-9-1979].

Sl. No. 64 Officers' Duty to Watch Conduct of Their Subordinates

It has been decided that all officers should be informed that it is their duty to watch the conduct of their subordinates and to ensure that corruption does not spread among them. Failures to do so would be reflection on their own efficiency.

[Authority. - Estt. Division O.M.No. 3/35/59-SE.II, dated 4-3-1959].

Sl. No. 65 Responsibility of Head of Department for Corruption in Department

Measures undertaken to curb corruption in the police have shown appreciable results, and its personnel deserve to be commended, and encouraged to continue with their efforts in that direction.

2. Meanwhile, public complaints of corruption in several government departments persist, and effective steps are required to root it out. It is the bounden duty of every Head of Department to exercise utmost vigilance, analyse the cause, and trace the source where incidence of corruption occurs.

3. In future, a Head of Department will bear the responsibility, and be answerable for proven charges of corruption within the area of his administrative jurisdiction. It is self-evident that corruption prevails in a department if its Head is:

- (a) himself corrupt, or
- (b) wilfully blind to corruption taking place, or
- (c) so inefficient that he is unable to control it.

4. Whichever of these three reasons may be applicable, such a Head of Department cannot be retained in service to the detriment of government's objective of serving the people and promoting their weal and welfare.

[Authority.- President of Pakistan's note No. 57/I/CMLA, dated 25-9-1978].

Sl. No. 66 Avoidance of Favouritism or Nepotism in Making Ad-Hoc Appointments

Considerable time often elapses before candidates recommended by the Federal Public Service Commission become available for appointment. Consequently, *ad-hoc* appointments are made, pending selection of suitable candidates by the Commission. In this connection it has been brought to the notice of government that, in making such *ad hoc* appointments, officers in certain Ministries/Departments indulged in favouritism and nepotism. Government views this with concern and it has been decided that suitable disciplinary action should be taken against the delinquent officers.

2. Acts of favouritism or nepotism being prejudicial to good order or service discipline constitute misconduct as defined in the Government Servants (Efficiency and Discipline) *Rules. It is, therefore, requested that if, instances of favouritism or nepotism or irregularity in making ad hoc appointments are brought to notice, the officers responsible should be proceeded against under those Rules. Suitable instructions may also kindly be issued to all officials concerned in the Ministry including Attached Departments and Sub-ordinate Offices.

[Authority.- Estt. Division D.O. letter No.2/2/62-D.I, dated 15-2-1962].

Sl. No. 67 Loss of Security Passes to Be Treated as 'Misconduct'

As provided in para 97 of the [Security Instructions] (1973 Edition) prepared by the Cabinet Division and this Division's Circular letter No. 14/17/71-Cord., dated the 18th November, 1971, a government servant who has lost the Security Pass issued to him is required :-

* Refers to Government Servants (E&D) Rules, 1960, repealed by Government Servants (E&D) Rules, 1973.

- (i) to make report to the Police Station and to the Head of his Department about the loss of the Pass; and
- (ii) to deposit Rs. 5 in the State Bank of Pakistan before a new Security Pass is issued to him. The amount of Rs.5 covers only the cost of the pass and actually no penalty has been imposed on him. It has been noticed that the government servants generally do not take sufficient care to keep the passes in safe custody with the result that loss of security passes is on the increase. As the pass lost can be misused by any unauthorized person which involves serious security risk, it has been decided, in consultation with the authorities concerned, that the loss of Security Pass would be treated as "misconduct" in terms of Government Servants (Efficiency and Discipline) Rules, 1973.

2. However, before any action is initiated against a government servant who has lost his Security Pass, it is necessary to determine, in each case as to whether the security pass in question was lost due to negligence. If the government servant concerned is able to give a satisfactory account of the circumstances under which the security pass was lost by him, it may not be proper to proceed against him. If, after preliminary inquiry, it is found that the Security Pass was lost due to the negligence of the government servant concerned or that the lost Security Pass had fallen into unauthorized hands as a result of any willful omission or commission on his part, only then it would be appropriate to take disciplinary action against him under the Government Servant (E&D) Rules 1973.

3. All Ministries and Divisions are, therefore, requested that in future while referring the case of issue of a Security Pass to a person who has already lost a Security Pass, it may also please be clearly indicated whether disciplinary action, or if any, has been taken/is being taken against the official concerned.

[Authority.- Ministry of Interior O.M. No. 19/2/75-Security dated 31-3-1975 as amended vide O.M. No. 19/9/75- Security dated 2nd August, 1982].

Sl. No. 68 Use of Intemperate and Inappropriate Language in Representations and Petitions of Government Servants

At times, representations of government servants contain wild allegations against superior officers. While government servants would be free to submit their representations in accordance with the prescribed

procedure whenever they feel aggrieved, they should be informed that the use of such language constitutes misconduct. You may, therefore, impress upon all government servants working under your administrative control the need and propriety of refraining from the use of such language and to scrupulously observe the norms of decency and decorum. Failure to do so on their part will not only result in no action being taken on requests contained in such representations/petitions but will also render them liable to disciplinary action for misconduct. Serious action will also be taken when wild allegations are made against senior officers which, on investigations, are found to be without any basis.

[Authority.- Estt. Division D.O.letter No.8/13/71-F.II, dated 28-5-1974].

Sl. No. 69 Grant of Pension Gratuity etc. to a Government Servant Compulsorily Retired from Service under the Government Servants (Efficiency and Discipline) Rules, 1973

A doubt has been felt in some Ministries/Divisions as to whether a government servant compulsorily retired under the Government Servants (Efficiency and Discipline) Rules, 1973, is eligible for grant of pension/gratuity.

2. In this connection, it is clarified that sub-section (1) of section 19 of the Civil Servants Act, 1973 provides that on retirement from service, a civil servant shall be entitled to receive such pension or gratuity or both as may be prescribed. It is laid down in sub-section (3) of section 19 of the aforementioned Act that pension is not admissible in the case of civil servants who have been removed or dismissed for reasons of discipline. As such a government servant compulsorily retired under the Government Servants (Efficiency and Discipline) Rules, 1973, is entitled to pension or gratuity or both as admissible under normal rules in terms of sub-section (1) of section 19.

3. According to the Auditor General of Pakistan's Letter No. 71/A/46-73, dated the 1st March, 1975 (**Annex**) the term "retirement" used in section 19(l) of the Civil Servants Act, includes "compulsory retirement" under Government Servants (Efficiency and Discipline) Rules, 1973.

4. It may be recalled that all persons who were screened out in 1959, or were prematurely retired under MLR-58 (1969) or MLR-114 (in March, 1972), or who were compulsorily retired under Government Servants (Efficiency and Discipline) Rules, 1973, in October, 1976, were allowed normal pensionary benefits, and the production of certificate of

thoroughly satisfactory service in terms of Article 470-CSR was waived. The production of certificate was also waived in the cases of those who were retired under section 13 of the Civil Servants Act, 1973.

5. The position under rules may be brought to the notice of all departments, offices and autonomous bodies under the administrative control of the Ministries/Divisions so that civil servants and employees of the autonomous bodies compulsorily retired under Government Servants (Efficiency and Discipline) Rules, 1973 and under similar rules framed by autonomous bodies are not deprived of their retirement benefits.

6. In all cases of compulsory retirements, the requirement of certificate of thoroughly satisfactory service (required in terms of Article 470-CSR, and section (7) of the pension papers*, or in corresponding provisions in the rules of autonomous bodies should be deemed to have been waived.

[Authority.-Estt. Division O.M. No. 4/16/80-D.I, dated 25-9-1980].

(ANNEX)

[Extract from Auditor-General of Pakistan Letter No. 71-A/46-73, dated 1st March, 1975].

The term retirement used in section 19(l) of the Civil Servants Act, 1973 includes "Compulsory Retirement" under the Government Servants (Efficiency and Discipline) Rules, 1973.

Sl. No. 70 Grant of Leave to Government Servants Compulsorily Retired from Service under the Government Servants (Efficiency and Discipline) Rules

A reference is invited to the Establishment Division's O.M. No. 4/13/60-SR, dated the 4th October, 1960 (**Annex**) and it is stated that the instructions contained therein have been reviewed in this Division and in supersession of these instructions, it has been decided that government servants compulsorily retired from service as a measure of punishment under the Government Servants (E&D) Rules, 1973 should not be granted leave preparatory to retirement.

[Authority.- Estt. Division O.M. No.4/8/88-D.I, dated 4-4-1977]

* See 'A Manual of Pension Procedures (2006)' published by Pakistan Public Administration Research Centre (PPARC), Establishment Division.

ANNEX

[Copy of O.M. No. 4/13/60-SR, dated the 4th October, 1960]

It has been decided that the government servants compulsorily retired from Establishment Division service under the Government Servants (Efficiency and Discipline) Rules, 1960, may be granted leave preparatory to retirement under the normal rules. However, each case should be decided on its own merit by the competent authority as defined in Rule 2 (1) of those Rules.

Sl. No. 71 Grant of Arrears of Pay and Allowances to Government Servants for Period of Absence from Duty, On Re-Instatement as a Result of Court's Decisions

The Supreme Court, in its recent judgment in C.A. No.28 of 1969 [West Pakistan VS. Mrs. A. V. Issacs], has ruled that a civil servant has and always had the right to recover salary already accrued due to him despite the fact that his service was during "Pleasure". This has rendered obsolete its own two earlier judgments in the cases of Mehrajuddin [PLD 1959 SC (Pak) 147] and Fazl-e-Haq Mussarrat [PLD 1960 SC (Pak) 208] and a judgment of the former Federal Court in the case of Ali Ahmed Hussain Shah [PLD 1955 FC 522] all of which followed the Privy Council's view on I. M. Lall's case and which was also followed in the Law Ministry. In its latest judgment, the Supreme Court has taken the view that if the dismissal of a government servant is held to be unlawful he should be allowed salary for the period he was kept out of service. This was, however, subject to the condition that if he has accepted other employment or engaged in other profitable business during this period, any amount earned by him by way of salary from such employment or as profits of such business would have to be set off against the salary due, firstly because as government servant he cannot serve elsewhere or engage in any other business without the permission of the government and secondly, because on general principle a person cannot be allowed to reap a double advantage. Therefore, it would be no more open to the government to resist claim for arrears of pay of a civil servant wrongfully removed from service on the plea that no such claim was competent. The claim will have to be resisted, if at all, on the facts of a particular case referred to in the judgment as exceptional cases. The right of the government servant to claim future salary has, however, been negated by the court.

2. In view of the latest judgment of the Supreme Court on the subject, a civil servant's claim for arrears of salary in the relevant

circumstances cannot now be refused. Therefore, Law Division's earlier advice to the contrary must be deemed to have been recalled and the Establishment Division is requested to review, in consultation with the Ministry of Finance, all the pending cases relating to claims of arrears of pay in the light of the fresh declaration of law by the Supreme Court and settle such claims. The Supreme Court's judgment underlines the necessity of duly observing with care the provisions of the Constitution and the Government Servants (Efficiency and Discipline) Rules*, in all disciplinary cases against government servants and of expeditious disposal of such cases.

[*Authority*:- Law Division O.M. No.F.7 (8)/70-SOL (I), dated 12-8-1970].

Sl. No. 72 Reinstatement of Government Servants on Court Decision and Functions of Enquiry Committee

A reference is invited to the O.M. from the Law Division No. F.7 (8)/70-Sol(I), dated 12th August, 1970, which states, *inter alia*, that, in accordance with the Supreme Court's judgment in CA No. 28 of 1969 (West Pakistan vs Mrs. A. V. Issacs), if the dismissal of a government servant is held to be unlawful, he has to be allowed salary for the period he was kept out of service, reduced by the amount, if any, that he might have earned by way of salary, or as profits, on account of having accepted some employment, or having been engaged in some profitable business, during the above period. Thus, the legal status of government servants' claims for arrears of pay and allowances is no longer the same as had been indicated in para 3 of this Ministry's circular d.o.No.F.9(15)-RI (Rwp)/61, dated 23rd December, 1961 (**Annex**). Consequently, it is no longer appropriate for the enquiry committee referred to in para 4 of that circular D.O. to consider on merits, in cases in which government servants are restored to their posts as a result of court's decisions, as to whether or not, and to what extent, pay and allowance for the period of their absence from duty should be restored.

2. It has accordingly been decided that, in cases where a government servant is reinstated retrospectively as a result of a court's decision, the functions of the enquiry committee to be set up under para 4 of this Ministry's circular d.o.No.F.9(15)-RI (Rwp)/61, dated 23rd December, 1961, as amended (**Annex**) would henceforth be as follows:-

* Refers to Government Servants (E&D) Rules, 1960, repealed by Government Servants (E&D) Rules, 1973.

- (a) The Ministry/Division/Department as the case may be, may obtain from the government servant concerned a solemn declaration, supported by an affidavit, as to the particulars of his employment, or engagement in profitable business, during the period of his absence from duty, and the amount earned by him by way of salary from such employment, or as profits in such business.
- (b) After examining such evidence as might be available, and cross-examining, if necessary, the government servant, the Ministry/Division/ Department, as the case may be, may give their finding as to whether or not the above declaration is, 'prima facie', acceptable and on what grounds.
- (c) If the declaration is found to be, '*prima facie*', unacceptable, the Ministry/Division/Department, as the case may be, should refer the case to the committee, which, before giving their finding as to the amount earned by the government servant during the period of absence from duty, may get the declaration properly verified/scrutinized by any agency they consider appropriate. For example, if the case had been dealt with by the Special Police Establishment* at an earlier stage in any connection, this verification/scrutiny may be arranged to be carried out by that Establishment**. For purposes of this verification/security, assistance of the relevant Income-tax authorities may also be sought, if the government servant concerned be an Income-tax payer.
- (d) In case the reinstatement of the government servant has been ordered by the court on account of the relevant administrative action having been found to be defective, the committee should also give their findings:
- (i) as to which officers were responsible for that defectiveness of administrative action; and
- (ii) as to whether any, and what part, of the amount payable to the government servant by way of net salary for the period of his absence from duty, might justifiably be recovered from such officers. The recovery from such officers will, of course, follow

* FIA.

** Agency.

departmental proceedings under the Government Servants (Efficiency and Discipline) Rules.

3. The above instructions do not apply to cases in which government servants are reinstated as a result of acceptance of appeals by departmental appellate authorities, which will continue to be regulated by the provisions of FR-54, as hitherto.

[Authority.- Finance Division O.M.No.781-R4/73-F.3(4)-R.1/73, dated 10-7-1973].

(ANNEX)

[Extract of Paras 4 & 5 of the Finance Division letter No. F.I (15) RI (Rwp)/61, dated 23rd December, 1961 as amended].

4. If as a result of court's decision, a government servant restored to his post, the question whether pay and allowances for the period he was under suspension or was removed from service should be decided on the merit of each case. For this purpose, it is suggested that in all cases the Ministry or Department concerned should order a departmental enquiry headed by the representative of the Ministry/Deptt. administratively concerned with their Financial Adviser/Deputy Financial Adviser as a member of the Committee. This committee should consider whether, on the merits of the case, government would be justified in restoring the official concerned, the pay and allowances for the period involved and, if so, whether in full or in part. In coming to a conclusion whether pay and allowances to the individual should or should not be restored, following considerations will have to be kept in view:—

- (a) whether the person concerned was acquitted on a purely technical or procedural grounds or whether the actual allegations against him had been gone into and were found to be incorrect;
- (b) whether the individual during the period he was away from active duty and other sources of income; and so on.

5. It has further been decided that in cases where the total period involved does not exceed 12 months from the time the individual was suspended or removed from service, the final decision should be taken by the Ministry concerned at the level of the Secretary and in all other cases the matter should be referred to the Ministry of Finance for prior concurrence.

Sl. No. 73 Grant of Arrears of Pay and Allowances to Government Servants for Period of Absence from Duty, on Reinstatement as a Result of Court's Decision

Due to certain subsequent developments, instructions issued vide Finance Division circular D.O No. F-9(15) R.I (Rwp)/61, dated 23-12-1961 and O.M No. 781-R4/73-F.3(4)-R-I/73, dated 10-07-1973 called for a revision. FR-53 and FR-54 have been amended and government servants under suspension are now entitled to a subsistence grant equal to full pay and allowances. Similarly, employees reinstated in service administratively or as a result of the court's decision with consequential benefits are allowed salary for the period they stayed out of service.

2. In view of the above, therefore, there is no need to refer cases to the Finance Division for payment of arrears of pay and allowance pertaining to the period of suspension. In cases of reinstatement after removal/dismissal as a result of courts' decisions, however, the Ministry/Division/Department concerned has to determine the amount earned by the government servant concerned from other sources during the period he remained out of service. For this purpose, the Ministry/Division/Department concerned should obtain a solemn declaration from the government servant concerned in the form of an affidavit as to the particulars of his employment/business or any other profitable work undertaken by him during the period of his absence from duty and the amount earned therefrom. The case should, then, be examined by a Departmental Enquiry Committee on which Finance Division may be represented by the FA/DFA* concerned. The Committee may examine such other evidence as it may require and give its findings and recommendations to the Secretary of the Ministry / Division concerned for such orders as he may deem appropriate.

[Authority: Estt. Div.'s O.M No. F.5 (17)-R-1/2000, dated 4th August, 2000.]

Sl. No. 74 Committals to Prison- **[CSR 194-A]

A government servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a government servant is not arrested or is released on bail, the competent authority may suspend

* Financial Adviser; Deputy Financial Adviser

**CSR-194 subs and CSR 194-A omitted *vide* Finance Division S.R.O. No. 25(KE)/97 dated 4-2-1997.

him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period, the government servant shall be entitled to the subsistence grant as admissible under "FR-53".

Sl. No. 75 Suspension of a Government Servant Accused of Criminal Offences

In cases where government servants are accused of criminal offences, frequent references are made to the Establishment Division on issues such as:

- (i) whether, on their committal to prison, they are to be suspended by a specific order or their suspension is automatic ;
- (ii) whether or not on their release on bail after arrest, they can be reinstated in service ;
- (iii) whether their continued suspension requires approval of the authority after every three months.

2. The matter has been considered in the Establishment Division in consultation with the Law Division. It has been held that cases of the above nature are to be dealt with under Article 194 and 194-A of the Civil Service Regulations which are existing rules and which cannot be over-riden by administrative instructions contained in Section IV of Appendix-3 of Fundamental Rules and Supplementary Rules Vol. II.

3. In the context of the points mentioned in paragraph 1, the position that emerges from Article 194 and 194-A of CSR is explained below:—

- (a) a government servant committed to prison either for debt or on a criminal charge, should be considered as under suspension from the date of his arrest and until the termination of the proceedings against him, *i.e.*, his suspension is automatic from the date of arrest till termination of proceedings against him;
- (b) a government servant, against whom a criminal charge or proceeding for arrest for debt is pending, should also be placed under suspension by the issue of specific orders to

this effect during the periods when he is not actually detained in custody or imprisoned (e.g. whilst released on bail) if the charge made or proceedings taken against him is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude; and

- (c) the requirement of obtaining approval of authority for extension of suspension period after every 3 months laid down in Government Servants (Efficiency and Discipline) Rules, 1973 applies to suspensions ordered under these rules. Article 194 or 194-A do not mention any such requirement.

4. In view of the position stated above, the answers to the queries mentioned in para 1 are as follows in seriatim:—

- (i) Suspension, under Article 194 is automatic. Suspension under Article 194-A requires specific approval of the competent authority.
- (ii) In the light of what is stated in the preceding paragraph, the competent authority can, in case the accused official is no longer detained in custody, reinstate him in service unless it likes him to continue to be under suspension on the consideration that the charges against him are connected with his position as a government servant or is likely to embarrass him in the discharge of his duties as such or involve moral turpitude. From the date of reinstatement onwards, the government servant will no doubt be paid full pay. However, adjustment of allowances for the period he remained under suspension will be made as Article 194 and 194-A envisage after the termination of the proceedings.
- (iii) Approval of the competent authority for suspension under Article 194 or 194-A is not required every 3 months.

5. With reference to (i) and (ii) in the preceding paragraph, the following administrative instructions may also be followed:—

- (a) a report may be immediately submitted to the "competent authority" whenever a person is committed to prison and is

considered to be under suspension under Article 194 CSR in order to ensure that the competent authority remains in touch with the position of the official and his case; the fact of suspension may also be notified under advice to all concerned including the audit authorities in terms of Article 194 CSR; and

- (b) a report on the progress of the criminal case leading to the suspension of a government servant under Article 194 or 194-A, CSR, as the case may be, be submitted to the authorized officer every three months for his information to ensure that he remains in touch with the position of the official and his case.

6. The O.M. issues with the concurrence of the Ministry of Finance.

[Authority.- Estt. Division O.M.No.4/12/74-DI, dated 10-3-1980].

SI. No. 76 Detention of Government Servants Under Public Safety Acts

A question has arisen whether an employee of the Federal Government who is detained in prison for a period of time under the provisions of the Sindh Maintenance of Public Safety Act, 1948 or a similar enactment and is released without any trial, loses his service under the government and whether such a person is entitled to any leave salary or subsistence allowance for the period he remained under detention. As some doubts seemed to exist in the matter, the question has been fully considered in consultation with the Law Division and it has been decided that the following procedure should be adopted to regulate cases of detention in prison and subsequent acquittal or conviction:—

- (i) As soon as it comes to notice that an employee has been detained in prison, action should be taken to place him under suspension. The period of the employee's detention **[should be treated as period spent under]* committal to prison within the meaning of Article 194 C.S.R. and the pay and allowances during suspension should be regulated under F.R.53.
- (ii) If the employee is subsequently acquitted honourably, he

* Amended *vide* Estt. Division O.M. No. 27/41/52-SE II, dated 7-12-1954.

should be reinstated forthwith. He will be entitled to receive full salary for the entire period of his absence from duty under F.R. 54(a).

- (iii) If on the other hand, the acquittal is not honourable, then the provision of F.R. 54 (b) will apply.
- (iv) If the employee is released from detention without any trial, it is open to the competent authority to take disciplinary action against him if good and sufficient reasons exist from such action. In that case the procedure prescribed in the Efficiency and Discipline Rules must be observed.
- (v) If the employee is convicted, he may be dismissed from service if his retention in service is not desirable. In that case, the procedure prescribed in the Efficiency and Discipline Rules, need not be observed. He will be entitled to nothing more than the subsistence allowance up to the date of his dismissal from which date the pay and allowance will cease under F.R. 52.

[Authority.-Estt. Division O.M.No. F/19/11/49-Ests (SE), dated 20-12-1949].

Sl. No. 77 Clarification Regarding Detention of Government Servants under Public Safety Act

A reference is invited to the Establishment Division's O.M. No. F. 19/11/49-Ests (S.E.), dated the 20th December, 1949, and it is stated that a certain amount of confusion has arisen from the words "considered as resulting from"* which occur in item (i) of that Office Memorandum. These words, as they stand, are capable of being interpreted as if a person who is detained under the Public Safety Act will be governed by the provisions of Article 194, Civil Service Regulations, as it stands. The position, however, is that Article 194 does not strictly apply to such cases but the intention is that, when a person is detained under the Public Safety Act, his pay and allowances should, on the analogy of the provisions of Article 194, be regulated as if he was committed to prison. In order to make this intention clear, it has been decided that the words "considered as resulting from" * referred to above may be replaced by the words "treated as period spent under".

[Authority.-Estt. Division O.M.No.27/41/52-SE-II, dated 7-12-1954].

* The words "considered as resulting from" appeared in para 1(i). These words have been substituted by the words "should be treated as period spent under" para 1(i), as decided in Hence subs. vide above OM dated 7.12.1954.

Sl. No. 78 Removal from Service as a Result of Conviction in Court of Law

Attention is invited to the Establishment Division's O. M. No. 3/24/59-SE.II, dated 21-3-1959 (**Annex**). It is stated that the instructions contained therein have been reviewed in the Establishment Division and, in supersession of these instructions, it has been decided that, in future, all government servants convicted of a criminal charge involving moral turpitude should be dismissed from government service. For this purpose, Government Servants (Efficiency and Discipline) Rules, 1973 provide for dispensation of the normal disciplinary procedure.

[Authority.-Estt. Division O.M.No.2/2/73-DI, dated 15-4-1976].

(ANNEX)

[Copy of Establishment Division O.M. No. 3/24/59-SE.I, dated the 21st March, 1959].

References have been received from time to time from Ministries and Divisions *etc.* enquiring whether a government servant convicted by a court of law can be removed or dismissed from service or reduced in rank straightaway or it is necessary to give him a show cause notice before passing final orders in the matter.

2. This question has been given due consideration in the Establishment Division who are of the view that,, as a general principle, if a government servant is convicted in a court of law he does not automatically lose his employment under government. But if in the opinion of the authority competent to pass orders of dismissal, removal or reduction in rank grounds which led to his conviction are good and sufficient for imposing any of these penalties, that authority can pass such an order. If, however, the competent authority considers that a lesser penalty or no penalty at all is called for in the circumstances of the case (such as minor or technical nature) there is no bar to that authority taking a decision accordingly.

3. If it is decided to award the penalty of dismissal, removal or reduction in rank it is not necessary to give a show cause notice to the person concerned *vide* Article 181 (2) proviso (a) of the late Constitution or Rule 55 of the Civil Services (Classification, Control and Appeal) Rules [Article 177 (I) (b) of the 1962 Constitution or rule 6 of the Efficiency and

Discipline Rules, 1960 may be referred to in the present context]. The order of removal, dismissal or reduction can be passed by the competent authority taking into consideration the grounds of conduct which led to the conviction of the person concerned in the court of law. The removal, dismissal or reduction in such cases takes effect from the date of orders and not from the date of verdict passed by the court.

Sl. No. 79 Strictures Passed by Courts against Government Servants

The question, whether strictures passed by courts of law against a government servant render him liable to departmental action, has been under consideration of the Establishment Division for some time. It has been held that when a court passed any strictures against a government servant, it should not necessarily be assumed that he is guilty of some misconduct or breach of rules or an act of omission or commission. The nature of the action to be taken should be decided after careful consideration of the facts and circumstances of each individual case. If the strictures are such as to merit disciplinary action against the government servant concerned, he should be dealt with departmentally in the light of the Government Servants (Efficiency and Discipline) Rules. No government servant should, however, be punished on the basis of the strictures without drawing up necessary proceedings in accordance with the aforesaid rules. An entry may be made in the Character Roll of the government servant concerned or a copy of the strictures placed therein only when specific orders are passed to that effect by the competent authority. In no other case, strictures should find a place in the Character Roll of the government servant.

[Authority.- Estt. Division O.M.No. 3/110/59-E.V., dated 28-4-1960].

Sl. No. 80 Payment of Costs Incurred By Government Servants in Defending Themselves in Judicial Proceedings

Under section 266 (3) (d) of the Government of India Act, 1935, it was necessary to consult the Federal Public Service Commission in matters relating to reimbursement of costs incurred by government servants in defending themselves in legal proceedings and accordingly, after Independence, detailed instructions were issued indicating, *inter alia*, at what stage the Commission were to be consulted in such matters, *vide* this Division Office Memorandum No. 3/15/52-SE. II, dated the 10th July, 1952 (**Annex**). These instructions continued to operate also under

the 1956 Constitution which kept alive the above legal position by its Article 188 (2) (d).

2. With the commencement of the new Constitution, the position in this regard will, however, undergo some change as consultation with the Federal Public Service Commission in respect of matters mentioned above will not be necessary [vide Article 185 (2) *ibid*]. It is, therefore, requested that the instructions contained in the Office Memorandum referred to above may please be followed subject to the modification that such cases need not be referred to the Commission with effect from the commencing day' of the new Constitution.

[Authority.-Estt. Division O.M.No.2/16/62-D.I, dated 25-5-1962]

(ANNEX)

[Copy of Establishment Division O.M. No. 3/15/52-SE.II, dated 10-7-1952]

The question has been raised what the practice should be where applications are received from government servants asking for the costs of defending criminal or civil proceedings filed against them when the opposite party is (a) a private person, (b) government.

2. The law on the subject is contained in section 197 of the Code of Criminal Procedure and in Section 266(3) (d) and 271 of the Government of India Act, 1935.

3. As regards proceedings initiated by members of the public against government servants in respect of an act or acts done by them in their official capacity, there is little difficulty. In a letter issued in 1919, the Government of India in the Finance Department set out the practice in the following terms:—

"For many years, it has been the practice to apply the same principles in all departments. When a government officer has been accused of committing an offence, or has been used for damages on the ground of some act done by him in his official capacity, and it appears to the local Government that his conduct was not open to blame, it is usual to employ the Government law officers to defend the case at the expense of Government. When Government is not so satisfied, the practice is to leave the officer to defend himself at his own expense. But if he is subsequently acquitted and his character cleared Government defrays such reasonable charges as he has incurred in defending himself. The amount, which

Government should pay, is settled on the merits of each case according to circumstances. The justification for this procedure plainly is that had the facts been fully ascertained at the beginning, Government would have undertaken his defence".

4. It is not necessary to amplify the above statement of practice, save to invite the attention of Ministries to the necessity of consulting the *Pakistan Public Service Commission before passing orders, as required under Section 266 (3) (d) of the Government of India Act, 1935, and of consulting the Ministries of Law and Finance whether the expenses claimed are reasonable.

5. A more difficult question arises when government are themselves the prosecutors. Unlike prosecutions launched by members of the public, prosecutions of officials by government start with a presumption that they have been filed in good faith, after careful consideration and not vexatiously. When a case fails owing to its having remained unproved or the accused being given the benefit of the doubt or on some technicality. Government are under no obligation to pay compensation; and any general practice of doing so merely because a case had failed in court would be a waste of government funds and make the cost of anti-corruption proceedings prohibitive. On the other hand the possibility cannot be excluded that there will, occasionally, be cases in which there are good reasons to believe that the accused was, in fact, innocent. In such cases, compensation may and should be paid.

6. The procedure in all cases where application for such compensation is made will be as follows. If the tentative view of the administrative Ministry concerned is that compensation should be paid, they will consult the Ministry of Law both on any legal issue which may arise and on the reasonability of the charges claimed (counsel's fees, etc.). They will then, in any case, whether or not they favour payment of compensation, forward the file to the *Pakistan Public Service Commission, with a concise statement of the case and all relevant papers, for their advice. On receipt of their advice, they will decide whether or not to pay compensation and, if it is proposed to make any payment, will obtain the concurrence of the Ministry of Finance **.

* Federal

** Note.- Attention is invited to Sl. No.15 (b) (XVII) Annex II to the Ministry of Finance's O.M. No. F. 1 (5) R. 12/80, dated 11th March, 1981 according to which Ministries/Divisions have been delegated full powers to sanction "Law Charges" in consultation with the Ministry of Law. The present position is in Fin. Div.OM No. F. 3(2) Exp. III/2006, dated 13th September, 2006 the System of Financial Control and Budgeting, 2006 September, 2006 (Annex 1).

Sl. No. 81 Maintenance and Circulation of List of Persons Debarred From Future Employment under Governments- Establishment of Convention between *Central Government and Provincial Governments

As all governments addressed have indicated their willingness to establish a convention with the *Central Government and between themselves to the effect that persons debarred from service under one government will be treated as such by other government, it has been decided to establish the proposed convention with immediate effect.

[Authority.- Estt. Division No.39/4/48 Estt.(ME), dated 2-8-1948].

Sl. No. 82. Procedure for the Maintenance and Circulation of Lists of Persons Debarred From Future Employment under Government

In order to effect economy in time, labour, and expense and to ensure the systematic preparation and maintenance of the list of debarred persons, it has been decided to centralise the work and to adopt the following procedure for this purpose:-

- (a) Ministries/Divisions will notify to the Establishment Division particulars of government employees dismissed and debarred from future employment by them or by any of their Attached Departments or Subordinate Offices;
- (b) The Federal Public Service Commission will also notify to Establishment Division particulars of all candidates declared by them as unsuitable for government employment;
- (c) Provincial Governments will also notify to the Establishment Division particulars of government employees debarred by them from future employment, together with particulars of candidates declared by Provincial Public Service Commission as unsuitable for government service;
- (d) The particulars under (a) to (c) above will be supplied monthly to the Establishment Division so as to reach that Division not later than the 20th of the month concerned; and
- (e) Establishment Division will prepare a consolidated list, in alphabetical order, once a month, and circulate it to the Ministries/Divisions and the Provincial Governments.

[Authority. - Estt. Division O.M.No. 39/6/48-Estt.(ME), dated 25-10-1948].

* Federal.

SI. No. 83 Statements about Government Servants Dismissal from Service and Debarred From Future Employment

According to the procedure laid down in the Establishment Division Office Memorandum No.39/6/48-Estt. (ME), dated the 25th October, 1948, as amended in their Office Memorandum of even number, dated the 2nd June, 1949, Ministries/Divisions, Federal Public Service Commission, Provincial Governments and administrations are required to furnish, to the Establishment Division the particulars of government servants dismissed from service and debarred from future employment under government, in the form prescribed therein. It is felt that the form in question should be amplified to include the educational qualification and permanent address of the person debarred from government service. It is requested that, in future, information in regard to the person debarred from future employment under government may please be furnished in the revised form **(Annex)**.

2. It has been observed in several cases that authorities concerned are not in a position to furnish, to the Establishment Division, all the necessary particulars of the persons debarred from future employment under government for the reason that proper records of their particulars have not been maintained by them. It will be appreciated that, unless full particulars of the individuals concerned are included in the consolidated list issued by the Establishment Division, there is a danger of some of these individuals re-joining government service undetected and thus the very purpose for which these lists are issued will be defeated. Ministries, etc., are, therefore, requested to ensure that full particulars of all government servants are maintained by them so that necessary particulars are made available to the Establishment Division in case any of them is debarred from future employment under government.

[Authority. - Estt. Division O.M.No.38/6/65-ME, dated 18-6-1955].

SI. No. 84 Reports about Future Employment

Nil reports in respect of persons debarred from future employment under government need not be sent to the Establishment Division.

[Authority. - Estt. Division O.M.No. 15/6/59-ME, dated 5-9-1959].

SI. No. 85 List of Persons Dismissed From Service and Debarred From Future Employment

Under instructions issued from time to time, Ministries are required to supply to the Establishment Division, a statement, giving particulars of persons dismissed from service and debarred from future employment

under the government in the prescribed form by the 20th of each month. This statement is to be arranged alphabetically, typed only on one side of the paper and supplied to the Establishment Division in duplicate in a consolidated form.

2. It appears that these instructions are not being followed and these statements are not received in the prescribed form in accordance with the existing instructions. The last date prescribed for submission of these statements, e.g., 20th of each month is also not being adhered to. The result is that the lists cannot be printed in time.

3. In order to ensure the systematic preparation and maintenance of the lists of debarred personnel, it is requested that the above instructions may kindly be complied with strictly in future.

[Authority.- Estt. Division O.M. No. 103/10/59-Con., dated 22-12-1959].

(ANNEX)

**LIST OF PERSONS DISMISSED OR DEBARRED
FROM GOVERNMENT SERVICE**

Ministries/Divisions: _____

Provincial Government: _____

Serial No.	Name and Permanent Address	Educational Qualifications	Father's Name and Address	Date of Birth	Office in which employed and the <u>post held</u> *Post or service for which he was a candidate	Reasons for Dismissal or *Disqualification	Height and Personal Marks of Identification, if known
1	2	3	4	5	6	7	8

* In the case of persons declared unsuitable by the Public Service Commission.

Sl. No. 86 Quarterly List of Persons Dismissed From Service and Debarred from Future Employment – Manner of Submission

The Ministries/Divisions are requested that henceforth the names with particulars of persons sent to the Establishment Division for publication in the quarterly lists of dismissed and debarred from future employment under the government may kindly be sent to this Division in triplicate on the prescribed proforma in alphabetical order e.g., the names starting with Alphabet `A' on one sheet and those starting with `B' on a separate sheet and so on.

2. It is also requested that the material for publication in the said lists may be sent well in time so that the lists can be published immediately after the expiry of the quarter.

[Authority.- Estt. Division O.M. No. 22/4/71-F.I, dated 30-11-1971].

Sl. No. 87 Consultation of Lists of Persons Dismissed from Service and Debarred From Future Employment

The periodical lists of persons dismissed from government service and debarred from future employment under the government are issued by the Establishment Division with the object that Ministries/Divisions etc., remain abreast of the information in regard to the persons dismissed from government service on account of serious charges against them and that such persons should not be re-employed under the government in future.

2. The Ministries/Divisions/Attached Departments etc. should consult these lists before making fresh appointments to avoid chances of such persons getting into the government service again. The Establishment Division may kindly be informed that the instructions are being strictly followed by the Ministries/Divisions and that these have been brought to the notice of other authorities and offices under their administrative control.

[Authority.- Estt. Division O.M. No.22/4/71-F.I, dated 3-4-1973].

Sl. No. 88 Submission of Forged Documents in Support of Age/Educational Qualifications

A large number of cases have come to notice in which candidates for competitive examinations conducted by the *Central Public Service Commission have submitted forged documents in support of their age or

* Federal.

educational qualifications. This malpractice has become so frequent that it is considered that it can be eradicated only if strict measures are adopted. The Establishment Division, therefore, consider that no punishment less than that of dismissal is normally appropriate in such cases.

2. It is, therefore, advised that while considering cases of this nature the Ministry of Finance, etc., may keep in view the views expressed in the Establishment Division letter No.40/6/50-SEI, dated 21-6-1950 Chapter 2, Vol. I of Estacode Edition, 2007.

[Authority.- Estt. Division O.M.No. 40/15/51-SEI, dated 8-5-1951].

Sl. No. 89 False or Forged Information about Educational Qualifications

Under the existing orders, candidates for posts in government service who give false information about their educational qualifications, or tamper with their dates of birth in their educational certificates, are disqualified by the Central* Public Service Commission from appearing at any examination, and they are also debarred by the government from employment under them. A number of such cases of forgery have been detected by the *Central Public Service Commission, and it is felt that unless deterrent action is taken by way of prosecution in a court of law, forgers will not be discouraged. It has, therefore, been decided that whenever there are good grounds for suspecting a candidate for a post under the government of having given false information about his educational qualifications, or tampering with his date of birth as recorded in his educational certificate action should be taken immediately to prosecute him and have the case tried summarily.

[Authority.- Estt. Division Letter No. 6/26/58-R, dated 11-11-1958].

Sl. No. 90 False or Forged Information about Educational Qualifications, Age and Pakistan Penal Code

Government of Pakistan do not agree with the views expressed by the Government of East Pakistan in their letter No. 2070-GAC, dated 9th December, 1958 that the furnishing of false information by candidates for posts in government service is punishable under section 177 of the Pakistan Penal Code. Section 177 of the Pakistan Penal Code deals with the cases of persons legally bound to furnish information to a public servant, whereas there is no legal obligation in the part of a candidate to furnish information when applying for a post in government service. The offence of furnishing

* Federal.

false information in such cases is not, therefore, punishable under section 177, but under section 182 of the Pakistan Penal Code.

2. As for tampering with the date of birth as recorded in an educational certificate, it is considered that this amounts to forgery within the meaning of section 463 of the Pakistan Penal Code. The forging of certificates to support false assertions of educational qualifications would appear to be punishable under section 465, and the use of forged certificates punishable under section 468 of the Pakistan Penal Code. It is considered that these offences, which are punishable with long periods of imprisonment, cannot be tried summarily for the reason that, under section 260 of the Code of Criminal Procedure, only offences punishable with imprisonment for a term not exceeding six months can be tried summarily.

3. In the circumstances, prosecution for the offences mentioned above should be restricted to cases of false information under section 182 of the Pakistan Penal Code, ignoring the offence of forgery where it is also present. Steps should also be taken to have the cases tried in a summary manner under sub-section (1) of section 260 of the Code of Criminal Procedure, 1898.

[Authority.- Estt. Division Letter No.6/26/58-R, dated 20-1-1959 addressed to the [then] Government of East Pakistan].

Sl. No. 91 Anti-corruption Measures – Government Servants to Disclose Their Assets/Severe Disciplinary Action For Indulging in Corrupt Practices

Government of Pakistan have recently considered certain measures for the elimination of corruption among government servants and have, '*inter alia*', decided as follows:–

- (a) that a government servant when required by government to disclose his assets, immovable as well as liquid, must comply;
- (b) that a government servant, who indulges in nepotism, favouritism, victimization and wilful abuse of office, will be liable to disciplinary action which may include dismissal.

2. It is requested that the above decisions may please be brought to the notice of all government servants serving under the Government of Pakistan.

[Authority.- Estt. Division O.M.No. 4/15/53-SE II, dated 7-7-1953].

Sl. No. 92 Responsibility of Officers to Watch Conduct of Subordinates

It has been decided that all officers should be informed that it is their duty to watch the conduct of their subordinates and to ensure that corruption does not spread among them. Failures to do so would be reflection on their own efficiency.

[Authority.- Estt. Division O.M.No. 3/5/59-SE II, dated 4-3-1959].

Sl. No. 93 Responsibility of Heads of Departments/Organizations to Eradicate Corruption from Officials Working Under Them

Government has recently considered the question of eradication of corruption from services and decided that "Heads of Organizations" should be made responsible for rectifying and punishing corrupt officials working under them. It was further decided that they should be provided with a list of suspected corrupt officials whose activities should be watched vigilantly.

In accordance with the existing instructions, it is the duty of all officers to watch the conduct of their subordinates and to ensure that corruption does not spread among them. The Inspector General, Special Police Establishment*, is being asked to furnish to the heads of departments/organizations, lists of suspected corrupt officials of their departments/organizations. The services of the Special Police Establishment should be freely utilized for verifying the allegations of corruption, or for conducting enquiries/investigations, into suspected cases of corruption.

2. The Office Memorandum may be brought to the notice of all Heads of Departments/Organizations under the Ministry of Finance, etc.

[Authority.- Interior Division O.M. No. 1/8/67-SP (P), dated 20-9-1967].

Sl. No. 94 Suspension of Public Servants Involved in Cases of Bribery and Corruption

It has come to the notice of the Interior Division that government servants who were involved in cases of bribery and corruption and were suspended from service in accordance with paragraph 12 of the Instructions Regarding Investigation of Cases of Bribery and Corruption by the Federal Investigation Agency, have been kept under suspension for unduly long period. In some cases, the period of suspension extended over

* DG, FIA.

six months or even more, thereby subjecting such officials to unnecessary mental and other hardships. In order to obviate such hardships, it has been decided that the cases of public servants who are being prosecuted on charge of corruption and have been under suspension for over a year should be reviewed after every six months, with a view to determining whether they can be reinstated. It is accordingly requested that the particulars of such cases may be furnished to this Ministry, in the enclosed form (**Annex**) every six months i.e. by the middle of January and July every year alongwith the recommendations of the Ministry/Division concerned, for carrying out the proposed review.

2. 'Nil' statements may also please be sent in respect of these Ministries/Divisions/Departments/Organizations in which no public servant of the category mentioned above is under suspension.

[Authority.- Interior Division O.M. No. 1/7/68-SP (P), dated 29-6-1968]

Form

**STATEMENT OF PUBLIC SERVANTS INVOLVED IN CORRUPTION
CASES AND CONSEQUENTLY SUSPENDED FROM SERVICE**

Ministry/Department.....

Statement for the half year ending.....

Serial No.	Name and designation of public servant	Date from which continuously under suspension	Reason for suspension viz, whether arrested by police and whether sanction for prosecution issued	If sanction for prosecution issued its number and date	Remarks
1	2	3	4	5	6

Sl. No. 95 Responsibility of Head of Department for Corruption within Area of His Administrative Jurisdiction

Measures undertaken to curb corruption in the police have shown appreciable results, and its personnel deserve to be commended, and encouraged to continue with their efforts in that direction.

2. Meanwhile, public complaints of corruption in several government departments persist, and effective steps are required to root it out. It is the bounden duty of every Head of Department to exercise utmost vigilance, analyse the cause, and trace the source where incidence of corruption occurs.

3. In future, a Head of Department will bear responsibility, and be answerable for proven charges of corruption within the area of his administrative jurisdiction. It is self-evident that corruption prevails in a department of its Head is:

- (a) himself corrupt, or
- (b) wilfully blind to corruption taking place, or
- (c) so inefficient that he is unable to control it.

4. Whichever of these three reasons may be applicable, such a Head of Department cannot be retained in service to the detriment of government's objective of serving the people and promoting their weal and welfare.

[Authority.- President and CMLA's Note No. 57/1/CMLA, dated 25-9-1978].

Sl. No. 96 Setting-up of Committees to Deal with Cases of Corruption

The question of eradicating corruption from the various walks of life in the country has been engaging the attention of the government for some time. More particularly, corruption and indiscipline in government offices have given government cause for a great deal of concern. Accordingly, amongst other measures that the government is contemplating, the Prime Minister has been pleased to approve the following procedure for cleansing government offices and departments of corrupt and inefficient elements.

2. The Inspector General, Special Police Establishment* should periodically compile lists of government servants who are either

* DG, FIA.

guilty of corrupt practices or enjoy a persistent reputation of being corrupt. These lists should be forwarded to the Establishment Division in the case of officers of *Grade 17 and above and to the concerned Ministries in case of government servants of Grade 16 and below. Secretaries to the Government and heads of departments may also report, in respect of the Ministries and Departments under them, such cases of government servants in *Grade 17 and above to the Establishment Division.

3. The cases thus referred to the Establishment Division will be looked into by a Committee consisting of Establishment Secretary, Interior Secretary and Secretary of the Ministry concerned. The Committee will be responsible for making recommendations to the Prime Minister as to the action that may be taken against the corrupt officials concerned. In respect of Government servants of Grade 16 and below Ministries may take final action.

4. In big departments such as Railways, Telephones and Telegraphs** and Pakistan Public Works Department, where corruption is rampant in a big way, separate Committees should be set up. These Committees should finalize action in respect of officers in *Grade 16 and below. For *Grade 17 and above they should make recommendations to the Committee referred in para 3, who after scrutiny will submit cases to Prime Minister. There should be a separate Committee for corporations.

5. These departments should also have their own separate anti-corruption cells, which they may organize in consultation with the Interior Division and I.G., ***S.P.E.

6. The Committees referred to in paras 3 and 4 should also deal with cases of inefficient government servants. [®][As you, no doubt, know senior government servants of Grades* 21 and 22 can now be retired at any time, if they are inefficient or have outlived their utility]. Other government servants can also be retired on completion of 25 years of service. It has been decided with the Prime Minister's approval that 2 to 3 years before a government servant is due to complete 25 years service, a

* BPS

** T&T Department was converted into Pakistan Telecommunication Corporation Ltd. (PTCL). PTCL has been privatized as Pakistan Telecommunication Company Ltd. (PTCL). In the public sector, the telecommunication needs of the government are catered for by the National Telecommunication Corporation (NTC). There are posts of Telephone Operators in government organizations.

*** DG, FIA

[®] Note. See Section 13 of Civil Servants Act, 1973, as amended.

special entry should be made by the reporting officer in his ARR indicating whether his continued retention in service is justified. Such cases as are reported unfit for further retention for 3 consecutive years should come up before the respective Committee for necessary scrutiny and action.

[Authority.- Estt. Division D.O. No. 1/7/74-CV, dated 22-8-1974].

Sl. No. 97 Co-operation with Investigating Officers of the Federal Investigating Agency

The New Federal Investigation Agency has been constituted by the Government of Pakistan for the investigation of cases of bribery and corruption involving persons serving in connection with the affairs of the Centre*. The cases of corruption usually relate to the functions of the public servants concerned and involve the examination of official record for coming to a conclusion whether an offence has been committed or not. Instances have come to notice that in some cases when the Investigating Officers of the Special Police Establishment** approached the departments for papers relevant to the cases under investigation, the officers concerned delayed handing over of papers on one pretext or the other and in some cases, even refused to hand over the documents. They were perhaps not aware that under section 94 of the Criminal Procedure Code, an Investigating Officer is empowered to demand the production of any paper connected with the offence, the investigation of which is being conducted by him and omission to comply is punishable under section 175 of the Pakistan Penal Code. Even otherwise, it is the duty of each public servant to assist the anti-corruption agencies in their arduous task of eradicating corruption. The responsibility of the Heads of Departments in this matter has also been emphasized in this Ministry's Office Memorandum No. 1/8/67-SP (P), dated the 20th September, 1967. Delay in the investigation of corruption cases is detrimental to the prosecution and goes in favour of the accused who gets a chance to tamper with the record and win over the witnesses before the police can examine them. It is, therefore, requested that suitable instructions may be issued to all concerned impressing upon them the need for prompt handing over of the requisite record to the Investigating Officers and the desirability of extending full co-operation to them in the investigation of corruption cases.

[Authority.- Interior Division O.M. No. 1/8/68-SP (P), dated 24-7-1968].

* Federal.

** FIA.

Sl. No. 98 Handing-Over of Record and Extending Cooperation for Investigation

It has been again reported by the Inspector General, Special Police Establishment*, that most of the investigations are delayed as the relevant record of the case is not readily made available by the department concerned to the investigating officers.

2. It is, therefore, requested that fresh instructions may kindly be issued to all concerned impressing upon them the need for prompt handling over of the requisite record to the investigating officers and the desirability of extending full co-operation to them in the investigation of corruption cases.

[Authority.- Interior Division O.M.No. 1/8/68-SP (P), dated 27-2-1971].

Sl. No. 99 Instructions Regarding Investigations by the Federal Investigation Agency into Cases of Bribery and Corruption

With the coming into force of the F.I.A. Act No. VIII of 1975, the Special Police Establishment** stands converted into the Federal Investigation Agency. Instructions regarding investigations by the Federal Investigation Agency into the conduct of cases of bribery and corruption have, therefore, been drawn upon the lines of the former instructions regarding investigations by the Special Police Establishment with necessary modifications.

[Authority.- Interior Division O.M. No. 1/21/74-SP (P), dated 5-3-1975].

* FIA.

CHAPTER-II

THE FEDERAL INVESTIGATION AGENCY (109-110)

CHAPTER-II

FEDERAL INVESTIGATION AGENCY

SI. No. 1 *THE FEDERAL INVESTIGATION AGENCY RULES 1975

[22nd January, 1975]

S. R. O. 130(1)/75.— In exercise of the powers conferred by sub-section (1) of section 9 of the Federal Investigation Agency Act, 1974 (VIII of 1975), the Federal Government is pleased to make the following rules:—

1. Short title and commencement.— (1) These rules may be called the Federal Investigation Agency Rules, 1975.

(2) They shall come into force at once.

2. Definitions.— In these rules, unless there is anything repugnant in the subject or the context,—

(a) "Act" means the Federal Investigation Agency Act, 1974 (VIII of 1975);

(b) "Agency" means the Federal Investigation Agency, constituted under the Act; and

(c) "Director-General" means the Director-General of the Federal Investigation Agency appointed under sub-section (2) of section 3 of the Act.

3. The Director-General shall exercise in respect of the Agency all powers exercisable, under the Police Act, 1861 (V of 1861), by an Inspector-General of Police.

SI. No. 2 *The Federal Investigation Agency (Inquiries and Investigations) Rules 2002

S.R.O. 567 (I)/2002.— In exercise of the powers conferred by sub-section (I) of section 9 of the Federal Investigation Agency Act, 1974 (VIII of 1975), the Federal Government is pleased to make the following rules, namely:—

* Published in the Gazette of Pakistan, Extraordinary, Part II, dated 29th January, 1975, at page 146.

1. Short title and commencement.– (1) These Rules may be called the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002.

(2) They shall come into force at once.

2. Definitions.– (1) In these rules unless there is anything repugnant in the subject or context,–

- (a) "Act" means the Federal Investigation Agency Act, 1974 (VIII of 1975);
- (b) "Additional Secretary" means the Additional Secretary, Ministry of Interior, Government of Pakistan;
- (c) "competent authority" means the authority to accord permission either to hold an inquiry or investigation, or to order registration of a criminal case, or drop the case after investigation, or decide departmental proceedings under these Rules;
- (d) "Council" means the Federal Anti-Corruption Council (FACC);
- (e) "Deputy Director" means the Deputy Director of the Agency;
- (f) "Director" means the zonal and functional Director of the Agency;
- (g) "Head of Department" means an officer incharge of a Department of the Federal Government, corporation or an autonomous body established by the Federal Government;
- (h) "prosecution sanctioning authority" means the Federal Government or, as the case may be, a Provincial Government which may sanction for prosecution under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or, as the case may be, under sub-section (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958); and
- (i) "Secretary" means the Secretary, Ministry of Interior Government of Pakistan.

(2) The words and expressions used but not herein defined shall have the meanings assigned to them in the Act.

3. **Initiation of action by the Agency.**— (1) The Agency may, subject to rules 4 and 5, initiate an inquiry or investigation either on its own initiative or on receipt of a complaint or oral or written information.

(2) After an inquiry or investigation has been registered, the inquiry or investigation shall proceed with care and discretion and no undue publicity shall be given to it. Special care shall be taken to ensure that no unnecessary damage is caused to the prestige, reputation and dignity of any public servant involved in the case.

4. **Verification of complaints against public servants.**— The Deputy Director or an officer above the rank of Deputy Director may initiate verification of a complaint in order to ascertain the identity of the complainant or informer and genuineness of the complaint or information. No action shall be taken on any anonymous or pseudonymous complaint.

5. **Initiation of inquiry and registration of criminal case.**— (1) An inquiry shall be initiated against an accused public servant specified in column (2) of table below with prior permission of the authority, specified in column (3) of that table.

TABLE

S. No.	Basic Pay Scale of public servant	Authority
(1)	(2)	(3)
1.	BPS 1 – 12 and equivalent.	Deputy Director
2.	BPS 13 – 17 and equivalent.	Director
3.	BPS 18 – 19 and equivalent.	Director General
4.	BPS 20 – 21 and equivalent.	Secretary
5.	BPS 22 and equivalent.	FACC.

(2) Subject to sub-rule (3), a criminal case shall be registered against an accused public servant specified in column (2) of table below with prior permission of the authority specified in column (3) of that table.

TABLE

S. No.	Basic Pay Scale of public servant	Authority
(1)	(2)	(3)
1.	BPS 1 - 12 and equivalent.	Director
2.	BPS 13 - 17 and equivalent.	Director General
3.	BPS 18 - 19 and equivalent.	Additional Secretary
4.	BPS 20 - 21 and equivalent.	Secretary
5.	BPS 22 and equivalent.	FACC.

(3) No prior permission under sub-rule (2) shall be required for registration of a case against a public servant caught as a result of trap arranged by the Agency under the supervision of a Magistrate of the first class. In such case, a report within twenty-four hours shall be made to the Secretary of the Ministry or Division concerned or the Head of the Department concerned and immediate superior of the public servant concerned.

(4) If on receipt of a complaint, the competent authority decides not to initiate an inquiry or register a case, it shall record reason therefor.

6. Report regarding registration of case and arrest.— The Registration of a case and consequential arrest of a public servant shall be reported to the Head of the Department of the accused within twenty-four hours.

7. Power to call for record of case.— (1) The Secretary and Director-General may *suo moto* or otherwise call for the record of any case or inquiry, pending with the Agency, for examination and give such directions as may be necessary for the speedy, fair and just disposal of the case.

(2) A Director may *suo moto* or otherwise call for the record of any case or inquiry for the purpose of satisfying himself as to the correctness or propriety of decision taken by a Deputy Director under these rules and may pass such orders as he may be deem fit.

8. Power to drop case and recommend departmental proceeding.— (1) The authority specified in column (3) of the table

below may drop a case and recommend departmental proceedings in respect of a public servant specified in column (2) of that table.

TABLE

S. No.	Basic Pay Scale of public servant	Authority
(1)	(2)	(3)
1.	BPS 1 - 16 and equivalent	Director-General
2.	BPS 17 and equivalent	Additional Secretary
3.	BPS 18 - 19 and equivalent	Secretary
4.	BPS 20 - 21 and equivalent	FACC

(2) When decision to hold departmental proceedings against a public servant taken under sub-rule (1), the Agency shall forward facts of the case, statement of allegations, list of witnesses and documents if any to the concerned competent authority of the accused public servant for initiating departmental proceedings.

9. **Federal Anti-Corruption Council.**— (1) There shall be a Federal Anti-Corruption Council (FACC) which shall consist of—

- (a) Secretary
Chairman
- (b) Representative of the Law, Justice and
Member
Human Rights Division not below the rank of Joint Secretary.
- (c) Representative of the Establishment Division
Member not below the rank of Joint Secretary.

(2) The Director-General, Federal Investigation Agency, shall act as Secretary of the Council.

(3) The Federal Anti-Corruption Council shall co-opt a representative of the concerned Ministry (not below the rank of Joint Secretary) whose officer's case is before the Council.

10. **Obtaining Sanction for prosecution.**—(1) On completion of an investigation, a case found fit for prosecution for which sanction for prosecution is required under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or under sub-section (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958), or the rules made there under, shall be submitted by the Agency to the Federal Government to accord sanction for prosecution alongwith full facts of the case, the opinion of the Legal Officer and statement of allegations.

(2) In cases registered against officers working in BPS-20 and above, explanation of the accused officer, giving him fifteen days time shall be obtained by the Director-General. Questions asked and replies furnished by the concerned officer shall invariably be incorporated in the Confidential Final Report and shall be submitted to the Federal Anti-Corruption Council alongwith relevant documents.

(3) In cases of officers working in BPS-19 and below, the prosecution sanctioning authority shall communicate full facts of the case and statement of allegations to the Ministry or Department under whom the public servant concerned is employed. The Ministry or Department shall supply these documents to the public servant concerned and give him an opportunity to submit his reply within thirty days of its receipt.

(4) The Ministry or Department concerned to whom a case has been sent under sub-rule (3) shall convey its recommendations alongwith the statement of the public servant concerned to the prosecution sanctioning authority within sixty days of its receipt.

(5) The prosecution sanctioning authority shall take into consideration the explanation of the accused public servant while making a decision regarding disposal of the case.

(6) If the prosecution sanctioning authority decides to prosecute the accused public servant, sanction for prosecution under section 197 of the Code of Criminal Procedure, 1898 (Act V of 1898), or, as the case may be sub-section (5) of section 6 of the Pakistan Criminal Law Amendment Act, 1958 (XL of 1958), shall be given forthwith.

(7) If it is decided to hold departmental proceedings against the public servant, it shall be held by the authority under whom the public servant is serving. The Ministry of Interior, Government of Pakistan or, as the case may be, the Agency shall supply all material required for the departmental proceedings to the concerned Ministry, Division or Department under which the public servant concerned is employed.

11. **Competent authority in cases where senior public servant is involved alongwith junior public servant.**— If more than one public servant is involved in a case, competent authority for the public servant in the highest rank shall also be the competent authority for the junior public servant involved in the case.

[No. F1/20/99-FIA (I).]

Sd/-
MANZOOR ALI KHAN,
Deputy Secretary.

Sl. No. 3 Setting up of Anti-Corruption Council at the Centre to Deal with Cases of Class I Officers.

It has been decided to set-up an Anti-Corruption Council at the *Centre to deal with cases of corruption against Class I Officers** investigated by the Special Police Establishment. The composition etc., of the Council will be as follows:—

(1) Composition.— The Council will be composed as follows:—

- | | | |
|-------|--|-----------|
| (i) | Secretary, Cabinet Secretariat
(Establishment Division) | Member |
| (ii) | Secretary, Ministry of Home
and Kashmir Affairs
(Home Affairs Division***) | Member |
| (iii) | Secretary, Ministry of Law | Member |
| (iv) | Inspector-General, Special
Police Establishment | Secretary |

Note.- (a) The senior most of the three permanent members will act as the Chairman of the Council.

(b) The Council will co-opt the Secretary of the Ministry concerned, the case of whose official comes up for decision.

(2) Jurisdiction.— The Council will deal with cases of corruption against:-

- (i) All Class I Officers** of the Central** Government;
- (ii) Officers of the Provincial Governments or of the corporate bodies and other organizations set-up by the Central* Government where the authority competent to remove the accused from service is the President;

* Federal Government.

** Officers in BPS 17 to 22.

*** Interior Division.

(iii) Members of All Pakistan Services* or of Central Class I** Services or holders of Class I Posts under the Central Government who were at the time of the commission of the offence serving in connection with the affairs of a Province.

(3) Functions.- The functions of the Council will be as follows:-

- (i) To permit institution of open enquiry by the Special Police Establishment.
- (iii) To permit registration of a case by the Special Police Establishment, for formal investigation.
- (iv) To consider the enquiry/investigation report and recommend, as the case may be,
 - (a) prosecution of the accused, or
 - (b) departmental action, or
 - (c) dropping of the case, or
 - (d) further enquiry/investigation.

[*Note.-* Recommendations of the Council shall have the same sanctity and shall be given the same weight as the recommendations of the Central*** Public Service Commission].

[Reference Interior Division O. M. No. 1/9/67-SP (P), dated 29-6-1968].

Sl. No. 4 Repeal of Removal from service (Special Powers) Ordinance, 2000.

Act No. III of 2010

An Act to repeal the Removal from Service (Special Powers) Ordinance, 2000 (XVII of 2000).

* Federal.

** BPS 17-22.

*** All Pakistan Unified Grades (APUG): Secretariat Group, District Management Group and Police Service of Pakistan.

WHEREAS it is expedient to repeal the Removal from Service (Special Powers) Ordinance, 2000 (XVII of 2000), for the purpose hereinafter appearing;

It is hereby enacted as follows:-

Short Title, Extent and Commencement.—

(1) This Act may be called the Removal from Service (Special Powers) (Repeal) Act, 2010.

(1) It extends to the whole of Pakistan.

(2) It shall come into force at once.

REPEAL

(1) The Removal from Service (Special Powers) Ordinance, 2000 (XVII of 2000) is hereby repealed, hereunder referred to as the repealed Ordinance.

(2) All proceedings pending under the repealed Ordinance or the rules made thereunder immediately before the commencement of this Act against any person whether in government service or corporation service shall continue under the repealed Ordinance or the rules made thereunder.

(3) Subject to sub-section (2), on the repeal of the said Ordinance, all the disciplinary matters relating to persons in government service, to whom the Civil Servants Act, 1973 (LXXI of 1973) and the Government Servants (Efficiency and Discipline) Rules, 1973, apply, shall be governed under the aforesaid Act and the rules made thereunder the persons in corporation service shall be governed under the law applicable to them and rules and by-laws made thereunder.

[Authority: National Assembly Sectt. Notification No. F-23 (4)/2010-Legis, dated 6th March, 2010]

CHAPTER-III

NATIONAL ACCOUNTABILITY ORDINANCE (121-122)

CHAPTER-III

NATIONAL ACCOUNTABILITY ORDINANCE

1999: Ord. XVIII] *National Accountability*

SI.No.1

***NATIONAL ACCOUNTABILITY ORDINANCE No. XVIII OF 1999**

An Ordinance to provide for the setting up of a National Accountability Bureau so as to eradicate corruption and corrupt practises and hold accountable all those persons accused of such practices and matters ancillary, thereto';

WHEREAS it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, ¹[misuse or abuse] of power ²[or authority], misappropriation of property, ²[taking of] kickbacks, - commissions and for matters connected and ancillary or incidental thereto;

AND WHEREAS there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, ³[Governmental agencies] and other agencies;

AND WHEREAS there is a grave and urgent need for the recovery of state money and other assets from those persons who have misappropriated or removed such ²[money or] assets through corruption, corrupt practices and misuse of power ^{4*} or authority;

⁵[AND WHEREAS there is an urgent need to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedures for the prevention of corruption in the society;]

⁶[AND WHEREAS there is an increased international awareness that nations should co-operate in combating corruption and seek, obtain or give mutual legal assistance in matters concerning corruption and for matters connected, ancillary or incidental thereto.]

AND WHEREAS it is necessary that a National Accountability Bureau be set up so as to achieve *the* above aims;

* The NAB Ordinance, 1999 and all rules, notifications and orders made or issued there under have been adapted and applied in the Northern Areas, see SRO-467 (1)/2000, dt. 28-6-2000.

¹ Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 2, for "misuse/abuse"

² Ins. *ibid*

³ Subs. *ibid.* for "government."

⁴ The word and oblique "and/" omitted *ibid*

⁵ New paragraph ins. *ibid*

⁶ New paragraph ins. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s.2.

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AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999, as amended;

AND WHEREAS the President is satisfied that circumstances exist which ¹[render] it necessary to take immediate action;

Now THEREFORE, in pursuance of the aforesaid Proclamation and Provisional Constitutional Order as well as Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

- ²[Short title. XVIII of 1999.
1. This Ordinance may be called the National Accountability ^{3*} Ordinance, 1999.
2. This Ordinance shall come into force at once and shall be deemed to have come into force from the 1st day of January, 1985.
- ⁴[3. The provisions of this Ordinance shall have effect not with standing anything contained in any other law for the time being in force.
4. It extends to the whole of Pakistan and shall apply to all persons in Pakistan, ⁵[all citizens of Pakistan] and persons who are or have been in the service of Pakistan wherever they may be, including areas which are part of Federally and Provincially Administered Tribal Areas.
- 5.-(a) "Accused" shall include a person in respect of whom there are reasonable grounds to believe ⁶[that he] is or has been involved in the commission of any offence ⁷[tribale] under this Ordinance ^{8*} or is subject of an investigation ⁹[or] inquiry by the National Accountability Bureau or ¹⁰[any other agency authorised by the National Accountability Bureau in this regard under this Ordinance].
- Commence-ment.
- Ordinance to override other laws.
- Application.
- Definitions.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s.2, for "renders".

²Subs. *ibid.*, s.3, for "Title".

³The word "Bureau", omitted *ibid.*

⁴Subs. and shall be deemed always to have been so subs. by the National Accountability Bureau (Amdt.) Ordinance, 1999 (19 of 1999), s.2, for the original section 3.

⁵Ins. by *Ord.* No. 133 of 2002, s. 4.

⁶Subs. *ibid.*, s.5, for ",".

⁷Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s.2.

⁸The word and oblique "and/" omitted by *Ord.* No. 133 of 2002, s.5.

⁹Subs. *ibid.*, for "f".

¹⁰Subs. *ibid.*, for "Concerned Agency".

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- (b) "Appropriate Government" means in relation to any person serving in connection with the affairs of the Federation, including any person employed by a corporation, body, financial institution, bank, authority undertaking or any other organization set up, controlled or administered by or under the authority of the Federal Government ¹[, the Federal Government and in other cases] the Provincial government ²[or the local government] concerned.
- (c) "Assets" means any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan ^{3*} which ⁴[he] cannot reasonably account ²[for] or for which ⁴[he] cannot prove payment of full and lawful consideration.
- (d) "**Associates**" means
- (i) any ⁵[person] who is or\has been managing the affairs ⁶[of] or keeping accounts ⁷[for] the accused or who enjoys or has enjoyed any benefit from the assets ⁸ * * *
- (ii) any association of persons, body of individuals, partnership ⁹[firm] or private limited ¹⁰[company] within the meaning of companies Ordinance 1984, of which ¹¹[the accused] is or has been a member, partner or director or which ¹²[has] been promoted, floated, established or run by the ¹³[accused], whether singly or jointly, with other persons].
- ¹⁴[(iii) a trustee of any trust declared by the accused, or of which the accused is also a trustee or a beneficiary; and]

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s.5 for "or"

²1ns. *ibid.*,

³The comma and word for ", for" omitted *ibid.*

⁴Subs. *ibid.*, for "they".

⁵Subs. *ibid.*, for "individual".

⁶Subs. *ibid.*, for "for".

⁷Subs. *ibid.*, for "of".

⁸The words "referred to above" omitted *ibid.*,

⁹Subs. *ibid.*, for "firms".

¹⁰Subs. *ibid.* for "Companies".

¹¹Subs. *ibid.*, for "such a person".

¹²Subs. *ibid.*, for "have".

¹³Subs. *ibid.*, for "same group of persons".

¹⁴Subs. *ibid.*, for clause (iii).

- ¹[(iv) a *benamidar*
- ²[(da) **“benamidar”** means any person who ostensibly holds or is in possession or custody of any property of an accused on his behalf for the benefit and enjoyment of the accused ;]
- (e) **“Chairman National Accountability Bureau”** means a person who is appointed as such by the President ³* * * as mentioned in section 6 (b) hereafter;
- (f) **“Code”** means the Code of Criminal Procedure, 1898;
- ⁴[(fa) **“Conciliation Committee”** means the Conciliation Committee constituted under section 25A;]
- ⁵[(g) **“Court”** means an Accountability Court which shall consist of a Judge who shall be appointed by the President of Pakistan, in consultation with the Chief Justice of the High Court ⁶[of the Province] concerned ⁷* * * on such terms and conditions as may be determined by the President ;]
- ⁸[(h) **“Judge”** means a Judge of a Court who shall be a serving District and Sessions Judge qualified to be appointed as Judge of the High Court and includes a Judge, whether serving or retired District and Sessions Judge, who was appointed Judge of a Court before the commencement of the National Accountability Bureau (Amendment) Ordinance, 2001;]
- ⁹[(j) **“Deputy Chairman National Accountability Bureau”** means the person appointed as Deputy Chairman of the National Accountability Bureau by the President;]

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 5, for “clause (iv)”.

²New clause (da) ins. *ibid*.

³The words “of the Islamic Republic of Pakistan” omitted *ibid*.

⁴New clause (fa) ins. by the National Accountability Bureau (Amdt.) Ordinance. 2000 (4 of 2000), s. 2.

⁵Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001) s.3, for clause (g) which was previously amended by Ord. No. 24 of 2000. s.2 for original cl. (g).

⁶Ins. by Ord. No. 133 of 2002, s. 5.

⁷Certain words omitted *ibid*.

⁸Subs. by Ord. No. 35 of 2001, s. 3, for clause (h).

⁹Subs. by Ord. No. 133 of 2002, s. 5. for clause (j), which was previously amended by Ord. No. 24 of 2000. s. 2, for “Chief Executive”.

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- (k) **“National Accountability Bureau”** means the Bureau set up and notified under this Ordinance, (hereinafter ¹[referred to] as NAB);
- (l) **“Freezing”** includes attachment, sealing, ²[prohibiting], holding, controlling ^{3*} or managing any property either through a Receiver or otherwise as may be directed by the ^{4*} Court or Chairman NAB ^{4***} and in case it is deemed necessary the disposal thereof, by sale through auction or negotiation subject to confirmation by the Court or by Chairman ⁵[NAB] as the case may be after public notice.
- (m) **“Holder of public office”** means a person who
- (i) has been the President of Pakistan or the Governor of a Province;
 - (ii) is, or has been the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney General and other Law Officer appointed under the Central Law Officers Ordinance, 1970, Advisor to the Prime Minister, Special Assistant to the Prime Minister, Federal Parliamentary Secretary, Member of Parliament, Auditor General, Political Secretary, ^{6* *} Consultant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State;
 - (iii) is, or has been, the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Advisor to the Chief Minister, Special Assistant to the Chief Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate General including Additional Advocate General and Assistant Advocate General, Political Secretary, ^{6* *} Consultant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister;

¹Subs. by Ord. No. 133 of 2002, s. 5. for “known”.

²Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 5 for “prohibition”.

³The word and oblique “and” omitted *ibid.*,

⁴Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4of 2000), s. 2.

⁵Subs. by Ord, No. 133 of 2002, s. 5 for “National Accountability Bureau”.

⁶The words “Advisor or” omitted *ibid.*

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- (iv) is holding, or has held, an officer or post in the service of Pakistan, or any service in connection with the affairs of the Federation, or of a Province, or of a local council constituted under any Federal or Provincial law relating to the constitution of local councils¹[co-operative societies] or in the management of corporations, banks, financial institutions^{2**} firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government: other than a person who is a member of any of the armed forces of Pakistan^{3* * *} except a person who is, or has been a member of the said forces and is holding, or has held, a post or office in any public corporation, bank, financial institution, undertaking or other organization established, controlled or administered by or under the Federal Government or a Provincial Government⁴[or, notwithstanding anything contained in the Pakistan Army Act, 1952 or any other law for the time being in force, a person who is a civilian employee of the Armed Forces of Pakistan].
- (v)^{5* *} has been, the Chairman or Vice-Chairman of a zila council, a municipal committee, a municipal corporation or a metropolitan corporation constituted under any Federal or Provincial law relating to local councils; and
- ⁶[(va) is or has been a District Nazim or Naib Nazim, Tehsil Nazim or Naib Nazim or Union Nazim or Naib Nazim].

“Explanation” For the purpose of this sub-clause the expressions “Chairman” and “Vice-Chairman” shall include “Mayor” and “Deputy Mayor” as the case may be, and the respective councilors therein.

¹Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 5.

²The words "co-operative societies" omitted *ibid.*, which was previously amended by Ord. No. 35 of 2001, s. 3.

³Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2001(35of2001), s. 3.

⁴Ins. by Ord. No. 133 of 2002, s. 5.

⁵The words "is, or" omitted *ibid.*

⁶New sub-clause (va) ins. *ibid.*

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- (vi) ¹* * * has served in and retired or resigned from or has been discharged or dismissed from the Armed Forces of Pakistan;
- (n) “**Offence**” means the offences of corruption and corrupt practices, ²[and other offences] as defined in this Ordinance and includes ³[the offences] specified in the Schedule to this Ordinance.
- (o) “**Person**” ⁴[, unless the context otherwise so requires,] includes in the case of a ⁵[company or a body corporate], the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company ²[or body corporate] or anyone exercising direction or control of the affairs of such ⁵[company or a body corporate] ⁴* * * ; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having ²[any] interest in the said firm, partnership or proprietorship concern or direction or control thereof;
- (p) “**Property**” includes any or all movable and immovable properties situated within or outside Pakistan; ⁶*
- (q) “**Government Property**” means ⁷[property] belonging to the Government and includes gifts, donations, financial assistance, grants, aid received or collected in whatever name or for whatever purpose ⁸[by a holder of public office during the tenure of office; and]
- ⁹[(r) “**wilful default**” a person ¹⁰[or a holder of public office] is said to commit an offence of wilful default under this Ordinance if he does not pay ⁴[, or continues not to pay,] or return or repay the amount ¹⁰[due from him] to any bank, financial institution,

¹Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 2.

²Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 5.

³Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 3 for “those offences as”.

⁴Ins. and omitted by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 2.

⁵Subs. by Ord. No. 133 of 2002, s. 5, for “Corporate body”.

⁶The word “and” omitted *ibid.*,

⁷Subs. *ibid.*, s. 5, for “both movable and immovable properties”.

⁸Subs. *ibid.*, for “during the tenure of office”.

⁹New clause (r) added by the National Accountability Bureau (Amdt.) Ordinance 2000 (4 of 2000), s. 2.

¹⁰Ins. by Ord. No. 133 of 2002, s. 5.

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cooperative society, ¹* * Government department or a statutory body or an authority established or controlled by a Government on the date that it became due ²[as per agreement containing the obligation to pay, return or repay or] according to the laws, rules, regulations, instructions, issued or notified by ³[the State Bank of Pakistan, or the bank,] financial institution, cooperatives society, Government Department ⁴[,] statutory body or an authority established or controlled by a Government, as the case may be, and a ⁵[thirty days notice has been given to ⁶[such person or holder of public office]]:

Provided that it is not wilful default under this Ordinance if ⁷[such person or holder of public office] was unable to pay, return or repay the amount as aforesaid on account of any wilful breach of agreement or obligation or failure to perform statutory duty on the part of any bank, financial institution, cooperative society ⁴[,] or a Government department ⁴[,] statutory body or an authority established or controlled by Government ⁸[:]

⁸[Provided further that in the case of default concerning a bank or a financial institution a seven days notice has also been given to ⁶[such person or holder of public office] by the Governor, State Bank of Pakistan :

Provided further that ⁹[the] aforesaid thirty days or seven days notice shall not apply to cases pending trial at the time of promulgation of the National Accountability Bureau (Amendment) Ordinance, 2001].

¹¹[5A.-(1) A Judge of a Court who is a serving

Tenure ¹⁰* of a judge.

¹The words "or an omitted *ibid.*, s.5.

²Ins. by Ord. No. 133 of 2002, s. 5.

³Subs. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 2.

⁴Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 5, for "or a".

⁵Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 3, for "certain words".

⁶Subs. by Ord. No. 133 of 2002, s. 5, for "the defaulter".

⁷Subs. *ibid.*, for "the accused".

⁸Subs. and added by Ord. No. 35 of 2001, s. 3.

⁹Ins. by Ord. No. 133 of 2002, s. 5.

¹⁰The word "etc" omitted *ibid.*, s. 6.

¹¹New sections 5A and 5B ins. by Ord. No. 35 of 2001, s. 4.

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District and Sessions shall hold office for a period of three years from the date of his initial appointment as such Judge.

(2) An incumbent judge who on the 24th April, 2001, is not a serving District and Sessions Judge and has exercised option to serve as a Judge shall continue for a period of three years from the date of his initial appointment as such Judge.

(3) An incumbent Judge who is a serving District and Sessions Judge and retires while serving as such Judge shall, subject to his option, continue for a period of three years from the date of his initial appointment as such Judge.

(4) A Judge shall not be removed or transferred from his office, before the completion of the term ¹[with] his office without consultation of the Chief Justice of the High Court concerned.

5B. Where a serving District and Sessions Judge retires while serving as a Judge of a Court, he shall be entitled to such pension as would have been admissible to him in his service as District and Sessions Judge, had he not been appointed as Judge of a Court, his service as a Judge of a court being treated as service for the purpose of calculating that pension.]

6. (a) There shall be constituted a National Accountability National Bureau for the whole of Pakistan
Accountability Bureau

²(b) Chairman, National Accountability Bureau;

(i) There shall be a Chairman NAB to be appointed by the President in consultation with the ³[Leader of the House and the Leader of the Opposition in the National Assembly] for a ⁴[non-extendable] period of ⁵[four] years on such terms and conditions as may be determined by the President and shall not be removed except on the grounds of removal of Judge of Supreme Court of Pakistan ⁶[:]

⁷[Provided that the present incumbent of the office of Chairman, NAB, shall complete the period of four years from the date of his initial appointment].

Pensionary Benefits to retiring District and Session Judge retiring while serving a judge of a court.

National Accountability Bureau.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 6, for "of".

²Subs. by the National Accountability Bureau (Amdt.) Ordinance 2001 (35 of 2001), s. 5, for sub-section (b), which was previously amended by various enactments.

³Subs. by Ord. No. 133 of 2002, s. 7, for "Chief Justice of Pakistan".

⁴Ins. *ibid.*,

⁵Subs. *ibid.*, for "three",

⁶Subs. *ibid.*, for full stop.

⁷New proviso added *ibid.*,

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- (ii) The Chairman NAB may, in writing under his hand, addressed to the President, resign his office.
- ¹[(ba) A person shall not be appointed as Chairman NAB unless he—
- (i) is a retired Chief Justice or a Judge of the Supreme Court or a Chief Justice of a High Court; or
 - (ii) is a retired officer of the Armed Forces of Pakistan equivalent to the rank of a Lieutenant General; or
 - (iii) is a retired Federal Government Officer in BPS 22 or equivalent].

(c) **Acting Chairman, National Accountability Bureau:**

As and when the Chairman NAB is absent or unable to perform the functions of his office due to any reasons whatsoever, the Deputy Chairman ²[NAB,] will act as the Chairman NAB, and in case the Deputy Chairman ²[NAB,] is absent or unable to perform the functions of the office ³[any officer of the NAB] duly authorized by the Chairman NAB ⁴[shall] act as Chairman NAB.

7.(a) There shall be a Deputy Chairman NAB appointed by the ⁵[President] in consultation with the Chairman NAB. The Deputy Chairman ²[NAB] shall assist the Chairman ²[NAB] in the performance of his duties and ²[shall] carry out such functions as may be directed by the Chairman ²[NAB].

⁶[(aa) A person shall not be appointed as Deputy Chairman NAB unless he—

- (i) is or has been an officer of the Armed Forces of Pakistan equivalent to the rank of a Major General; or
- (ii) is or has been a Federal Government officer in BPS 21 or equivalent ;]

⁷[(b) The Deputy Chairman²[NAB] shall hold office for a ²[nonexpendable] period of three years and shall not be removed except on the ground of misconduct as defined in sub-

¹New sub-section (ba) added *ibid.*

²Ins. by the National Accountability Bureau (Amdt) Ordinance, 2002 (133 of 2002), ss. 7, 8 and 9.

³Subs. *ibid.*, s. 7, for "any other person".

⁴Subs. *ibid.*, for ", to".

⁵Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 4 for "Chief Executive".

⁶New sub-section (aa) ins. by Ord. No. 133 of 2002, s. 8.

⁷Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 6., for sub-section (b).

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rule (4) of rule 2 of the Government Servants (Efficiency & Discipline) Rules, 1973].

8. ¹[(a) (i) The President of Pakistan, in consultation with the ²* * * Chairman NAB, may appoint any person, who is qualified to be appointed as a Judge of the Supreme Court, as Prosecutor General Accountability.

- (ii) The Prosecutor-General Accountability shall hold independent office on whole time basis and shall not hold any other office concurrently.
- (iii) The Prosecutor General Accountability shall hold office for a ³[non-extendable] period of three years.
- (iv) The Prosecutor General Accountability shall not be removed from office except on the grounds of removal of a Judge of Supreme Court of Pakistan.
- (v) The Prosecutor General Accountability may, by writing under his hand addressed to the President of Pakistan, resign his office.]

(b) The Prosecutor General ³[Accountability] shall give advice to the Chairman NAB upon such legal matters and perform such other duties of a legal character as may be referred or assigned to him by the Chairman NAB and in the performance of his duties, he shall have the right of audience in all ⁴[Courts established under this Ordinance and all other Courts³[including the Supreme Court and a High Court]and Tribunals] in Pakistan.

⁵[(c) The Prosecutor General Accountability, with the approval of Chairman NAB⁶***may appoint Special Prosecutors to conduct prosecution of cases and to appoint advocates to institute or defend cases, appeals, petitions, applications and all other matters before any court ⁷[or tribunal] including the High Courts and Supreme Court in matters arising out of or relating to proceedings under this Ordinance.]

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 7, for "sub-section (a)".

²The words "Chief Justice of Pakistan and" omitted by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 9.

³Ins. *ibid.*, ss. 8 and 9.

⁴Subs. by the National Accountability Bureau (Amdt) Ordinance, 2000(4 of 2000), s.5, for certain words.

⁵Subs. by Ord. No. 35 of 2001, s. 7, for sub-section (c).

⁶The certain words omitted by Ord. No. 133 of 2002, s. 9.

⁷Ins. *ibid.*,

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¹[(d) In case the Prosecutor General Accountability is absent or unable to perform the functions of his office due to any reason whatsoever, any other Law Officer of the NAB, duly authorised by the Chairman NAB, shall act as the Prosecutor General Accountability.]

Corruption
and corrupt
practices.

9. (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices

- (i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward such as is specified in section 161 of the Act Pakistan Penal Code for doing or for-bearing to do any official act, or for showing or for-bearing to show, in the exercise of his official functions, favour or dis-favour to any person, or for rendering or attempting to render any service or disservice to any person; or
- (ii) if he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his official functions or ²[from] any person whom he knows to be interested in or related to the person so concerned; or
- (iii) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him, or under his control, or wilfully allows any other person so to do ; or
- (iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse ^{3*} or dependents or any other person, any property, valuable thing, or pecuniary advantage; or
- (v) if he or any of his dependents or benamidars owns, possesses, or has ⁴[acquired] right or title in any ⁵["assets" or holds irrevocable power

Act XLV
of 1860.

¹New sub-section (d) ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 9.

²Subs. *ibid.*, s. 10, for "form".

³The word and oblique "and" omitted *ibid.*,

⁴Subs. by the National Accountability Bureau(SecondAmdt.) Ordinance, 2000 (24 of 2000), s. 4.

⁵Subs. by Ord. No. 133 of 2002. s. 10 for "movable or immovable property".

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- of attorney in respect of any assets] or pecuniary resources disproportionate to his known sources of income, which he cannot ¹[reasonably] account for ²[or maintains a standard of living beyond that which is commensurate with his sources of income]; or
- (vi) ²[if he] misuses his authority so as to gain, any benefit or favour for himself or any other person or ³[renders or attempts to render] ⁴[or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority];
- (vii) if he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or ⁵[attempts to grant] any ⁶[undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar ¹[or any other person] ⁷[; or]
- Act XLV of 1860. ⁸[(viii) if he commits an offence of wilful default ⁹[; or]]
¹⁰[(ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person; or
- Act XLV of 1860. (x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code, 1860 with regard to any property including money or valuable security entrusted to him by members of the public at large;
- (xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 10, for "reasonable".

²Ins: *ibid.*.

³Subs. *ibid.*, for "to render or attempt to do so".

⁴Added by the National Accountability Bureau (Second Amdt) Ordinance, 2000 (24 of 2000), s. 4.

⁵Subs. by Ord. No. 133 of 2002, s. 10, for "enables".

⁶Ins. by Ord. No. 24 of 2000, s. 4.

⁷Subs. by the National Accountability Bureau (Amdt) Ordinance, 2000 (4 of 2000), s. 6, for full stop.

⁸Added, *ibid.*,

⁹Subs. by the National Accountability Bureau (Amdt) Ordinance. 2001 (35 of 2001), s. 8, for full stop.

¹⁰Subs by Ord. No. 133 of 2002. s. 10, for "clause (ix)" which was previously amended by Ord. No. 35 of 2001, s. 8.

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criminal breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 in Act respect of property entrusted to him or over which he has dominion; and

- (xii) if he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses (i) to (xi).]

(b) All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in sections 1[426,491,] 497,498 and 561A or any other provision of the Code, or any other law for the time being in force no Court 2* * * shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance.

3[(c) If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no prima facie case is made out against him and the case may, be closed, the Chairman NAB shall refer the matter to a Court for approval and for the release of the accused, if in custody.]

4* * * * *

Punishment for corruption and corrupt practices.

10. (a) 5[A holder of public office or any other person] who commits the offence of corruption and corrupt practices shall be punishable with 6[rigorous] imprisonment for a term which may extend to 14 years 7[and with fine] and such of the assets and 8[pecuniary resources] of such 9[holder of public office or person, as are] found to be disproportionate to the known sources of his income or which 10[are] acquired by money obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars

1Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 6.
2Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 8, which was previously amended by Ord. No.4 of 2000, s. 6.
3Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 10, for "sub-section (c)" which was previously amended by Ord, No; 24 of 2000, s. 4, for the "original sub-section (c).",
4Sub-section (d) omitted ibid., s, 10, which was previously amended by various enactments.
5Subs. ibid., s. 11, for "A person".
6Ins. 'ibid.,
7Subs. ibid., for "or with fine or with both".
8Subs. ibid., for "property".
9Subs. ibid" for "person which is,",
10Subs. ibid., for "is".

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shall be ¹* * * forfeited to the appropriate Government ²[, or the concerned bank or financial institution as the case may be].

³[(b) The offences specified in the Schedule to this Ordinance shall be punishable in the manner specified therein.

(c) The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

(d) Notwithstanding anything to the contrary contained in any other law for the time being in force an accused, convicted by the Courts of an offence under this Ordinance, shall not be entitled to any remission in his sentence.].

11. Where ⁴ [an accused] found guilty of an offence is sentenced to pay a fine, ⁵* * * the amount of the fine shall in no case be less than the gain derived by the accused or any relative or associate ⁶ [by the commission of the offence].

Imposition of fine.

12. (a) The Chairman NAB or the court trying ⁸ [an accused] for any offence as specified under this Ordinance, may, at anytime, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property ⁹* * * or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf.

Power take to freeze property.

(b) If the property ordered to be frozen under sub-section (a) is a debt or other movable property, the freezing may be made:

- (i) by seizure; or
- (ii) by appointment of receiver; or
- (iii) by prohibiting the delivery of such property to the accused or to anyone on his behalf; or .
- (iv) by all or any of such or other methods as the court or the Chairman NAB as the case may be, deem fit.

¹The words "liable to be" omitted by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. U.

²Added *ibid.*,

³Subs. *ibid.*, for "sub-section'(b)."

⁴Subs. *ibid.*, s. 12, .for "a person".

⁵The certain words omitted *ibid.* s. 12.

⁶Subs. *ibid.*, for certain words.

⁷Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4of 2000), s. 7.

⁸Subs. by Ord. No. 133 of 2002, s. 13, for "a person".

⁹The words and comma "movable or immovable," omitted *ibid.*,

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(c) If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases

- (i) by taking possession; or
- (ii) by appointment of receiver; or
- (iii) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or
- (iv) by all or any of such methods as the Chairman NAB or the Court may deem fit:

Provided that any order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding ¹[fifteen] days unless confirmed by the ^{2*}Court, where the Reference under this Ordinance shall be sent by ³[Chairman] NAB:

Provided further that notwithstanding ⁴[anything to the contrary contained herein,] the order of ³[Chairman] NAB or the Court shall be effective from the time of passing thereof or proclamation thereof in a newspaper, widely circulated and dispatch at the last known address of the accused ⁵[either by registered post A.D. or courier service or ^{6*}* * electronic media as the ⁷[Court] may deem proper having regard to the facts and circumstances of the case.]

(d) If the property ordered to be frozen consists of livestock or is of a perishable nature, the Chairman NAB, or the Court may, if it deems

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 9, for "30."

²The word "Accountability" omitted by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2b02), s. 13.

³Ins. *ibid.*,

⁴Subs. *ibid.*, for "that".

⁵Added by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 5.

⁶The words "any other mode of" omitted by Ord. No. 133 of 2002, s. 13.

⁷Subs. *ibid.*, for "court".

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proper and expedient, order the immediate sale thereof and the proceeds of the sale may be deposited with the Chairman NAB or the Court, or as either may direct as Appropriate.

(e) The powers, duties and liabilities of a receiver, if any, appointed under this section shall be the same as those of a receiver appointed under Order-XL of the Code of Civil Procedure, 1908.

¹[(f) The order of freezing mentioned in sub-sections 'a' to 'e' shall remain operative until the final disposal of the case by the Court and in the event of the acquittal of the accused, shall continue to remain operative for a period of ten days after receipt of certified copy of the order of acquittal ² [or release] by NAB, whereafter it shall be subject to an order by the court in which an appeal, if any, is filed.

13. (a) Notwithstanding the provisions of any law for the time being in force, the ^{3*} Court shall have exclusive jurisdiction to entertain and adjudicate upon all claims or objections against the freezing of any property under section 12 above. Such claims or objection shall be made before the ^{3*}Court within 14 days from the date of the order freezing such property.

Claims or objection against freezing.

(b) The Court may for sufficient cause extend the time for filing such claims or objections for a period not exceeding additional 14 days.

⁴[(c) The accused or any other aggrieved party, whose claim or objection against freezing of property has been dismissed by the Court, may, within ten days file an appeal against such order before the High Court].

Presumption against accused accepting illegal gratification.

14. (a) Where in any trial of ⁵[an offence under clauses (i), (ii), (iii) and (iv) of sub-section (a) of section 9] it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person any gratification, other than legal remuneration, or any valuable thing, or any pecuniary advantage from a person or any agent of a person, for any favour shown or promised to be shown by the accused, it shall be presumed, unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing or pecuniary advantage for, himself or some other person, as the case may be, as a motive or a reward such as is specified in section 161 to 163 of the Pakistan Penal Code, 1860, or, as the case may be, without consideration, or for a consideration which he, believed to be inadequate.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance. 2001(35 or 2001), s. 9. for sub-section (f).

²Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 13.

³The word "Accountability" omitted *ibid.*, s. 14.

⁴Subs. by Ord. No. 35 of 2001, s. 10, for sub-section (c), which was previously amended by Ord. No. 4 of 2000, s. 8.

⁵Subs. by Ord., No. 133 of 2002, s. 15, for certain words.

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(b) Wherein any trial of an offence punishable under section-165A of the Pakistan Penal Code, 1860 it is proved that any gratification, other than legal remuneration or any valuable thing has been given, or offered to be given, or attempted to be given, by any accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give, or attempted, to give, that gratification, or that valuable thing, as the case may be, as a motive or a reward such as is specified in section 161 to 163 of the said Code; or, as the case may be, without consideration or for a consideration which he believed to be inadequate.

Act XLV
of 1860.

(c) In any trial of an offence punishable under ¹["clause (v) of sub-section (a) of section 9 of"] this Ordinance, the fact that the accused person or any other person on his behalf, is in possession, for which the accused person cannot satisfactorily account, of ²[assets] or pecuniary resources disproportionate to his known source of income, or that such person has, at or about the time of the commission of the, offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account the Court shall presume, unless the contrary is proved, that the accused person is guilty of the offence of corruption and ^{3*} corrupt practices and his conviction ⁴[therefor] shall not be invalid by reason only that it is based solely on such a presumption.

⁵[(d) ⁶[In any trial] of an offence under ⁷[clause (vi) and (vii) of section 91 the burden of proof that he used his authority, or issued any directive, or authorised the issuance of any policy or statutory rule or order (SRO); or made any grant or allowed any concession, in the public interest, fairly, justly, and for the advancement of the purpose of the enactment under which the authority was used, directive or policy or rule or order was issued or grant was made or concession was allowed shall lie on ⁸[the accused], and, in the absence of such proof the accused shall be , guilty, of the offence, and his conviction shall not be invalid by, the reason that it is based solely on such presumption [:]⁹

⁹[Provided that the Prosecution shall first make out a reasonable case against the accused charged under clause (vi)

¹Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133of2002).s. 15.

²Subs. *ibid.* for "Property".

³The Oblique and word "or" omitted *ibid.*;

⁴Subs *ibid.*, for "therefore".

⁵New sub-section(d)added, by the National Accountability Bureau (Amdt.)Ordinance, 2000 (4 of 2000), s. 9.

⁶Subs. by Ord. No. 133 of 2002, s. 14, for "where a person is accused".

⁷Subs *ibid.*, for certain words.

⁸Subs *ibid.* for "him".

⁹Subs.and added by the National Accountability Bureau(Amdt.)Ordinance,2001 (35 of 2001),s.11.

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or clause (vii) of sub-section (a) of section 9.]

15. ²[(a)Where an accused person is convicted [of an offence under section 9, of this Ordinance] he shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province:

Disqualification to contest elections' [or to hold public office.

Provided that any accused person who has availed the benefit of ⁴[sub-section (b) of section] 25 shall also be deemed to have been convicted for an offence under this Ordinance, and shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of ten years, to be reckoned from the date he has discharged his liabilities relating to the matter or transaction in issue, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory for local authority or in service of Pakistan or of any Province.]

(b) Any person convicted of an offence ⁵[under section 9 of this Ordinance] shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances ⁶[or other financial accommodation by] any bank or financial institution ⁷[owned or controlled by the Government] for a period of 10 years from the date of conviction.

Trial of offences.

16. ⁸[(a) Notwithstanding anything contained in any other law for the time being in force an accused shall be prosecuted for an offence under this Ordinance in the Court and the case shall be heard from day to day and shall be disposed of within thirty days.

⁹[(b) The Court shall sit at such place or places as the ¹⁰[Federal] Government may, by order, specify in this behalf.

¹¹[(c) Where more Courts than one have been established at a place, the Chief Justice of the High Court of the Province concerned shall designate a Judge of any such Court to be an Administrative Judge and a case triable under this Ordinance shall be filed before the ¹²[Court] of the Administrative

¹Added by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4of2000), s. 10.

²Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 Ord. No. (35 of 2001), s. 12, for sub-section (a).

³ Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 16, for certain words.

⁴Subs *ibid.*, s. 16, for "section".

⁵ Subs *ibid.*, for certain words.

⁶ Subs. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 6, for "from".

⁷Subs *ibid.*, for "in the public sector".

⁸Subs *ibid.* s.7 for sub-section(a) which was previously amdt. by Ord.No.4of 2000, s.11.

⁹Subs. by Ord, No. 4 of 2000 s. 11 for the original sub-section (b).

¹⁰Ins. by Ord. No. 133 of 2002, s. 17.

¹¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 13, for sub-section (c).

¹²Subs. by Ord, No. 133 of 2002 s. 17 for "court".

Judge who may either try the case himself or, assign it for trial by any other court established at that place at any time prior to the framing of the charge.

¹[(cc) In respect of a case assigned to a Court under sub section (c), all orders made or proceedings taken before the assignment shall be deemed to have been made or taken by the court to which the case has been assigned]

(d) Notwithstanding anything contained in this section, if in respect of any case relating to an offence triable under this Ordinance, the Chairman NAB, having regard to the facts and circumstances of the case may file a reference before any ^{2*} Court established anywhere in Pakistan, and such Court shall have the jurisdiction to try the same:]

³**16A.** (a) Notwithstanding anything contained in any other law for the time being in force, the Chairman NAB may apply to any court of law or tribunal that any case involving ⁴[any] offence under this Ordinance pending before such court or tribunal shall be transferred to a Court established under this Ordinance, then such other Court or Tribunal shall transfer the said case to any Court established under this Ordinance and it shall ⁵[be deemed to be a reference under section 18 of the Ordinance, and it shall] not be necessary for the Court to recall any witness or again to record any evidence that may have been recorded.

⁶[(b) In-respect of any case pending before a Court, ⁵[if]the Prosecutor General Accountability or any special prosecutor authorised by him in this behalf, having regard to the facts and circumstances of the case and in the interest of justice and for the protection and safety of witnesses, considers it necessary that such case is transferred for trial, he may apply, for the transfer of the case from any such Court in one Province to a Court in another Province or from one ⁷[Court] in a Province to another Court in the same Province,

- (i) to the Supreme Court of Pakistan in case the transfer is intended from a Court in a Province to a Court in another Province; and

¹New sub-section(cc),ins.by the National Accountability-Bureau(Amdt.) Ordinance, 2001 (35 of 2001) s. 13.

²The word "Accountability", Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002) s. 15.

³New section 16A added by the National Accountability Bureau (Amdt.)Ordinance, 2000 (4 of 2000), s. 12. .

⁴Subs.by Ord. No. 133 of 2002, s. 15, for "a Schedule".

⁵Ins. *ibid*.

⁶Subs. by Ord. No. 35 of 2001, s. 14. for sub-section (b).

⁷Subs. by Ord. No. 133 of 2002, s.15, for "court".

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- (ii) to the High Court of the Province in case the transfer is intended from one Court in a Province to another Court in the same Province;

and the Supreme Court or the High Court, as the case may be, if it is in the interest of justice, transfer the case from one ¹[Court] to another ¹[Court] and the case so transferred shall be tried under this Ordinance without recalling any witness whose evidence may have been recorded.

(c) The accused may also make an application to the supreme Court for the transfer of a case from a Court in one Province to a Court in another Province and to the High Court for transfer of a case from one Court in a Province to another Court in the same Province and the Supreme Court or the High Court, as the case may be, if it is in the interest of justice, transfer the case from one Court to another Court, and the case so transferred shall be tried under this Ordinance without recalling any witness whose evidence may have been recorded.]

²[**16B.** The Court shall have the power to punish for contempt of Court with imprisonment for a term which may extend to six months and with fine which may extend to one million rupees any person who

Contempt
of Court.

- (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order or direction of the Court;
- (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a person constituting the Court into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending or most likely to come up before the Court; or
- (d) does anything which, by any other law, constitutes, contempt of court.

³* * * * *

17. (a) Notwithstanding anything contained in any other law for the time being in force, unless there is anything inconsistent with the provisions of this Ordinance, the provisions of the Code of Criminal procedure, 1898, shall *mutatis mutandis*, apply to the proceedings under this ⁵[Ordinance].

Act V
of
1898.

Provision of
the court to
apply.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002) s.18 for "court".

²New section 16B ins. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 7.

³*Explanation* omitted by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 15.

⁴Subs. by Ord. No. 133 of 2002, s.19, for "Provision".

⁵Subs. *ibid*; for "Order".

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(b) Subject to sub-section (a), the provisions of Chapter XXIIA of the Code shall apply to trials under this Ordinance.

(c) Notwithstanding anything contained in sub-section (a) or subsection (b) or in any law for the time being in force, the ^{1*} Court may, for reasons to be recorded, dispense with any provision of the Code and follow such procedure as it may deem fit in the circumstances of the case.

²[(d) Notwithstanding anything in section 234 of the Code, a person accused of more offences than one of the same kind committed during the space of any number of years from the first to the last of such offences, may be charged with and tried at one trial for any number of such offences.]

Cognizance
of offences.

18. (a) The ^{1*} Court shall not take cognizance of any offence under this Ordinance except on a reference made by ³ [the Chairman NAB or an officer of the NAB duly authorised by him.]

(b) A reference under this Ordinance shall be initiated by the ^{4*} National Accountability Bureau on –

- (i) a reference received from the ^{5***} appropriate government; or
- (ii) receipt of a complaint; or
- (iii) ⁶[its] own accord

⁷[(c)] Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry or investigation.]

(d) The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance, shall rest on the NAB to the exclusion of any other agency or authority, unless any agency or authority is required to do so by the Chairman ⁸[NAB] ⁹ [or by an officer of the NAB

¹The word "Accountability" omitted by the National Accountability Bureau (Amdt.) Ordinance 2002 (133 of 2002), ss. 19 and 20.

²New sub-section (d) ins. *ibid.*

³Subs. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 8. for certain words.

⁴Omitted *ibid.*,

⁵Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 13.

⁶Subs. by Ord. No. 24 of 2000, s. 8 for "his".

⁷Subs. *ibid.*, for the original sub-section (c).

⁸Ins. by Ord. No. 133 of 2002, s.20.

⁹Subs. by Ord. No. 24 of 2000, s. 8 for "or/and Deputy Chairman".

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duly authorised by him] NAB.

(e) The Chairman NAB and such members, officers^{1*} or servants of the NAB shall have and exercise, for the purposes of an inquiry^{1*} or investigation the power to arrest any person, and all the powers of an officer-in-charge of a Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, police officer or any other official or agency, as the case may be, is sought by the NAB such officer or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman²[NAB] or any officer²[of NAB] duly authorized by the Chairman NAB.

(f) Any Inquiry³[or]Investigation under this Ordinance shall be completed expeditiously^{4***}as may be practical and feasible.

(g) The^{5*}Chairman NAB,⁶[or^{7*} an officer of the NAB duly authorised by him,] shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further⁸[and there is sufficient material to justify filing of a reference], he shall refer the matter to⁹[a] Court.

(h) If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was *prima facie frivolous* or has been filed with intent to malign or defame any persons, the Chairman²[NAB] or Deputy Chairman NAB or¹⁰[an officer of the NAB duly authorised by the Chairman NAB], may refer the matter to the Court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

¹The word "and oblique" and omitted by the National Accountability Bureau (Amdt.) Ordinance 2002 (133 of 2002) s. 20.

²Ins. *ibid.*,

³Subs *ibid.*, for "and".

⁴Omitted by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 8.

⁵Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000(4of 2000),s. 13.

⁶Ins. by Ord. No. 2, 4 of 2000, s. 8.

⁷Omitted by the National Accountability Bureau (Amdt) Ordinance, 2001(35of2001),s. 16.

⁸Ins. *ibid.*,.

⁹Subs. by Ord.. No. 133 of 2002, s. 20, for "an Accountability".

¹⁰Subs. *ibid.*, for "the prescribed law officer".

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Person to call for information. 19. The Chairman NAB or ¹[an officer of the NAB duly authorised by him] may, during the course of an inquiry ²[or investigation] ³[of an offence under this Ordinance]:-

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made there under;
- (b) require any person to produce or deliver any document or thing useful or relevant to the inquiry ²[or investigation];
- (c) examine any person acquainted with the facts and circumstances of the case; ^{4*}
- ⁵[(d) require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whosoever, including copies of entries made in a bank's or a financial institution's books such as ledgers, day books cash books and all other books including record of information and transactions saved in electronic or digital form, and the keepers of such books or records shall be obliged to certify the copies in accordance with law ⁶[:and]
- ⁷[(e) where there is reasonable suspicion that any person is involved in or is privy to an offence under this Ordinance, the Chairman NAB may, with the prior approval in writing of the High Court concerned, direct that surveillance of that person may be carried out through such means as may be necessary in the facts and circumstances of the case and the Chairman NAB, may in this regard seek the aid and assistance of any ⁸[Governmental] agency and the information so collected may be used as evidence in the trial under this Ordinance:

Provided that the copies obtained or information received or evidence collected under clauses (d) and (e) shall be confidential and shall not be ⁹[kept] used for any purpose other than for

¹Subs. by the National Accountability Bureau (Amdt) Ordinance, 2002 (133of2(02),s. 21, for "any authorised officer".

²Ins. by the National Accountability Bureau (Amdt) Ordinance, 2000 (4 of 2000), s. 14.

³Subs. by Ord. No. 133 of 2002, s. 21, for certain words.

⁴The word "and" omitted *ibid.*,

⁵Subs. by the National Accountability Bureau(Amdt)Ordinance,2001(35of2001), s.17, for clause (d).

⁶Subs. by Ord. No. 133 of 2002, s. 21, for full stop.

⁷New clause (e) added by Ord. No. 35 of 2001, s. 17.

⁸Subs. by Ord. No 133 of 2002, s. 21, for "Government",

⁹Ins. *ibid.*,

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legal proceedings under this Ordinance],

20. (a) Notwithstanding anything contained in any law for the time being in force, it shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual or large transactions ¹[in an] account, which have no apparently genuine economic or lawful purpose and upon *bonafide* professional judgment of the Bank ²[or financial institution] that such transactions could constitute or be related to ³[an offence under this Ordinance], the manager or director of such ⁴[Bank-or] financial institution shall report all such transactions to the Chairman NAB forthwith by the quickest possible mode of communication to be confirmed in writing.

(b) Whoever fails to supply the information in accordance with sub-section (a) shall be punishable with rigorous imprisonment which may extend to 5 years, ⁵[and] with fine ^{6***}.

21. The Chairman NAB or any officer authorized by the Federal Government may request a Foreign State to do ⁸[any or all of] the following acts in accordance with the law of such State.

- (a) have evidence taken, or documents or other articles produced;
- (b) obtain and execute search warrants or other lawful instruments authorizing search for things relevant to investigation or proceedings in Pakistan believed to be located in that State, and if found, seize them;
- (c) freeze assets, by whatever processes are lawfully available in that State, to the extent to which the assets are believed on reasonable grounds to be situated in that State;
- (d) confiscate articles and forfeit assets to the extent to which the articles or assets, as the case may be, are believed to be located in that State;
- (e) transfer to Pakistan any such evidence, documents, things, articles, assets or proceeds realized from the disposal of such articles or assets^{9*}
- (f) transfer in custody to Pakistan a person detained in ¹⁰[that] State who consents to assist Pakistan in the relevant investigation or proceedings ¹¹ ;* ¹²

Reporting of suspicious financial transactions.

International co-operation – request for manual legal assistance.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 18, for "with context to the".

²Subs. *ibid.* for "Suspicion".

³Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 22, for certain words.

⁴Ins. by Ord. No. 35 of 2001, s. 18.

⁵Subs. by Ord. No. 133 of 2002, s. 22, for "or".

⁶The Comma and words "or with both" omitted *ibid.*.

⁷Sub-section (c) omitted *ibid.*,

⁸Ins. *ibid.*, s. 23.

⁹Omitted by Ord. No. 35 of 2001, s. 19.

¹⁰Subs. by Ord. No. 133 of 2002, s. 23, for "the foreign".

¹¹Subs. by Ord. No. 35 of 2001, s. 19.

¹²The word "and" omitted by Ord. No. 133 of 2002, s. 23.

¹[(g) notwithstanding anything contained in the **Qanun-e-Shahadat** Order 1984 or any other law for the time being in force all evidence, documents or any other material transferred to Pakistan by a Foreign Government shall be receivable as evidence in legal proceedings under this Ordinance ²[;and]]

³[(h) notwithstanding anything to the contrary contained hereinabove, the Chairman NAB may, on such terms and conditions as he deems fit, employ any person or organisation, whether in Pakistan or abroad, for detecting, tracing or identifying assets acquired by an accused in connection with art offence under this Ordinance, and secreted or hoarded abroad, and recovery of and repatriation to Pakistan of such assets.]

Jurisdiction.

22. (a) The Chairman NAB may ⁴[inquire in to and] investigate any suspected offence which appears to him on reasonable grounds to involve ⁵[an offence under] this Ordinance, and has been referred to him, or of his own accord.

(b) The Chairman NAB may, if he thinks fit, conduct any such investigation in conjunction with any other agency or any other person ^{6*} who is, in the opinion of the Chairman NAB, a proper Agency or person to be concerned in it.

Transfer of property void.

23. (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated ⁷[an inquiry or] investigation into ⁸[any offence] under this Ordinance, alleged to have been committed by an accused person, such ⁷[accused] person or any relative or associate of such ⁷[accused] person or any other person on his behalf, shall not transfer by any means whatsoever ⁷[or] create a charge on any ^{9***} property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the ^{10*} Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void.

¹New clause (g) added by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 19.

²Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 23, for full stop.

³New clause (h) added *ibid.*,

⁴Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 15.

⁵Subs. by Ord. No. 133 of 2002, s. 24, for certain words.

⁶The word incl. oblique "which" omitted *ibid.*,

⁷Ins. *ibid.*, ss. 25 and 26.

⁸Subs. *ibid.* for "the offences".

⁹The words "movable or immovable" omitted *ibid.*,

¹⁰The word "Accountability" omitted *ibid.*,

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(b) Any person who transfers, or creates a charge on property in contravention of sub-section (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not exceeding the value of the property involved ¹[:]

¹[Provided that such transfer of any right, title or interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit].

24. (a) The Chairman NAB shall have the power, at any stage of the ³[inquiry or] investigation under this Ordinance, to direct that the accused if not already arrested, shall be arrested. ²[Arrest]

(b) If the Chairman, NAB ²[, or an officer of the NAB duly authorised by him,] decides to refer the case to a ⁴ Court, such reference shall contain the substance of the. ⁵[offence or offences as the case may be,] alleged to have been committed by the accused and a copy of such reference shall be forwarded to the Registrar of the ⁴ Court to which the case has been sent to try the accused, and another copy shall be delivered to the accused.

(c) The provisions of Sub-section (a) shall also apply to cases, which have already been referred to the Court.

⁶[(d) Notwithstanding anything contained in the Code, where the holder of a public office or, any other person accused of an offence is arrested by NAB under this Ordinance, NAB shall, as soon as may be, inform him of the grounds and substance on the basis of which he has been arrested and produce him before, the ⁷[Court] ⁸H*within a period of twenty-four hours of arrest excluding the time necessary for the journey from the place of arrest to the ⁷[Court] and such person shall, having regard to the facts and circumstances of the case, be liable to be detained in the custody of NAB for the purpose of inquiry and investigation for a period not exceeding ninety days ⁹[and the Court may remand an accused person to custody not

¹Subs. and added by the National Accountability Bureau (Amdt) Ordinance 2001 (35 of 2001), s. 20.

²Ins. by the National Accountability Bureau (Second Amdt) Ordinance, 2000 (24 of 2000), s. 9.

³Ins. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 26.

⁴Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 16.

⁵Subs. by Ord. No. 133 of 2002, s. 26, for "offence/offences".

⁶Subs. by Ord. No. 4 of 2000, s. 16, for the original sub-section (d).

⁷Subs. by Ord. No. 133 of 2002, s. 26, for "court".

⁸The words "established under this ordinance" Omitted *ibid.*,

⁹Subs. by Ord. No. 35 of 2001, s. 21.

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exceeding, fifteen days at a time and for every subsequent remand the Court shall record reasons in writing copy of which shall be sent to the High Court.]

¹[(e) All persons presently in custody shall immediately upon coming into force of this sub-section, unless previously produced before ²[a] Court, be produced before such Court, as provided in sub-section (d) and the Order authorising retention of custody by NAB shall be deemed to relate to the date of arrest.]

³[(f) The Chairman, NAB may declare and notify any place as ⁴[a police station or] a sub-jail at his discretion.]

Voluntary
return and
plea
bargain.

⁵[25. (a) Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntarily comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of type matter or transaction in issue:
Provided that the matter is not *sub judice* in any court of law.

(b) Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Ordinance, the Chairman, NAB, may, in his discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB, the Chairman, NAB, shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused.

(c) The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank

¹New sub-section(e)added by the National Accountability Bureau (Amdt) Ordinance, 2001

(35 of 2001) s. 21.

²Subs. by the National Accountability Bureau (Amdt.) Ordinance,2002(133of2002), s. 26 for "an Accountability".

³Sub-section (e) renumbered as sub-section (f) by the National Accountability Bureau (Amdt.) Ordinance 2000 (4 of 2000) s. 16.

⁴Ins. *ibid*.

⁵Subs. by Ord. No. 133 of 2002, s. 27, for "section 25", which was previously amended by various enactments.

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or financial institution, company, body corporate, co-operative society, statutory body, or authority concerned within one month from the date of such deposit]

¹[25A. ²[(a) Where ³[an accused person] has been arrested or is in the custody of NAB or apprehends such arrest or custody for the investigation of the charge against him of committing an offence of *willful* default on account of non-payment of dues to a bank or financial institution or Co-Operative Society, he may at any stage before or after such arrest or before, during or after such custody or investigation apply to the Governor, State Bank of Pakistan for reconciliation of his liability through the Conciliation Committee and the Governor may, if he deems fit, refer the matter to the Conciliation Committee.

Payment of
loans etc.

(aa) The Governor, State Bank of Pakistan shall constitute one or more Conciliation Committees for the purposes of this Ordinance.]

⁴[(b) The Conciliation Committee shall consist of a nominee of the Governor, State Bank of Pakistan, being a senior officer of the State Bank well qualified in the profession of banking who shall be the Chairman of the Committee two nominees of the NAB to be nominated by the Chairman NAB, two chartered accountants to be nominated by the Governor, State Bank of Pakistan, one Chartered Accountant to be nominated by the Council of the Institute of Chartered Accountants of Pakistan, Karachi, such nomination to be obtained by the Governor, State Bank of Pakistan a Chartered Accountant to be nominated by the ¹[accused] and a Chartered Accountant to be nominated by the lender bank or financial institution.

Explanation.- Where the ⁶[lender] is a consortium or group of banks or financial institutions, the lender means the lead bank or financial institution.

(bb) The Chairman of the conciliation committee shall convene the meetings and conduct proceedings of the ⁷[Conciliation] Committee in the manner he deems fit.]

⁸[(c) The Conciliation Committee, after examination of the record of the lending bank or financial institution and the ⁹[accused] and after hearing the parties through their Chartered

¹New section 25A ins. by the National Accountability Bureau (Amdt.) Ordinance, 2000 (4 of 2000), s. 18.

²Subs. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 11, for sub-section (a) which was previously amended by Ord. No. 4 of 2000, s. 18.

³Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (33 of 2002), s. 28, for "a person".

⁴Subs. by Ord. No. 24 of 2000, s. 11, for sub-section (b).

⁵Subs. by Ord. No. 133 of 2002, s. 28, for "borrower".

⁶Subs. *ibid.*, for "Leader".

⁷Ins. *ibid.*, s. 28.

⁸Subs. by Ord. No. 24 of 2000, s. 11, for sub-section (c).

⁹Subs. by Ord. No. 133 of 2002, s. 28, for "borrower".

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¹[Accountants], shall determine the amount outstanding against the ²[accused] calculated in accordance with law, rules, regulations and circulars of the State Bank of Pakistan and. further determine the manner and the schedule of repayment having regard to the facts of each case. The ²[accused], if he so desires, shall be heard at commencement and *before* the conclusion of proceedings:

Provided that the borrower shall have the right to have access to, and instruct, the Chartered Accountant representing him before the Conciliation Committee even if the borrower is in ^{3*} Custody, during the proceedings of the Conciliation Committee.]

(d) The Conciliation Committee shall conclude the reference within thirty days and its recommendations shall be recorded by its Chairman and shall contain the views of all members of the ⁴[Conciliation] Committee. The recommendations of the Conciliation Committee shall be submitted to the ⁵[Governor, State Bank of Pakistan.]

⁶[(e) The Governor, State Bank of Pakistan shall consider the recommendations submitted to him under sub-section (d) and may accept the recommendations or may, for reasons to be recorded, pass such other appropriate order thereon as he deems fit. The acceptance of the recommendations of the ⁴[Conciliation] Committee or passing any other order as aforesaid shall constitute the decision of the Governor, State Bank of Pakistan.]

⁷[(f) Where the ⁸[accused] undertakes to repay the amount as determined by the Conciliation Committee, the Chairman NAB, with the approval of the Court, may release the accused.]

⁹[(g) The decision of the Governor State Bank of Pakistan shall be communicated to the Chairman NAB, which shall be binding on him, except for valid reasons to be recorded in writing subject to approval of the Court, to be accorded within a period of seven days.]

¹⁰(h) In the event of failure either of the Conciliation

¹Subs. *ibid.*, for "Accountant".

²Subs. by Ord. No. 133 of 2002, s. 28, for "borrower".

³The word "the" omitted by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 28.

⁴Ins. *ibid.*

⁵Subs. by the National Accountability Bureau (Second Amdt.) Ordinance 2000 (24 of 2000), s. 11, for the "Chairman NAB".

⁶Subs. *ibid.* for sub-section (e).

⁷Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 23, for sub-section (f), which was previously amended by Ord. No. 24 of 2000, s. 11.

⁸Subs. by Ord. No. 133 of 2002, s. 28, for "borrower".

⁹Subs. by Ord. No. 35 of 2001, for sub-section (g).

¹⁰Subs. by Ord. No. 24 of 2000, s. 11, for sub-section (h).

¹¹The word "Accountability" Omitted by Ord. No. 133 of 2002, s. 28.

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Committee to conclude the reference within thirty days of the commencement of the conciliation proceedings or the failure of the [accused] to accept and implement the decision of the Governor, State Bank of Pakistan regarding the payment and matters relating thereto, such failure to accept or implement the decision shall be referred to the ^{11*}Court subject to the provisions of Section 31D and the Court may proceed with the case thereafter.

Provided that the period of thirty days may be extended by the Governor, State Bank of Pakistan by such further period or periods as he may find necessary having regard to the facts and circumstances of the case and for reasons to be recorded.]

26. (a) Notwithstanding anything contained in the Code, at any stage of ²[inquiry, investigation or trial], the Chairman ³[NAB] may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence, tender a full or conditional pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the said offence including the names of the persons involved therein whether as principals or abettors or otherwise.

Tender of
pardon ^{1***}

(b) Every person accepting a tender of pardon under sub-section (a) shall be examined ⁴[by a Magistrate and shall also be examined] as a witness in the subsequent trial.

(c) Subject to sub-section (d), the person to whom pardon has been granted under this section shall not

(i) in the case of a full pardon be tried for the offence in respect of which the pardon was granted; and

(ii) in the case of a conditional pardon be awarded a punishment or penalty higher or other than that specified in the grant of pardon notwithstanding the punishment or penalty authorized by law.

(d) Where the Chairman NAB certifies that in his opinion, any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence through wilful or reckless mis-statement, not complied with the condition on which the tender ⁵[of pardon] was made, such a person may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the said

¹Certain words omitted by the National Accountability Bureau (Amdt.) Ordinance 2002 (133 of 2002), s. 29.

²Subs. *ibid.* for "investigation or inquiry".

³Ins. *ibid.*

⁴Ins. by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000) s.12.

⁵Ins. by Ord. No. 133 of 2002, s. 29.

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matter including the offence of giving false evidence, which he knows or ought to know is false.

(e) Any statement made before ¹[a magistrate] by a person who has accepted a tender of pardon may be given in evidence against him at ²[the] trial.

Power to sack assistance.

27. The Chairman NAB ³[or an officer of the NAB duly authorised by him,] shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or ⁴[inquiry or investigation] pending before the NAB, ⁵[or disposal of any property surrendered to or seized by the NAB,] from any department of the Federal Government, Provincial Government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector, as he may deem fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the ⁶[Chairman NAB's] decision shall be final.

Appointment of officers and staff in the National Accountability Bureau.

⁷**[28.** ⁸(a) The Chairman NAB, or an officer of the NAB duly authorised by him, may appoint such officers and staff as he may consider necessary for the efficient performance of ⁹ [the functions of the NAB] and exercise of powers under this Ordinance.]

¹⁰* * *

(c) The officers and members of staff ³[of the NAB] shall be titled to such salary, allowances and other terms and conditions of services as the Chairman NAB may, with the approval of the ¹¹[President], determine.

(d) Subject to sub-section (e) the provisions of the Civil Servants Act, 1973, shall not apply to the persons appointed in ¹[or employed by, the] NAB.

(e) Nothing contained in sub-section (d) shall apply to a person who is a civil servant within the meaning of the law relating to appointments as civil ¹²[servants] of the Federation or a Province and is deputed to or posted in NAB.

¹³(f) The Chairman NAB, may appoint advisers,

¹Subs. by Ord. No. 24 of 2000, s. 12, for certain words.

²Subs. *ibid.*, for "such".

³Ins. by the National Accountability Bureau (Second Amdt) Ord., 2000 (24 of 2000), s. 13.

⁴Subs. by the National Accountability Bureau (Amdt) Ordinance, 2002 (133 of 002), s. 30, for "proceeding".

⁵Ins. *ibid.*, ss 30 and 31.

⁶Subs. *ibid.*, for "Chairman's"

⁷Subs. by the National Accountability Bureau (Amdt) Ordinance, 2000 (4 of 20(0), s. 19 for the original section 28.

⁸Subs. by Ord. No. 24 of 2000, s. 14, for sub-section (a), which was previously amended by Ord. No. 4 of 2000, s. 19.

⁹Subs. by Ord. No. 133 of 2002, s. 31, for "his functions",

¹⁰Sub-section (b) omitted *ibid.*,

¹¹Subs. *ibid.*, for "Chief Executive".

¹²Subs. *ibid.*, for "servant".

¹³New section's (d) and (g) added *ibid.*

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consultants and experts, on payment of such fee or remuneration as he may determine, to assist him in performing the functions of the NAB and the discharge of his duties under this Ordinance.

(g) Notwithstanding anything to the contrary contained herein, or in any law for the time being in force, the Chairman NAB shall not be required to consult the Federal Public Service Commission for making appointments and on matters relating to qualifications of persons for such appointments and methods of their recruitment and the qualifications for appointments and methods of recruitment shall be such as he may by rules prescribe.]

29. ¹[An accused] shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him:

Accused to be competent witness.

Provided that the accused shall not be compelled to be a witness against himself: Provided further that, where an accused ^{2*} appears as a witness of his own choice and refuses to answer any question, the Court may draw such adverse inference from such refusal as it may think proper.

30. (a) Notwithstanding anything³[to the contrary] contained in ⁴[this Ordinance]or any other law ⁵[for the time being] in force, on pronouncement of judgement the ^{6*} Court shall have the jurisdiction and power to take cognizance of an offence committed in the course of the investigation or trial of a case by any officer, any witness, including an expert, who has tendered false evidence in the case, whether he deposed in court or not, or any other person, under sections 176 to 182 of Chapter X, or sections 191 to 204, or 211 to 223, or 225-A of Chapter XI, of the Pakistan Penal Code 1860, or under any other law relating to false evidence and offences against public justice and to summarily try him and award punishment provided for the, offence under the law.

False evidence.

(b) For the purpose of trial under sub-section (a), the Court may, as nearly as may be, follow the procedure specified in Chapter XXII of the Code.

(c) The proceeding under sub-section (a) may be initiated by the ^{7*}Court on its own accord at any time after the decision of the case or, in the event that there is an appeal, after the decision thereof, or on an application made by the N ⁸[prosecution]⁹[or the accused]tried by the Court, within thirty days.

Act XLV of 1860.

¹Subs. by the National Accountability Bureau (Amdt) Ordinance 2002 (133of2002),s. 32, for certain words.

²The word "person" omitted *ibid*,

³Ins *ibid.*, ss. 33 and 34.

⁴Subs. *ibid* for the "preceding provisions".

⁵Subs. *ibid.*, for "already".

⁶The word "Accountability" omitted *ibid*.

⁷Omitted by the National Accountability Bureau (Amdt) Ordinance, 2000(4of 2000),s. 20.

⁸Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 24, for "Prosecutor".

⁹Subs. by Ord. No. 133 of 2002, s. 33, for "of the person accused of an offence".

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[Prohibition to hamper investigation]

31. (a) Notwithstanding anything contained in any other law for the time being in force, if any person concerned with the inquiry ²[,] investigation and prosecution of a case consciously and deliberately and with malice ^{3*} compromises, hampers, misleads, jeopardizes or defeats an ⁴[inquiry or] investigation of a case under process before NAB or any concerned agency or authority or ⁵[the Court or any other court] he shall be ⁶[guilty of an offence under this Ordinance punishable with rigorous imprisonment for a term which may extend to ten years].

Absconding to avoid service of warrants.

(b) No person will be proceeded ⁷[against] under this section except with the sanction of a Committee ⁸[comprising] the Chairman NAB Deputy Chairman NAB and the Prosecutor General Accountability.

⁹31A. ¹⁰[(a)] Whoever absconds in order to avoid being served with any process issued by any Court or any other authority or officer under this Ordinance or in any manner prevents, avoids or evades the service on himself of such process or conceals himself to screen himself from the proceedings or punishment under this Ordinance shall be guilty of an offence ¹¹[under this Ordinance] punishable with imprisonment which may extend to three years notwithstanding the provisions of section 87 and 88 of ¹²[Code], or any other law for the time being in force.

Withdrawal from prosecution.

¹³[(b) Notwithstanding the provisions of section 18 it shall not be necessary to file a reference under this section in cases where a reference is pending before the Court.]

¹Amdt. by the National Accountability Bureau (Amdt.)Ordinance 2000 (4of2000),s. 21.

²Subs.by the National Accountability Bureau (Amdt.)Ordinance 2002(133of2002),s.34, for "and".

³The word "aforethought" omitted *ibid.*

⁴Ins. *ibid.*, ss. 33 and 34.

⁵Subs. *ibid.*, for "any court or an court" which was previously amended by Ord. No. 4 of 2000, s. 21.

⁶Subs. *ibid.*, for certain words.

⁷Subs. *ibid.*, for "with".

⁸Subs. *ibid.*, for "composing".

⁹New sections 31A, 31B and 31C, ins. by Ord. No. 4 of 2000, s. 22.

¹⁰Relettered as sub-section (a) by Ord. No. 133 of 2002, s. 35.

¹¹Ins. *ibid.*, ss. 35 and 36.

¹²Subs. *ibid.*, for "Code of Criminal Procedure, 1898".

¹³New sub-section (b) added *ibid.*,

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¹[31B. The Prosecutor General Accountability may, with the consent of the Court, withdraw from the prosecution of any ²[accused]person generally or in respect of anyone or more of the offences for which he is tried and upon such withdrawal:

- (i) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; and
- (ii) if it is made after a charge has been framed, he shall be acquitted in respect of such offence or offences.]

31C.No. Court established under this Ordinance shall take cognizance of an offence against an officer or an employee of a bank or financial institution for writing off, waiving, restructuring or refinancing any financing facility; interest or mark-up without prior approval of the State Bank of Pakistan.

³[Court to take cognizance of offence with prior approval of the State Bank.]

⁴[31D. Notwithstanding anything contained in this Ordinance or any other law for the time being in force, -no inquiry, investigation or proceedings in respect of imprudent loans, defaulted loans or rescheduled loans shall be initiated or conducted by the National Accountability Bureau against any person, company or financial institution without reference from Governor, State Bank of Pakistan:

Inquiry investigation or proceedings in respect of imprudent bank loans, etc.

Provided that cases pending before any Accountability Court before coming into force of the National Accountability Bureau (Second Amendment) Ordinance, 2000, shall continue to be prosecuted and conduct without reference from the Governor, State Bank of Pakistan.]

⁵[31E. The Chairman NAB or the Court may in the facts and Protection circumstances of a case take such measures as may be considered necessary of witnesses for the safety, security and protection of witnesses and their families.]

Protection of witnesses.

32. (a) Any ⁷[person convicted or the Prosecutor General Accountability, if so directed by ⁸[the Chairman] NAB,] aggrieved by the final judgement and order of the Court under this Ordinance may within ten days of the final Judgement and order of the ^{9*} Court prefer an appeal to the High Court of the Province where the Court is, situated ¹⁰[:]

Appeal [and revision].

¹⁰[Provided that no appeal shall lie against any

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 25, for section 31B.

²Ins. sub-section (a) by Ord. No. 133 of 2002, ss. 35 and 36.

³Ins. by the National Accountability Bureau (Second Amdt) Ord., 2000 (24 of 2000), s. 15.

⁴New section 31D ins. *ibid.*, s. 16.

⁵New section 31E, ins. by the National Accountability Bureau (Amdt) Ordinance, 2001 (35 of 2001), s. 126.

⁶Added by the National Accountability Bureau (Amdt) Ordinance, 2002 (133 of 2002), s. 37.

⁷Subs. by the National Accountability Bureau (Amdt) Ordinance, 2000 (4 of 2000), s. 23. for "Party to the Proceedings".

⁸Ins. by Ord. No. 133 of 2002, s. 37.

⁹The word "Accountability" omitted *ibid.*,

¹⁰Subs. and ins. by Ord. No. 35 of 2001, s. 27.

interlocutory order of the Court].

(b) All Appeals against the final Judgement ^{1**} filed before the High Court will be heard by a Bench of not less than two judges constituted by the Chief Justice of the High Court and shall be finally disposed of within thirty days of the filing of the appeal.

²[(c) No revision shall lie against any interlocutory order of the Court

^{3*} * * *

Transfer of pending proceedings.

⁴[**33.** Any and all proceedings pending before a ⁵[court] under the Ehtesab Act, 1997, shall stand transferred to ⁶[a] Court as soon as it is IX of constituted under this Ordinance within the same Province, and it shall 1997 not be necessary to recall any witness or again to record any evidence that may have been recorded.].

Payment of bonuses etc.

⁷[**33A.** There may be paid bonuses or ex-gratia ⁸[payments] to the officers and staff of the ⁹[NAB], other Government servants, public servants and rewards to members of public for rendering commendable services in detection, investigation and prosecution of ¹⁰[any offence under this Ordinance] as may be prescribed by rules].

¹Omitted by the National Accountability Bureau (Second Amdt.) Ordinance, 2000 (24 of 2000), s. 15.

²Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002), s. 37, for "sub-section (c)" which was previously amended by various enactments.

³Omitted by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 27.

⁴Subs. and shall be deemed always to have been so subs. by the National Accountability Bureau (Amdt.) Ordinance, 1999 (19 of 1999), s. 2, for the original section 33.

⁵Subs. by Ord. No. 133 of 2002, s. 38, for "Court".

⁶Subs. *ibid.*, for "an Accountability".

⁷New section 33A ins. by Ord. No. 35 of 2001, s. 28.

⁸Subs. by Ord. No. 133 of 2002, s. 39, for "payment".

⁹Subs. *ibid.*, for "National Accountability Bureau".

¹⁰Subs. *ibid.*, for certain words.

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¹**33B.** All Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial and local governments, statutory corporations or authorities established by the Federal Government or Provincial Government and holders of public office shall furnish to NAB a copy of any contract, entered into by such Ministries, Divisions and Attached Departments of the Federal Government, all departments of Provincial Government or local government, statutory corporations or authorities established by the Federal Government or Provincial Government or such holder of public office on its behalf, as the case may be, of the minimum monetary value of fifty million rupees or more, within such time as is reasonably practicable from the date of signing such contract.

Reporting
of Public
contracts.

33C. The Chairman NAB, shall from time to time as he deems fit, constitute committees comprising officers of the NAB or other persons or organisations from the private or public sectors to –

Measures
for the pre-
vention of
corruption
and corrupt
practices.

- (a) educate and advise public authorities, holders of public office and the community at large on measures to combat corruption and corrupt practices;
- (b) develop, arrange, supervise, participate in or conduct educational programmes or media campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;
- (c) examine the laws in force, and also rules and regulations relating to the practice and procedure of various ministries, departments of the Federal Government or Provincial Government, statutory or other public corporations or bodies, and the conduct of holders of public office and to recommend amendments in such laws, rules or regulations, as the case may be, in order to eliminate corruption and corrupt practices;
- (d) instruct, advise and assist any statutory or other public corporation or bodies or upon request, any organisation in the private and public sector on measures for the reduction and elimination of corruption and corrupt practices; and

¹New sections 338, 33C, 33D and 33E ins. by the National Accountability Bureau (Amdt.) Ordinance. 2002 (133 of 2002). s. 40.

- (e) monitor the implementation of the instructions and advice as aforesaid and to assess and evaluate the success or otherwise of such instructions and advice on the reduction and elimination of corruption and corrupt practices.

NAB to submit an annual report.

33D. The Chairman NAB shall as soon as possible after the end of every calendar year but before the last day of March next following, submit to the President a report of its affairs for that year which report shall be a public document and on its publication copies thereof shall be provided to the public at a reasonable cost.

Recovery of amount of fines, etc. as arrears of land revenue.

33E. Any fine or other sum due under this Ordinance, or as determined to be due by a Court, shall be recoverable as arrears of land revenue.]

Power to make rules.

¹[34. The Chairman NAB may, with the approval of the President, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.]

²[34A. The Chairman NAB may, by an order in writing delegate any of his powers to and authorise performance of any of his functions by, an officer of the NAB as he may deem fit and proper, subject, to such conditions, if any, as may be specified in the order, for carrying out the purposes of this Ordinance].

35. (a) The Ehtesab Act 1997 shall stand repealed from the date of promulgation of this Ordinance, provided that notwithstanding the repeal of the said Act, any proceedings pending under Ordinance CXI of 1996, Ordinance No. XX of 1997 and the Ehtesab Act, 1997, before any Court established under the said Act of 1997 ^{3*} or any of the aforesaid Ordinances amending the same, shall ⁴[continue under this Ordinance as transferred under ^{5****} section 33 to ⁶[a] Court.]

⁷[(b) any case or proceedings pending under the aforesaid Ordinances and the Act of 1997 immediately before the commencement of this Ordinance and transferred to any ⁸[Court] ^{9***} shall be proceeded with and all subsequent proceedings shall be completed in accordance with, and under the provisions of, this Ordinance.]

¹Subs. by the National Accountability Bureau (Amdt) Ordinance, 2002 (133 of 2002), s. 41, for section 34, which was previously amended by Ord. No.4 of 2000, s. 24, for certain words.

²New section 34A ins. by the National Accountability Bureau (Amdt.) Ordinance 2001, (35 of 2001), s. 29.

³The word "and/"omitted by Ord. No. 133 of 2002, s. 42.

⁴Subs. by the National Accountability Bureau (Amdt) Ordinance, 2000 (4 of 2000), s. 25, for certain words, which was previously ins. by Ord. No. 19 of 1999. s. 4.

⁵Omitted by Ord. No. 35 of 2001, s. 30.

⁶Subs. by Ord. No. 133 of 2002, s.42, for "an Accountability".

⁷Subs. by Ord. No.4 of 2000, s. 25, for the original sub-section (b).

⁸Subs. by Ord. No. 133 of 2002, s. 42, for "court".

⁹The words "established under this Ordinance" omitted *ibid.*,

1999 : Ord. XVIII] National Accountability

36. No suit, prosecution, or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman NAB, or any other member of the NAB or any person exercising any power or performing any function under this Ordinance or the Rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Ordinance or the rules thereof. Indemnity.

¹[37.-If any difficulty arises in giving effect to any provision of this Ordinance, the ²[Chairman NAB] ³[with the approval of the President], may make such order, not inconsistent with the provisions of this Ordinance, as may appear to him to be necessary for the purpose of removing such difficulty.] Removal of difficulties.

⁴[THE SCHEDULE]
[See section 10(b)]

S.No. (1)	Offences (2)	Punishment (3)
1.	Any person who aids, abets or through any wilful act or omission is instrumental in the commission of the offence of wilful default or with wrongful intent for illegal gratification by misuse of power, authority, influence, nepotism, favouritism writes off, waives, restructures or refinances illegally, improperly or without sufficient justification the principal amount of loan on any financial facility, interest or mark-up on any loan or financial facility provided to any person by any bank or financial institution, a co-operative society, a government department or an authority established or controlled by the Government shall have committed or be deemed to have committed the offence of corruption or corrupt practices.	Rigorous imprisonment for a term which may extend to fourteen years and fine.
	Refuses to answer questions, or to provide information to any member of the NAB or any other agency when required to do so.	Rigorous imprisonment for a term which may extend to five years.

¹Subs. by the National Accountability Bureau (Amdt.) Ordinance, 2001 (35 of 2001), s. 31, for section 37.

²Subs by the. National Accountability Bureau (Amdt.) Ordinance, 2002 (133 of 2002) s. 43 for "President".

³Subs. *ibid.*, for certain words.

⁴Subs. *ibid.*, for "the Schedule", which was. previously amended by various enactments.

National Accountability [1999 : Ord. XVIII]

S.No. (1)	Offences (2)	Punishment (3)
3.	Giving false information or fabricating false evidence during inquiry into or investigation of an offence by the NAB or any agency authorised by the NAB in this regard when given by	
	(a) a complainant, witness or an accused person or any inquiry officer; and	Rigorous imprisonment for a term which may extend to five years.
	(b) the investigator of the National Accountability Bureau or Concerned agency.	Rigorous imprisonment for a term which may extend to ten years.
4.	Misuse of authority or power in committing any offence specified above, by any person holding a public office including any offence under sections 161 to 165A of the Pakistan Penal Code (Act XLV of 1860).	Rigorous imprisonment for a term which may extend to fourteen years.
5.	Deceitfully, fraudulently or dishonestly causing loss to a bank, a financial institution, a cooperative society, a Government department, a statutory body or an authority established or controlled by the Federal Government, a Provincial Government or a local government.	Rigorous imprisonment for a term which may extend to fourteen years.]

CHAPTER-IV

WAFAQI MOHTASIB ORDINANCE (163-164)

CHAPTER-IV

WAFAQI MOHTASIB ORDINANCE

Sl. No. 1 Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

President's Order No.1 of 1983

Whereas it is expedient to provide for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration;

Now, THEREFORE in pursuance of the Proclamation of the fifth day of July, 1977, and in exercise of all powers enabling him in that behalf, the President and Chief Martial Law Administrator is pleased to make following Order:

1. Short Title, Extent and Commencement:

- (1) This Order may be called the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definition.-In this Order, unless there is anything repugnant in the subject or context:

- (1) "Agency" means a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court;
- (2) "mal-administration" includes:
 - (i) a decision, process, recommendation, act of

omission or commission which:

- (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is *bona fide* and for valid reasons; or
- (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- (c) is based on irrelevant grounds; or
- (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and

(ii) neglect inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities

(3) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3;

(4) "Office" means the office of the Mohtasib:

(5) "prescribed" means prescribed by rules made under this Order;

(6) "Public Servant" means a public servant as defined in section 21 of the Pakistan Penal Code (Act X LV of 1860), and includes a Minister, Adviser, Parliamentary Secretary and the Chief Executive, Director other officer or employee or member of any Agency; and

(7) "staff" means any employee or commissioner of the Office and includes co-opted members of the staff, consultants, advisers, bailiffs, liaison officers and experts.

3. Appointment of Mohtasib:

(1) There shall be a Wafaqi Mohtasib (Ombudsman), who shall be appointed by the President.

(2) Before entering upon office, the Mohtasib shall take an oath before the President in the form set out in the First Schedule.

- (3) The Mohtasib shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the executive; and all executive authorities throughout Pakistan shall act in aid of the Mohtasib.
4. Tenure of the Mohtasib:
 - (1) The Mohtasib shall hold office for a period of four years and shall not be eligible for any extension of tenure or re-appointment as Mohtasib under any circumstances.
 - (2) The Mohtasib may resign his office by writing under his hand addressed to the President.
5. Mohtasib not to hold any other office of profit, etc.:
 - (1) The Mohtasib shall not:
 - (a) hold any other office of profit in the service of Pakistan; or Occupy any other position carrying the right to remuneration
 - (b) for rendering of services.
 - (2) The Mohtasib shall not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office; nor shall he be eligible during the tenure of office and for a period of two years thereafter for election as a member of Parliament or a Provincial Assembly or any local body or take part in any political activity.
6. Terms and Conditions of Service and Remuneration of Mohtasib:
 - (1) The Mohtasib shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the President may determine and these terms shall not be varied during the term of office of a Mohtasib.
 - (2) The Mohtasib may be removed from office by the President on the ground of misconduct or of being incapable of properly performing the duties of his office by reasons of physical or mental incapacity:

Provided that the Mohtasib may, if he sees fit and appropriate to refute any charges, request an open public evidentiary hearing before the Supreme Judicial Council and if such a hearing is not held within thirty days of the receipt of such request or not concluded within ninety days of its receipt, the Mohtasib will be absolved of any and all stigma whatever. In such circumstances, the Mohtasib may choose to leave his office and shall be entitled to receive full remuneration and benefits for the rest of his term.

- (3) If the Mohtasib makes a request under the proviso to clause (2), he shall not perform his functions under this Order until the hearing before the Supreme Judicial Council has concluded.
- (4) A Mohtasib removed from office on the ground of misconduct shall not be eligible to hold any office of profit in the service of Pakistan or for election as a Member of Parliament or a Provincial Assembly or any local body.

7. Acting Mohtasib: At any time when the office of Mohtasib is vacant, or the Mohtasib is absent or is unable to perform his functions due to any cause, the President shall appoint an acting Mohtasib.

8. Appointment and Terms and Conditions of Service of Staff:

- (1) The members of the staff, other than those mentioned in Article 20 or those of a class specified by the President by order in writing, shall be appointed by the President in consultation with the Mohtasib.
- (2) It shall not be necessary to consult the Federal Public Service Commission for making appointment of the members of the staff or on matters relating to qualification for such appointment and methods of their recruitment.
- (3) The members of the staff shall be entitled to such salary allowances and other terms and conditions of service as maybe' prescribed having regard to the salary, allowances and other terms and conditions of service that may for the time being be admissible to other employees of the Federal Government in the

corresponding Grades in the National Pay Scales.

- (4) Before entering upon office a member of the staff mentioned in clause (1) shall take an oath before the Mohtasib in the form set out in the Second Schedule.

9. Jurisdiction, Functions and Powers of the Mohtasib:

- (1) The Mohtasib may on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:

- (a) are *sub-judice* before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or
 - (b) relate to the external affairs of Pakistan or relations or dealing of Pakistan with any foreign state or government; or
 - (c) relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.
- (2) Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein.
 - (3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for

studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

- (4) The Mohtasib may set up regional offices as, when and where required.

10. Procedure and Evidence:

- (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Mohtasib by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Mohtasib in person or sent by any other means of communication to the office.
- (2) No anonymous or pseudonymous complaints shall be entertained.
- (3) A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Mohtasib may conduct any investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.
- (4) Where the Mohtasib proposes to conduct an investigation he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, a notice calling upon him to meet the allegations contained in the complaint, including rebuttal:

Provided that the Mohtasib may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within thirty days of the receipt of the notice or within such longer period as may have been allowed by the Mohtasib.

- (5) Every investigation shall be conducted in private, but the Mohtasib may adopt such procedure as he considers appropriate for such investigation and he may obtain information from such persons and in such manner and

make such inquiries as he thinks fit.

- (6) A person shall be entitled to appear in person or be represented before the Mohtasib.
- (7) The Mohtasib shall, in accordance with the rules made under this Order, pay expenses and allowances to any persons who attends or furnishes information for the purposes of any investigation.
- (8) The conduct of an investigation shall not affect any action taken by the Agency concerned, or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.
- (9) For the purposes of an investigation under this Order the Mohtasib may require any office or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Mohtasib is relevant and helpful in the conduct of the investigation, and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation :

Provided that the President may, in his discretion, on grounds of its being a State secret, allow claim of privilege with respect to any information or document.

- (10) In any case where the Mohtasib decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.
- (11) Save as provided in this order, the Mohtasib shall regulate the procedure for the conduct of business or the exercise of powers under this Order.

11. Recommendations for Implementation

- (1) If, after having considered a matter on his own motion, or on a complaint or on a reference by the President, the Federal Council or the National Assembly, or on a motion

by the Supreme Court or a High Court, as the case may be, the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned:

- (a) to consider the matter further;
 - (b) to modify or cancel the decision, process, recommendation, act or omission;
 - (c) to explain more fully the act or decision in question;
 - (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
 - (e) to dispose of the matter or case within a specified time;
 - (f) To take action on his findings and recommendation to improve the working and efficiency of the Agency within a specified time; or
 - (g) to take any other step specified by the Mohtasib.
- (2) The Agency shall, within such time as may be specified by the Mohtasib, inform him about the action taken on his recommendations or the reasons for not complying with the same.
- (3) In any case where the Mohtasib has considered a matter, or conducted an investigation on a complaint or on a reference by the President the Federal Council or the National Assembly or on a motion by the Supreme Court or a High Court, the Mohtasib shall forward a copy of the communication received by him from the Agency in pursuance of clause (2) to the complainant or, as the case may be the President, the Federal Council, the National Assembly, the Supreme Court or the High Court.
- (4) If after conducting an investigation, it appears to the Mohtasib that an injustice has been caused to the person aggrieved in consequence of mal-administration and that the injustice has not been or will not be remedied he may, if he thinks fit lay a special report on the case before the President.

- (5) If the Agency concerned does not comply with the recommendations of the Mohtasib or does not give reasons to the satisfaction of the Mohtasib for non-compliance, it shall be treated as “Defiance of Recommendations” and shall be dealt with as hereinafter provided.

12. Defiance of Recommendations:

- (1) If there is a “Defiance of Recommendations” by any public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly.
- (2) In each instance of “Defiance of Recommendations” a report
- (3) The Mohtasib shall become a part of the personal file or Character Roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

13. Reference by Mohtasib: Where, during or after an inspection or an investigation, the Mohtasib is satisfied that any person is guilty of any allegations as referred to clause (1) of Article 9, the Mohtasib may refer the case to the concerned authority for appropriate corrective or disciplinary action, or both corrective and disciplinary action, and the said authority shall inform the Mohtasib within thirty days of the receipt of reference of the action taken. If no information is received within this period, the Mohtasib may bring the matter to the notice of the President for such action as he may deem fit.

14. Powers of the Mohtasib:

- (1) The Mohtasib shall, for the purposes of this Order, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 of Act Vol 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) compelling the production of documents;
 - (c) receiving evidence on affidavits; and
 - (d) issuing commission for the examination of witnesses.
- (2) The Mohtasib shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Mohtasib, may be useful for, or relevant to, the subject matter of any inspection or investigation.
- (3) The powers referred to in clause (1) may be exercised by the Mohtasib or any person authorised in writing by the Mohtasib or any person authorised in writing by the Mohtasib in this behalf while carrying out an inspection or investigation under the provisions of this Order.
- (4) Where the Mohtasib finds the complaint referred to in clause (1) of Article 9 to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made; and the amount of such compensation shall be recoverable from the complainant as an arrear of land revenue:

Provided that the award of compensation under this clause shall not debar the aggrieved person from seeking civil and criminal remedy.

- (5) If any Agency, public servant or other functionary fails to comply with a direction of the Mohtasib, he may, in addition to taking other actions under this Order, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Mohtasib.
- (6) If the Mohtasib has reason to believe that any Public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Mohtasib.

- (7) The staff and the nominees of the Office may be commissioned by the Mohtasib to administer oaths for the purposes of this Order and to attest various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Order without proof of the signature or seal or official character of such person.

15. Power to Enter and Search any Premises:

- (1) The Mohtasib, or any member of the staff authorised in this behalf, may, for the purpose of making any inspection or investigation, enter any premises where the Mohtasib or, as the case may be, such member has reason to believe that any article, book of accounts, or any other document relating to the subject matter of inspection or investigation may be found, and may:
 - (a) search such premises and inspect any article, book of accounts or other document;
 - (b) take extract or copies of such books of accounts and documents;
 - (c) impound or seal such articles, books of accounts and documents; and
 - (d) make an inventory of such article, books of accounts and other documents found in such premises.
- (2) All searches made under clause (1) shall be carried out, *mutatis mutandis*, in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

16. Power to Punish for Contempt:

- (1) The Mohtasib shall have the same powers, *mutatis mutandis*, as the Supreme Court has to punish any person for its contempt who:
 - (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib;
 - (b) scandalises the Mohtasib or otherwise does

anything which tends to bring the Mohtasib, his staff or nominees or any person authorised by the Mohtasib in relation to his office, into hatred, ridicule or contempt;

- (c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or
- (d) does any other thing which, by any other law, constitutes contempt of court:

Provided that fair comments made in good faith and in public interest on the working of the Mohtasib or any of his staff or on final report of the Mohtasib after the completion of the investigation shall not constitute contempt of the Mohtasib or his office.

- (2) Any person sentenced under clause (1) may, notwithstanding anything herein contained, within thirty days of the passing of the order, appeal to the Supreme Court.
- (3) Nothing in this Article takes away from the power of the President to grant pardon, reprieve or respite and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

17. Inspection Team:

- (1) The Mohtasib may constitute an Inspection Team for the performance of any of the functions of the Mohtasib.
- (2) An Inspection Team shall consist of one or more members of the staff and shall be assisted by such other person or persons as the Mohtasib may consider necessary.
- (3) An Inspection Team shall exercise such of the powers of the Mohtasib as he may specify by order in writing and every report of the Inspection Team shall first be submitted to the Mohtasib with its recommendations for appropriate action.

18. Standing Committees, etc. The Mohtasib may, whenever he thinks fit, establish standing or advisory committees at specified places with specified jurisdiction for performing such functions of the Mohtasib as are assigned to them from time to time and every report of such committee shall first be submitted to the Mohtasib with its recommendations for appropriate action.

19. Delegation of Powers: The Mohtasib may, by order in writing, delegate such of his powers as may be specified in the order to any member of his staff or to a standing or advisory committee, to be exercised subject to such conditions as may be specified, and every report of such member or committee shall first be submitted to the Mohtasib with his or its recommendations for appropriate action.

20. Appointment of Advisers, etc.: The Mohtasib may appoint advisers, consultants, fellows, bailiffs, interns, commissioners and experts or ministerial staff with or without remuneration, to assist him in the discharge of his duties under this Order.

21. Authorization of Provincial Functionaries, etc.: The Mohtasib may, if he considers it expedient, authorize, with the consent of a Provincial Government, any agency, public servant or other functionary working under the administrative control of the Provincial Government to undertake the functions of the Mohtasib under clause (1) clause (2) of Article 14 in respect of any matter falling within the jurisdiction of the Mohtasib; and it shall be the duty of the agency, public servant or other functionary so authorised to undertake such functions to such extent and subject to such conditions as the Mohtasib may specify.

22. Award of Costs & Compensation & Refunds of Amounts:

- (1) The Mohtasib may, where he deems necessary, call upon a public servant, other functionary or any Agency to show cause why compensation be not awarded to an aggrieved party for any loss or damage suffered by him on account of any maladministration committed by such public servant, other functionary or Agency, and after considering the explanation, and hearing such public servant, other functionary or Agency, award reasonable costs or compensation and the same shall be recoverable as arrears of land revenue from the public servant, functionary or Agency.
- (2) In cases involving payment of illegal gratification by any employee of any Agency, or to any other person on his behalf, or misappropriation, criminal breach of trust or

cheating, the Mohtasib may order the payment thereof for credit to the government or pass such other order as he may deem fit.

- (3) An order made under clause (2) against any person shall not absolve such person of any liability under any other law.

1. Assistance & Advice to Mohtasib:

- (1) The Mohtasib may seek the assistance of any person or authority for the performance of his functions under this Order.
- (2) All officers of an Agency and any person whose assistance has been sought by the Mohtasib in the performance of his functions shall render such assistance to the extent it is within their power or capacity.
- (3) No statement made by a person or authority in the course of giving evidence before the Mohtasib or his staff shall subject him to, or be used against him in any civil or criminal proceeding except for prosecution of such person for giving false evidence.

24. Conduct of Business:

- (1) The Mohtasib shall be the Chief Executive of the Office.
- (2) The Mohtasib shall be the Principal Accounts Officer of the Office in respect of the expenditure incurred against budget grant or grants controlled by the Mohtasib and shall, for this purpose, exercise all the financial and administrative powers delegated to a Ministry or Division.

25. Requirement of Affidavits:

- (1) The Mohtasib may require any complainant or any party connected or concerned with a complaint or with any inquiry or reference, to submit affidavits attested or notarized before any competent authority in that behalf within the time prescribed by the Mohtasib or his staff.

- (2) The Mohtasib may take evidence without technicalities and may also require complainants or witnesses to take lie detection tests to examine their veracity and credibility and draw such inferences that are reasonable in all circumstances of the case, especially when a person refuses, without reasonable justification, to submit to such tests.

26. Remuneration of Advisers, Consultants etc.:

- (1) The Mohtasib may, in his discretion, fix an honorarium or remuneration of advisers, consultants, experts and interns engaged by him from time to time for the services rendered.
- (2) The Mohtasib may, in his discretion, fix a reward or remuneration to any person for exceptional services rendered, or valuable assistance given to the Mohtasib in carrying out his functions:

Provided that the Mohtasib shall withhold the identity of the person, if so requested by the person concerned, and take steps to provide due protection under the law to such person against harassment, victimization, retribution, reprisals or retaliation.

27. Mohtasib & Staff to be Public Servants: The Mohtasib, the employees, officers and all other staff of the Office shall be deemed to be public servants within the meaning of Section 21 of the Pakistan Penal Code (Act XV L of 1860).

28. Annual & Other Reports:

- (1) Within three months of the conclusion of the calendar year to which the report pertains, the Mohtasib shall submit an Annual Report to the President.
- (2) The Mohtasib may, from time to time, lay before the President such other reports relating to his functions as he may think proper or as may be desired by the President.
- (3) Simultaneously, such reports shall be released by the Mohtasib for publication and copies thereof shall be provided to the public at reasonable cost.

- (4) The Mohtasib may also, from time to time, make public Cluny of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matters being dealt with by the Office.
- (5) The report and other documents mentioned in this Article shall be placed before the Federal Councilor the National Assembly, as the case may be.

29. Bar of jurisdiction: No court or other authority shall have jurisdiction:

- (1) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or
- (2) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib.

30. Immunity: No suit, prosecution or other legal proceeding shall lie against the Mohtasib, his Staff, Inspection Team, nominees, member of a Standing or Advisory Committee or any person authorised by the Mohtasib for anything which is in good faith done or intended to be done under this Order.

31. Reference by the President:

- (1) The President may refer any matter, report or complaint for investigation and independent recommendations by the Mohtasib.
- (2) The Mohtasib shall promptly investigate any such matter, report or complaint and submit his findings or opinion within a reasonable time.
- (3) The President may, by notification in the official Gazette, exclude specified matters, public functionaries or Agencies from the operation and purview of all or any of the provisions of this Order.

32. Representation to President: Any person aggrieved by a decision or order of the Mohtasib may, within thirty days of the decision or order, make a representation to the President, who may pass such order thereon as he may deem fit.

33. Informal Resolution of Disputes:

- (1) Notwithstanding anything contained in this Order, the Mohtasib and a member of the Staff shall have the authority to informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.
- (2) The Mohtasib may appoint for purposes of liaison counsellors, whether honorary or otherwise, at local levels on such terms and conditions as the Mohtasib may deem proper.

34. Service of Process:

- (1) For the purposes of this Order, a written process or communication from the Office shall be deemed to have been duly served upon a respondent or any other person by *inter alia*, anyone or more of the following methods, namely:
 - (i) by service in person through any employee of the Office or by any special process-server appointed in the name of the Mohtasib by any authorized staff of the Office, or any other person authorized in this behalf;
 - (ii) by depositing in any mail box or posting in any Post Office a postage-prepaid copy of the process, or any other document under certificate of posting or by registered post acknowledgement due to the last known address of the respondent or person concerned in the record of the Office in which case service shall be deemed to have been effected ten days after the aforesaid mailing;
 - (iii) by a police officer or any employee or nominee of the Office leaving the process or document at the last known address, abode, or place of business of

the respondent or person concerned and, if no one is available at the aforementioned address, premises or place, by affixing a copy of the process or other document to the main entrance of such address; and

(ii) by publishing the process or document through any newspaper and sending a copy thereof to the respondent or the person concerned through ordinary mail, in which case service shall be deemed to have been effected on the day of the publication of the newspaper.

(2) In all matters involving service the burden of proof shall be upon a respondent to credibly demonstrate by assigning sufficient cause that he, in fact, had absolutely no knowledge of the process, and that he actually acted in good faith.

(3) Whenever a document or process from the Office is mailed, the envelope or the package shall clearly bear the legend that it is from the Office.

35. Expenditure to be charged on Federal Consolidated Fund: The remuneration payable to the Mohtasib and the administrative expenses of the Office, including the remuneration payable to staff/nominees and grantees, shall be an expenditure charged upon the Federal Consolidated Fund.

36. Rules: The Mohtasib may, with the approval of the President, make rules for carrying out the purposes of the Order.

37. Order to override other laws: The provisions of this Order shall have effect notwithstanding anything contained in any other law for the time being in force.

38. Removal of Difficulties: If any difficulty arises in giving effect to any provision of this Order, the President may make such order, not inconsistent with the provisions of this Order, as may appear to him to be necessary for the purpose of removing such difficulty.

THE FIRST SCHEDULE

[See Article 9(1)]

I. do solemnly swear that I will bear true faith and allegiance to Pakistan;

That as Wafaqi Mohtasib, I will discharge my duties and perform my functions honestly, to the best of my ability, faithfully in accordance with the laws of the Islamic Republic of Pakistan, and without fear or favour, affection or ill-will;

That I will not allow my personal interest to influence my official conduct or my official decisions;

That I shall do my best to promote the best interest of Pakistan;

And that I will not directly or indirectly communicate, or reveal to any person any matter which shall be brought under my consideration, or shall become known to me, as Wafaqi Mohtasib, except as may be required for the due discharge of my duties as Wafaqi Mohtasib.

May Allah Almighty help and guide me (Ameen).

THE SECOND SCHEDULE

[See Article 8(4)]

I,do solemnly swear that I will bear true faith and allegiance to Pakistan;

That as an employee of the office of the Wafaqi Mohtasib, I will discharge my duties and perform my functions honestly, to the best of my ability, faithfully in accordance with the laws of the Islamic Republic of Pakistan and without fear or favour, affection, or ill-will.

That I will not allow my personal interest to influence my official conduct or my official decisions;

And that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration, or shall become known to me, as an employee of the office of the Wafaqi Mohtasib.

May Allah Almighty help and guide me (Ameen).

GENERAL
M. ZIA-UL-HAQ,
President and Chief Martial Law Administrator.

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