



ROLE OF DEFENCE REPRESENTATIVES

ALL INDIA BANK OF BARODA OFFICERS' ASSOCIATION
(Affiliated to INBOC and INTUC)

Dear Officer Colleagues,

The increasing number of disciplinary cases in Banks has necessitated the Defence Representatives to be well equipped in the art of defence. In this pursuit of ours, we are happy to bring out this updated publication on the '**Role of Defence Representatives**' elucidating the finer aspects of dealing with disciplinary proceedings. We are grateful to our former General Secretary, Shri K K Nair and his team for their contribution in preparation of 1st edition of this book which was published in the year 2014. The contents of this 2nd edition is primarily based on the materials published in the 1st edition along with improvements and addition of new chapters.

The Law of Jurisprudence demands that every charged person be considered innocent till proved guilty and get reasonable chance to defend oneself. We carry the noble responsibility of extending help to the charged officer by providing reasonable opportunity for his defence. It should be the endeavour of every Defence Representative to acquire maximum knowledge, so as to effectively play the role of Defence Representative.

Lot of changes have taken place between 2014 and 2023. We have accordingly added and deleted. The 'Concept of Staff Accountability Policy' and 'Administrative Enforcement of Accountability Scheme' has been covered. An exclusive chapter on Drafting Appeal has been incorporated.

We are thankful to Shri D B Mukhopadhyay, Shri S K Agarwal, Shri Anupam Kumar, Shri A K Mishra and Shri S K Singh for their sincere and hard work in preparing this handbook.

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CHAPTER - 1

CONCEPT OF DISCIPLINE AND DISCIPLINARY RULES

'Discipline' implies the practice of training one's mind and body, so that, all individual's behaviour in personal or professional life follows the prescribed rules and regulations of the particular family / society / organization in an orderly manner, to ensure smooth functioning at its various levels. Discipline in professional life is as important as it is in personal life. These norms or rules or regulations of a particular organization stipulate the manner in which an individual should conduct himself while working in the organization and, therefore, are called "**Disciplinary Rules and Regulations**". Every organization, be it social, political, financial, educational, cultural or commercial is having its own norms, rules or regulations governing the conduct of its members or employees. In our Bank **(1) Bank of Baroda Officer Employees' (Conduct) Regulations 1976** and **(2) Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations 1976 as amended in 1982** are the rules enforce governing the conduct of the officer employees. These regulations prescribe the manner in which an officer employee should conduct himself in his professional life in Bank of Baroda. These regulations with no exception bind every officer employee of our Bank.

Therefore, any deviation or breach of the above stated BoB's regulations by an officer employee will result in act of **'indiscipline'** amounting to **'misconduct'** - which may be a **'minor'** or **'major'** depending upon the circumstances and various factors involved in the particular case. 'Misconduct' ¹ demands disciplinary action ² which may result in 'enquiry' followed by punishment, if found guilty, by the **Disciplinary Authority (DA)**.

Cases arising out of 'misconduct' may be **(a) vigilance** or **(b) non-vigilance**. It is the **Internal Advisory Committee (IAC)** who classifies the misconduct as Vigilance or Non Vigilance. DA puts the misconduct to IAC through Disciplinary Proceedings (DP) department in a tabular format who takes a decision which is sent to Chief Vigilance Officer (CVO) for his approval. **CVO has the final authority to classify the misconduct as Vigilance or Non Vigilance.**

A vigilance case involves wilful misconduct which implies guilty or culpable mind; while a non-vigilance case involves misconduct without culpability. There is no set guidelines that the vigilance cases will attract major penalties and CNVC-F cases will attract minor penalty i.e. penalty of both the types i.e. major or minor may be awarded in both the cases looking to the gravity of the cases.

All the vigilance cases, through submission of First Stage Reference (FSR), shall be referred to CVO for First Stage Advice (FSA). The CVO, after going through the details advises the FSA - classifying the case as minor or major. Earlier, all the cases were referred to the CVO at every stage of the case which was delaying the whole process and therefore, the CVO has now advised the Disciplinary Authority to only refer such cases for second stage advice where the DA is of the view that the penalty he proposes is not in line with the FSA i.e. the

¹ 'Misconduct' in terms of the Regulation 24 of the BOBOE (Conduct) Regulations 1976 arises by the breach of the any of the provisions of the said regulations with some sort of ill motive which leads to punishment under the Bank of Baroda Officer Employee's (Discipline and Appeal) Regulations 1976.

² 'Disciplinary action' means imposing on an employee a punishment in accordance with the standing orders or rules or regulations (or principles of natural justice) with a view to correcting or punishing the employee.

DA is of the view that minor penalty be awarded where he has received the classification of the case as major vide the FSA and vice-versa.

The CVO, in respect of officers in scale V and above, shall refer the case to Central Vigilance Commission (CVC) for advice but no such reference is required to be made in case of non-vigilance matters. The DA is empowered to impose punishment as he deems fit, depending upon the facts and circumstances of the case.

In view of the culpability involved, the following illustrations or practical instances be connotative as vigilance matters and accordingly may attract major penalty.

- Possessing disproportionate assets;
- Obtaining or attempting to obtain illegal gratification;
- Misappropriation of Bank's property, money or stores;
- Obtaining or attempting to obtain any valuable thing or pecuniary advantage
- Falsification of Bank's records;
- case involving any of the lapses such as gross or wilful negligence, recklessness, exercise of discretion without or in excess of powers/jurisdiction, causing undue loss to the organisation or a concomitant gain to an individual and flagrant violation of systems and procedures;
- Misuse of official position or power for personal gain or gain for other/s;
- Disclosure of confidential information;
- False claims on the Bank on account of T.A. or other reimbursements.
- Irregularities in opening of accounts / creation of fictitious accounts;
- Recurrent instances of sanction of ODs in excess of discretionary powers / sanctioned limits without reporting;
- Frequent instances of accommodation granted to a party against norms e.g. Discounting Bills against bogus MTRs; purchase of bills despite earlier ones got returned unpaid; affording credits against uncleared effects in the absence of limits and opening LCs when previously opened LCs had devolved.
- The failure to take necessary action to protect the interest of the bank.
- Sacrificing / ignoring the interest of the bank and causing loss to the bank.

The following acts having involvement of an officer will also fall under the purview of Vigilance angle if an officer employee –

- Has not acted according to rules and his recommendations are not in the interest of the bank.
- That the decisions or recommendations do not appear to be objective & transparent and seem to be made to promote improper gains for self or anyone else.
- Has acted in a manner to frustrate or undermine the policies or decisions taken by the management.
- Has complied with Unauthorised or Unlawful verbal instructions of his seniors & has not brought the same to the notice of the competent authority.
- Has exceeded his discretionary powers without any justification or is detrimental to bank's interest.

The above instances are only illustrative. Whether or not a particular case is a vigilance matter shall be determined by the facts and circumstances of the each case to be decided by the competent authority.

An officer found indulged in any or more of the activities listed above is said to have breached the regulations mentioned above which may amount to misconduct, either major or minor, and will be punishable thereunder. ³

The Disciplinary Authority (DA) who is not below the rank of a Deputy General Manager in the grade or scale of TEG/S-VI in case of officers in the grade or scale of I and II and General Manager in the grade or scale TEG/S-VII in respect of the officer in the grade or scale of III and IV assisted by Disciplinary Proceedings Department of the Zone shall be competent to initiate disciplinary action and impose punishment in case an officer employee is found guilty of breach of the regulations. The details of the competent authority and disciplinary authority are based on the circular No BCC:DP:113:563 dated 09.03.2021 and BCC:DP:113:697 dated 26.03.2021 have been incorporated in chapter- 16 of this booklet.

The disciplinary action for the sake of convenience shall be divided into two stages viz. **(1)** preliminary and **(2)** action stage.

Preliminary Stage shall commence with Investigation and shall be initiated based upon the complaints, newspaper reports, inspection report, inspection report of RBI or audit report or investigating report of Police or CBI investigation etc.

Action stage includes Explanatory Note (EN) sought from the officer by issuing the EN. If the EN is found satisfactory, the DA will recommend closure of the case to Internal Advisory Committee (IAC) at BCC and upon receipt of their advice, if not otherwise, the case shall be closed. If the EN given by the officer employee is not convincing or satisfactory the Disciplinary Authority may start '**disciplinary action**' against him / her. The Disciplinary Authority, on finding the officer guilty of breach of the regulations, based on gravity of the case, may place the officer employee under suspension for the reasons stated under regulations 12 of the Discipline and Appeal Regulations.⁴ During the period of suspension, the suspended employee shall be eligible for subsistence allowance as prescribed in Regulation 14 of the Discipline and Appeal Regulations.⁵

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³ According to Regulation 24 a breach of any of the provisions of regulations shall be deemed to constitute a misconduct punishable under the Bank of Baroda Officer Employee's (Discipline and Appeal) Regulations, 1976.

⁴ As per regulation 12 An officer employee may be placed under suspension by the competent authority(1) where (a) a disciplinary proceeding against him is contemplated or is pending or (b) a case against him in respect of any criminal offence is under investigation, inquiry or trial (2) An officer employee shall be deemed to have been placed under suspension by an order of the competent authority (a) with effect from the date of his detention if he is detained in custody, whether on a criminal charge or otherwise for a period of exceeding forty eight hours; (b) with effect from the date of convicted, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction. The period of forty eight hours however shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent period of imprisonment, if any, shall be taken into account.

⁵ (1) An officer employee who is placed under suspension shall, during the period of such suspension and subject to sub-regulation (2) to (4) be entitled to receive payment from the bank by way of subsistence allowance on the scale mentioned below :

Basic pay – (i) for the first three months suspension 1/3rd of the basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry;(ii) for the subsequent period of after three months from the date of suspension, where the inquiry is held departmentally by the bank, ½ of the basic pay, the officer employee was drawing on the date prior to the date of suspension. (b) where the enquiry is held by an outside agency, 1/3 of the basic pay which the officer employee was drawing on the date prior to the date of suspension for the next three months and ½ of the basic pay which the officer employee was drawing on the date prior to the date of suspension for the remaining period of suspension.

CHAPTER - 2

DISCIPLINARY ACTION AND DEPARTMENTAL ENQUIRY

If the rationale to the Explanatory Note (EN) is found satisfactory, the Disciplinary Authority (DA) with the reasons will recommend for closure of the case to Internal Advisory Committee (IAC) at BCC and upon receipt of their advice, if not otherwise, the case shall be closed. Final authority for closure is CVO. If the EN given by the officer concerned is not convincing or unsatisfactory, the DA may start 'disciplinary action'⁶ against him / her by issuing Charge Sheet / Imputation of Lapses (IOL) along with list of documents relied upon & witnesses (Regulation 6(3) of BOBOE (Discipline and Appeal) regulations 1976) in form of memorandum to the officer concerned.

The officer employee, in defence of the memorandum of charges / IOL, shall be permitted to submit, within -15- days, if not otherwise mentioned, of the receipt of the charge sheet / IOL, his statement of defence (SOD) in writing.

INQUIRY AUTHORITY (IA):

In case of all major vigilance or non-vigilance cases only, the DA, on receiving the statement of defence from the officer employee, will proceed to appoint an Inquiry Authority (IA) to find out the truth in the allegations or to substantiate the charges against the officer employee in case the charges which are not admitted by the officer employee. IA is supposed to be independent and should have the capacity to take independent decision.

The office of IA is quasi-judicial in nature, as such shall be bound to take cognizance of the principles of natural justice. The coded principles of procedure such as civil procedure code or criminal procedure code, Indian Evidence Act have no application, whatsoever, in any manner to the departmental inquiry.

PRESENTING OFFICER (PO):

The DA will also proceed to appoint Presenting Officer (PO) to represent the Bank's views and observations with respect to the case concerned before the IA. PO presents the case in support of the Articles of Charges, on behalf of the DA. His job role is essentially to establish the allegations and charges on the basis of preponderance of Probability, by leading evidences, oral and / or documentary, direct or circumstantial.

The DA shall have the power to appoint any person as IA or PO - who may be a person within or outside the Bank. The DA may also appoint a retired officer on payment of Honorarium.

DEFENCE REPRESENTATIVE (DR):

DR is nominated by the Charged Officer (CO) & he pleads the case of CO.

⁶ 'Departmental action' means imposing on an employee a punishment in accordance with the standing orders or rules or regulations (or principles of natural justice) with a view to correcting or punishing the employee. As per the established principles shall be deemed to have commence only a charge sheet is issued to the officer employee.

Role of DR:

The main role of DR is to defend the case of the CO.

DR should be present usually from the preliminary stage itself i.e. preliminary hearing till the appeal disposal stage, so that the representation is fair and complete.

DR can inspect documents with due permission of IA on which he proposes to rely to defend the case as well as the documents on which the management proposes to rely.

DR can cross examine management witnesses & examine / re-examine (Confined to only those issues which are for the first time taken up in cross examination) defence witnesses.

DR can ask for permission to inspect relevant documents that may arise of depositions of the witnesses or some other circumstances; however the relevancy or the purpose of such inspection should be properly made out.

DR can also sign the records of proceedings and can also demand a copy of the depositions made by the witnesses.

The disciplinary action will have two stages viz. **(1) Preliminary Hearing (PH)** and **(2) Regular hearing (RH)**.

(1) PRELIMINARY HEARING (PH):

The disciplinary action starts with preliminary hearing conducted by the IA, who shall give a notice to the officer employee otherwise called Charged Officer (CO) as well to the PO to be present on the time, date and place fixed for hearing. As per latest guidelines conveyed vide circular number BCC:BR:112:515 dated 29.08.2020, use of technology in the process of disciplinary proceedings has been allowed and accordingly departmental inquiry may be conducted online as well i.e. through virtual modes.

The IA may direct the PO to present the list of documents, which are known as **“Management Exhibits or MEs”** together with copies and list of **“Management Witnesses or MWs”** which s/he intends to rely on behalf of Bank.

At this hearing the IA, with a view to ensure fair treatment, may inquire with the charged employee whether a copy of the charge sheet is made available to him and whether he pleads guilty or denies or disputes the charges against him. On disputing or denying the charges, the IA may further inquire whether the charged employee has any Defence Representative (DR) and if so, to furnish the list of documents of charged employee **Defence Exhibits or DEs** and list of **Defence Witnesses or DWs** the charged employee wants to rely on.

The IA on submission of documents by both the parties shall decide the relevancy of the documents and direct the PO to produce the documents in original and to allow their inspection by the officer employee, and thereupon a detailed time schedule is prepared fixing the time for inspection.

Once the relevance of the documents is decided by the IA, the charged employee may demand a copy of all the documents except the privileged or confidential documents⁷, PO proposes to rely on behalf of the bank.

⁷ It is permissible the custodian of the documents, (not the presenting officer) may take an objection or request for exemption claiming that certain documents relevant to the facts of the case are “privileged or confidential” documents on the ground that the disclosure of such documents goes against public interest or may damage bank’s interest if presented.

(2) REGULAR HEARING (RH):

The IA on the completion or compliance of the above formalities specified under (1) above at the preliminary hearing, shall follow the procedure mentioned below:

- i. IA shall take on record the documents submitted by the Bank Management and the Officer Employee respectively and the said documents shall be marked as "Management Exhibits" (ME no 1, 2 and 3 and so on) in case of documents submitted and relied on by the Bank Management and "Defence Exhibits" (DE no 1, 2 and 3 and so on) in case of documents submitted and relied on by the Officer Employee. Similarly the IA shall also take on record the witnesses relied upon by the Bank Management as well as the Officer Employee. Such witnesses relied upon by the management are termed as MW 1, 2, and 3 and so on and the witnesses relied upon by the officer employee shall be known as DW 1, 2 and 3 so on.
- ii. Upon submission of documents, the Defence Representative (DR) must discuss each and every allegation and charge levelled against the CO and ask for the arguments / justification from the PO based on which the PO intends to prove the allegations and charges. This shall be followed by the **examination-in-chief** of the witnesses on behalf of the Bank Management by the PO with an opportunity for the officer employee to cross examine the management witnesses. If the PO is of the opinion that the re-examination of the MWs is necessary on any or some points raised during the course of the cross examination, he may re-examine with the permission of the IA.
- iii. The IA on completion of examination and cross examination of all the MWs, may direct the officer employee to produce the DWs for the purpose of examination and cross examination. **If the defence witness during the course of examination is found hostile, the DR should stop the examination and request the IA to treat the witness as hostile and request the IA to allow him to cross examine the DW who turns hostile. In such cases DR may also ask leading questions to the witness so as to bring out the truth.**
- iv. The IA, on completion of the examination and cross examination of the MWs and DWs, may proceed with the general inquiry or examination of the officer who is charged.

The IA during the course of the enquiry shall record:

a. Daily Order Sheet:

In the daily order sheet, the IA records the names of the persons present and the gist of the hearing on that day. **The daily order sheet shall be signed by the IA, PO, CO and the DR.**

The DR should ensure all the objections raised by him are properly recorded in the "DAILY ORDER SHEET" during regular hearing. **Refuse to sign it, if your objections are not recorded**, because such recording of the objections will be useful to the DR / CSO at the later stage of proceedings, while preparing written brief, to prove that Natural Justice has been denied to the CSO.

b. Evidence Sheet:

In the evidence sheet the IA details the evidence or depositions by the witnesses - both the management and defence. Recording of the deposition of the witnesses may either be in question-answer form or in narrative form. The Evidence Sheet signed by the concerned witness shall also be cross signed by the IA.

The IA shall supply the copies of all the depositions to the PO and the CO.

The IA, on completion of hearing of both sides, may direct the PO to submit his written brief within 15 days, unless stated otherwise, with a copy to the CO.

Similarly, the IA may also direct the CO to submit his written brief within 15 days, unless stated otherwise, after receiving the written brief of the PO.

The IA, on receiving the written briefs of both PO and CO, may proceed to record his findings with reasons on each of the charge / allegation and spells out in clear terms whether the said charges are proved and proceed to submit his report to the DA along with all the records of inquiry.

Thereupon the DA, on receiving the findings or report of the IA, shall furnish a copy of the said findings or report to the CO with an advice to make a representation, if any, within 15 days, unless stated otherwise, of receipt of the copy of it. Such advice by the DA may provide further opportunity to make representation to the DA against the findings or report of the IA. Thereupon the DA, taking into account the facts on the record, shall pass the final order which may culminate into the punishment or the acquittal as the case may be. **The final order of the DA shall bring the proceedings of departmental enquiry to an end.**

In case the CO is found guilty of misconduct or violation of the regulations, the DA may impose penalty under Regulation 4 of Bank of Baroda Officer Employees (Discipline and Appeal) Regulations 1976⁸, which may either be major or minor penalty. In case of major penalty, 'statement of allegations' shall be issued, whereas in case of minor penalty, 'imputation of lapses' shall be issued.

The CO, however, may make an appeal to the **Appellate Authority (AA) within -45- days** from the date of receipt of the order of the DA, against the order of punishment or decision of the DA. The AA may either confirm or reverse or modify the decision / order of the DA.

If the CO is not satisfied with the decision of the Appellate Authority, the CO may prefer a review petition before the Reviewing Authority (MD & CEO). The Reviewing Authority may either confirm or reverse or modify the decision / order of the Appellate Authority.

If an officer is still aggrieved by the decision of the Reviewing Authority, he may have a legal recourse by approaching a court of competent jurisdiction. In other words, the CO may commence legal action only after exhausting all the avenues available to him under the Bank of Baroda Officer Employees' (conduct) Regulations 1976 and Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations as amended from time to time.

It may be noted that the proceedings of departmental enquiry, however, shall be conducted in accordance with the principles of natural justice. Principles of natural justice shall include:

- ✓ No one should be a judge in his own case
- ✓ No decision can be taken without hearing the parties or without giving opportunity to the parties.
- ✓ Enquiry should be conducted in fair manner, without bias
- ✓ No one should be condemned unheard

⁸ **According to Regulation 4 'Minor Penalty'** includes (a) censure (b) withholding of increments of pay with or without cumulative effect (c) withholding of promotion (d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders and (e) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting the officer's pension.

'Major Penalty' includes (a) except as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay (b) reduction to a lower grade or post (c) compulsory retirement (d) removable from service which shall not be a disqualification for future employment (e) dismissal which shall ordinarily be a disqualification for future employment.

- ✓ All documents and evidences against the CO should be recorded in his presence and no material should be relied upon against him without giving an opportunity.
- ✓ Opportunity to the CO to cross examine the management witness to be given
- ✓ Opportunity to the CO to produce defence witness and defence documents to be given
- ✓ Punishment should be commensurate with the nature of misconduct
- ✓ Justice should not only be done but also appear to be done

The DA or as the case may be the Appellate Authority must observe the principles of natural justice (though these are not codified), while conducting or during the course of the proceedings of domestic inquiry. **Knowledge of the principles of natural justice will immensely help the charged employee and the DR in knowing whether proceedings are being conducted accordingly or not. If the DA or the Appellate Authority, for any reason, does not observe the principles of natural justice while conducting the proceedings, there is every possibility, the outcome of the proceedings shall be vitiated and finally may lead to dismissal of it.**

In the domestic or departmental inquiry it is not necessary to prove the guilt of the CO beyond reasonable doubt but the guilt will be proved on the basis of **preponderance of probability**.

MINOR PENALTY PROCEEDINGS OF OFFCERS:

Regulation 8 of BOBOE (D&A) 1976 /82 details a procedure for imposition of Minor Penalties.

In cases where DA decides that proceedings are to be initiated for minor penalty, the DA will inform the officer concerned in writing by a memorandum of Imputation of Lapses (IOL) giving him an opportunity for making a Written Statement of Defence (WSOD) within the specified time.

The DA will take into consideration this WSOD before making a Final Order in the matter.

However, in case DA is satisfied that an inquiry is necessary, he shall follow the procedure as prescribed in Major Penalty Proceedings.

Though in minor penalty proceedings it is not mandatory to hold an inquiry, an officer being proceeded under minor penalty may represent or demand a full-fledged inquiry where he should be heard and permitted to examine / cross examine witnesses. DA will then have to accept or deny representation by a speaking order.

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CHAPTER - 3

CONCEPT OF NATURAL JUSTICE

There is no precise definition what exactly the concept of 'natural justice' is. The concept of natural justice includes the basic rights available to all the individuals as human beings. The concept of natural justice otherwise also known as 'the principles of natural justice' is believed to be natural rights available to every individual and as such have universal application. Till date these principles remain un-codified. The principles of natural justice apply whenever the rights, propriety or legitimate expectations of an individual are affected by the decision of other.

The principles of natural justice are concerned more about procedural fairness and ensuring a fair decision by the decision maker. Maintaining procedural fairness protects the rights of the individuals and enhances the confidence of the public in the system or process.

Traditionally Law recognizes **TWO PRINCIPLES** of natural justice viz.-:

- (1) **"Nemo Judex in Causa Sua"** i.e No man shall be a judge in his own case, or a suitor or the deciding authority must be impartial and without bias and
- (2) **"Audi Alteram Partem"** i.e. Hear the other side, or no one can be condemned unheard.

Over a period of time, a third principle has also emerged to the effect that –:

- (3) **Final orders must be speaking orders (Reasoned orders).** The first and the third principles mentioned above may be perceived as the corollary of the basic principle that Justice should not only be done but manifestly appear to have been done.

Based on the above, the following four may be stated as the Principles of Natural Justice:

- a) No one can be condemned unheard.
- b) No one can be a judge in his own case.
- c) Justice should not only be done but should manifestly appear to have been done.
- d) Final order must be speaking order.

Hearing Rule (*Audi Alteram Partem*):

Hearing rule requires a person must be allowed an adequate opportunity to present his case in which the Charged Officer's interest or rights are adversely affected by the decision maker i.e. Disciplinary Authority or as the case may be Appellate Authority. Therefore, the deciding authority, with a view to respect the rights of the Charged Officer (CO), must give an opportunity to the CO not only to prepare and present his evidence but also the opportunity to respond to the arguments presented by the opposite side. Under this rule it is very important that the person complained against should be informed of the allegations against him and should be given the opportunity to reply to the allegations. Thus this rule implies that the charged officer has a right to –:

- a) Know the charge.
- b) Inspect the documents.
- c) Know the evidence.
- d) Cross examine the witnesses.
- e) Lead evidence.

Bias Rule (*Nemo Judex in Causa Sua*)

The second rule mentioned above states that no one shall be judge in his own case. This implies that the deciding authority must be unbiased during the course of the hearing or making a decision.

Not only the deciding authority should be unbiased during the course of hearing, but also must act without bias in all procedures connected with the making of the decision. This further implies that the deciding authority should be impartial and must make a decision based on a balanced and considered assessment of the information and evidence before him without favouring one party over another.

Generally three kinds of bias are considered as important:

- a) **Personal Bias** – Where one is personally interested in the outcome of the case i.e. he acts as the complainant as well as the decision making authority.
- b) **Pecuniary bias** – A person who has a monetary interest in an issue should not deal with the case.
- c) **Bias of subject matter** – One who has certain strong notions / views about certain subjects might not be suitable for deciding issues relating to that subject e.g. one having strong male chauvinistic views, may not be suitable for dealing with issues relating to harassment of women employee

Justice should manifestly appear to have been done -

The basic principle underlying this rule is that justice must not only be done but must also appear to be done.

It is applicable to all cases where an independent mind has to be applied to arrive at a FAIR AND JUST DECISION and the authorities exercising judicial / quasi-judicial powers should discharge their functions in a fair and just manner.

Evidence Rule:

Evidence Rule says that the administrative decision must be based on material or evidence before the deciding authority. In other words, the deciding authority should not base his decisions on conjectures, mere speculation or suspicion. Further, the evidence presented by one party should be disclosed to the other.

Apart from the above, it would be necessary for the deciding authority to give specific reasons for his findings.

The following rules may be deduced based on the above rules:

- The CO must be informed unambiguously of the allegations or charges against him.
- The CO at every stage of the enquiry proceedings should be given a reasonable notice.
- The CO should be given a reasonable opportunity of procuring and producing documentary and oral evidence in his defence.
- The documentary or oral evidence produced by the CO in support of his case and against the allegations should be taken on record in the presence of the CO.
- The CO should be given adequate opportunity to cross examine the management witnesses.
- No documentary material shall be relied without giving an opportunity to the CO to examine it.
- The Inquiry Authority, either directly or indirectly a party to the case against the charged employee.

- There should be no unjustifiable delay in initiating or concluding the disciplinary proceedings.
- The Inquiry Authority should reach his findings without bias or prejudice and preconceived notions and should act impartially.
- The punishment proposed should be commensurate with the gravity of the misconduct and should not be disproportionate to the gravity of the misconduct.

LEGAL EFFECT OF THE NON-OBSERVANCE OF THE PRINCIPLES OF NATURAL JUSTICE:

Non-observance of the principles of natural justice may result in vitiating the proceedings which may finally lead to the setting aside the decision of the deciding authority as not tenable under law.



CHAPTER - 4

CONCEPT OF STAFF ACCOUNTABILITY

A Defence Representative must read thoroughly the Staff Accountability Policy. A comprehensive study and understanding of the nuances of the policy will enable him to comprehend the charged sheet issued to the CSO and analytically assess whether there is deviation from the policy which should be pointed out during enquiry proceedings. There are four documents which are most important from disciplinary proceedings point of view –

1. Internal Loan Policy.
2. Staff Accountability Policy (Includes both NPA accounts as well as operational / other fraud matters)
3. Books of Instructions.
4. Service Regulations.

Bank has circulated a staff accountability policy in 2022 (effective from 01.04.2022 to 31.03.2025) which is available on bank's site. But to facilitate Defence Representatives we have tried to highlight some important ingredients of staff accountability policy which are relevant here to understand the **concept of staff accountability** i.e. what is staff accountability & why it is necessary in banks.

The term **“Accountability”** means that one is responsible for one's decisions and actions. Accountability is inherent when there is delegation of power or delegation of duties.

In a large organization like ours where large number of people are vested with various levels of powers, it is fundamental and unavoidable that they should be responsible for their actions. As long as the actions are within the framework of the laid down guidelines, rules, regulations, policies and are in the interest of the Bank, they do not attract accountability.

Banks are in the business of lending which involves risk. A loan can turn bad due to a number of reasons like change in market conditions, change in law, inefficient management, and natural calamities etc. which are beyond the control of the Bank.

However, there may be reasons attributable to the staff who handled the advance and who by negligence / omission / commission / collusion failed to protect the interests of the Bank. It is in this case that staff accountability concept comes into the picture.

The objective of the staff accountability is to protect employees for their bona-fide actions and at the same time make them accountable for any wrong doings or any inaction on their part.

- **“Accountability”** is inherent where there is delegation of power and delegation of duty.
- **“Accountable”** is defined as **“Responsible for your decision or actions and expected to explain them when you are asked.”**

Staff accountability is also required to identify and punish only those employees who are prima facie responsible for the lapses of non-compliance of laid down systems & procedures or misconduct/ mala fide and/ or non-adherence to the due diligence' norms.

Therefore **the objective of the current policy is to position the entire policy with a positive connotation** and look at it largely from the following three pillars:

- 1. Accountability as an inherent part of the compliance culture:** The first pillar is about instilling and bringing about voluntary behaviour for compliance and due diligence in the work that employees perform as part of their "Accountability" for their work.

Voluntarism for being responsible in work is sought to be instilled through various mechanisms as shared below:

- (a) Compliance Culture:
- (b) Work Ethics programs:
- (c) Training and development:

- 2. Accountability as an enforced administrative mechanism for preventive vigilance:**
- 3. Examination of staff Accountability leading to possible Penal action for non-compliance(s):**

The existing policy of examination of staff accountability has emphasized this third pillar of penal action.

OBJECTIVES OF NEW STAFF ACCOUNTABILITY POLICY:

- a. The aim of the policy is to **"Prevent" rather than to "Punish"**.
- b. Conducting the exercise of **staff accountability is to safeguard the larger interests of the organization.**
- c. The rules, guidelines and this Staff Accountability policy of the Bank intends to **enhance managerial effectiveness, healthy credit portfolio, and simultaneously to keep high the morale of the employees, who are working and taking decisions in the interest of the Bank and within the framework of Bank's laid down systems and procedures.** It is not absolutely necessary that every omission needs to be invariably punished.
- d. To provide a conducive atmosphere for business growth and **to ensure protection of bona fide actions of the officials taken as per the rules, guidelines and policies of the Bank.** It is not the intention of the policy that a Commercial decision, taken according to the circumstances/rules prevailing at the time when decision was taken, is now viewed with the wisdom of hindsight.
- e. Sometimes a few cases are likely to slip into Non-Performing Assets (NPAs) due to situations beyond the control of bank officials. Assumptions made at the time of sanction may change drastically due to external factors which can hardly be visualized / controlled. Accordingly, concerned officials should not be made responsible for such accounts turning into NPA, lest decision makers will be at disadvantage vis-a -vis those who do not take decisions at all.

- f. **Credit Facilities sanctioned under tailor made and preapproved schemes specifically under retail, Government Sponsored and agricultural schemes, where all terms and Conditions of the scheme including selection of borrower criteria are complied, or deviation from the competent authority/ies for deviation, if any, are obtained, no staff accountability is assigned unless an act of mala fide or reckless financing is observed on the part of the bank official.**
- g. Microscopic scrutiny of all credit decisions after account slipping into NPA, with an obsessive mind-set of finding someone necessarily accountable is counter-productive for a business organization where lending activity is main source of revenue/profitability.
- h. It is therefore to be ensured that **bona fide decisions taken by the officials in the discharge of their duties during normal course of business are viewed in proper perspective and need not be subjected to disciplinary proceedings.**

The current policy therefore makes a clear distinction between Administrative action and Disciplinary action and tries to ensure that bona fide decisions will be protected.

At the same time, the Bank can ill afford to be lax on officials who indulge in motivated and reckless decision making and/or flagrantly violate the rules, guidelines and policies of the Bank thereby causing damage to the organization. Actions with mala fide intention, even if within the delegated authority or actions without due diligence or actions exceeding delegated authority without the approval of the appropriate authority, even if bona fide, will not qualify for immunity or exemption from the punitive angle, irrespective of whether there may or may not be any monetary loss to the Bank. Also, **Officers who are found continually lax or are repeatedly non-compliant, even after bringing them under the ambit of administrative enforcement, will have to be taken up for disciplinary action** after some time of giving him / her adequate scope to improve compliance.

OTHER IMPORATNT INGREDIENTS OF STAFF ACCOUNTABILITY POLICY:

- ❖ Past track record of the official in appraisal / sanction/ Monitoring will also be given due weightage.
- ❖ The role of various committees constituted as a part of the policy (A, B & C) is only for examination of accountability and not for fixing the accountability.
- ❖ Staff Accountability is to be examined in a fair and transparent manner and should not be vindictive or prejudiced views.
- ❖ What Exactly caused loss/ NPA slippage to the bank is more important: Without isolating specific causes for the loss, it will be meaningless to embark upon fixing staff accountability.
- ❖ What causes loss to the bank is more important than procedural lapses / not obtaining certain documents not so relevant. This is a vital step and needs to be handled with utmost care and forms the foundation of entire exercise.
- ❖ It should also be critically examined, had the specific commission / omission not occurred, whether the NPA / Loss could have been avoided.
- ❖ The basic concept of examination of staff accountability is to ensure that the process has looked into the following-

“Whether a person of common prudence, working within the ambit of prescribed rules, regulations, and instructions would have taken the decision in the prevailing circumstances in commercial / operational interests of the bank, is one possible criterion for determining bona fide of the case”

- ❖ Staff accountability policy aims to ensure that only those officials who are responsible for making, checking and monitoring with respect to specific activity are held accountable for deviations / irregularities committed and not all officials who have dealt with the account down the line.
- ❖ The policy of staff accountability rest on the basic premise that loss on account of genuine business decision will not attract staff accountability.
- ❖ While the loss caused due to mala fide intention or flagrant violation of systems and procedures or working against the bank or misusing the position of authority, should certainly attract accountability and the member of staff, found prima facie responsible for such acts, are liable to be sternly dealt with in accordance with the bank’s rules and regulations.
- ❖ Examining the role of concurrent auditor, internal auditors in reporting the irregularities and the role of other outside agencies.
- ❖ Examine Role of Inaction by the successors / New Incumbent especially in monitoring and follow up that has contributed.
- ❖ Supervisory lapses at RO in monitoring and control.
- ❖ The PSR system does not envisage re- appraisal and lapses attributed to appraisal / recommended/ sanction not attributable to PSR authority.
- ❖ The fact finding process is to take comprehensive view of the reasons for account becoming NPA including acts of omission / commission by officials causing **“LOSS”** to the bank.
- ❖ **Investigating Officer (IO) shall carry out in-depth investigation and if prima facie any employee is found accountable, IO shall obtain version of that employee as per draft prescribed along with revised format of investigation report before reporting irregularities / lapses against the employee.**

PREVIOUS PERIOD TO BE COVERED FOR EXAMINING THE STAFF ACCOUNTABILITY:

- a) - 4 - Years period before retirement / voluntary retirement / resignation of an official to be verified for Staff Accountability.
- b) No departmental proceedings against retired employees can be initiated, if not initiated while the employee was in service, for any of his actions, taken prior to - 4 - years as per sec 48(2) of BOB Employees’ Pensions Regulations, even in cases of quick mortality, unless involvement of staff is identified in Fraud / other criminal offences. Such cases need not be referred to IAC for classification. Four years restriction starts from the date of event / irregularity (i.e. sanction / review / enhancement / disbursement) and not from the date of detection. In case of Fraud,

the period is counted from the date of occurrence of fraud and not from the date of detection.

- c) In case of NPA accounts, the period of -48- months should be covered prior to date of NPA (earlier the period of 36 months was considered as per the previous guidelines for examination of Staff Accountability) (In case of restructured accounts, period of -48- months to be reckoned from the quarter in which the account has slipped) which should cover internal inspection, regular review/ review with increase and stock audit/ Statutory Audit/ Stock Inspection & various other audits.
- d) Time limit will not apply in case of frauds, other criminal offences or cases where mala fide are inferable.
- e) Endeavour should be made to ensure that the accountability process in case of retiring official is completed / concluded at least six months before the date of retirement.
- f) No disciplinary proceeding will ordinarily lie against any official for any lapse not detected in -3- successive internal regular inspections which will however be subject to coverage of minimum - 4- years' period from the date of event/ occurrence of the lapse.
- g) However, the above time limit will not apply to cases of where the involvement of the employee is identified in Frauds and Other criminal offences as per the law of the land.

CAVEATS IN EXAMINATION OF STAFF ACCOUNTABILITY:

- a) Examination of lapses should not be done with hindsight and circumstances prevailing at the, relevant time must be taken into account.
- b) Whether the business decision taken was bona fide or had intentional negligence/ recklessness / deliberate malfeasance, should be carefully looked into If there were any contributing factors to the account turning NPA, then these need to be, clearly brought out outlining the impact of the same.
- c) Where the account has turned NPA solely as a result of external factors, mere existence of procedural/ operational lapses on part of officials in sanction of the credit facility should not form the basis for ascribing accountability.
- d) Responsibility needs to be fixed where it lies e.g. in an account turned NPA due to improper, monitoring, accountability should not be ascribed on officials involved at sanctioning level.
- e) Past track record of the officials in appraisal/ sanction/ monitoring should be given due weightage.
- f) Materiality of the alleged omission / commission.
- g) Recovery probabilities.

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CHAPTER - 5

ADMINISTRATIVE ENFORCEMENT OF ACCOUNTABILITY SCHEME

In order to understand and plan effective role of Defence Representative (DR) he / she must have knowledge of Administrative Enforcement of Accountability Scheme (AEOAS), because henceforth in extreme cases of non-compliance, Management may initiate disciplinary action under this scheme.

The current Staff Accountability Scheme of the Bank is effective from 01.04.2022 to 31.03.2025 which aims at repositioning the entire accountability aspect in a very positive connotation and has therefore considered Accountability under the following **3 pillars**:

- Accountability as an inherent part of the Compliance culture.
- Administrative enforcement of Accountability (*recognizing diligent, compliance behaviour and system of alerts for non-compliance*)
- Examination of Staff Accountability leading to possible penal action for non-compliance.

Administrative Enforcement of Accountability (AEOA) as a preventive vigilance mechanism (Implementation of 2nd pillar of Staff Accountability Policy):

The recent circular BCC/BR/115/415 dated 20.07.2023 has been issued for the implementation of “2nd Pillar” with following approach and objectives.

- Create a fully compliant organization in all respects which makes employees feel proud of being a part of.
- Employees to champion the Compliance movement.
- Build a system of rewards for positive behaviour and also a system of checks and alerts to forewarn employees and get them to rectify or improve on the compliance.
- Prevent employees from getting into larger repercussions of punitive or disciplinary actions by alerting them at the initial stage and helping them come on the normal track of compliance.
- To act as a preventive vigilance mechanism for preventing bigger problems to the organization like NPAs, disruptions, losses, frauds, penalties, reputational damage, etc.

This scheme therefore is a step which, over the next few years, should drastically reduce the number of cases of employees that move into the category of disciplinary action and thereby the consequent impact on the career of the employees.

To instill the discipline and nurture the compliance culture by recognizing the positive behaviour of the employee by award of **White Flags** and alerting the non-compliant behaviour of the employee by award of **Red Flags**.

The scheme also has a provision to reflect the White / Red Flag points in the bio-data of the employee and may be used by the management for various HR related matters of the employee.

The 2nd pillar is about "prevention" and to enable employees to avoid getting into the purview of the 3rd pillar of punitive actions.

Bank has devised the system of checks and red flag alerts to the employees so that it acts as a warning bell for breaches or non-compliance and that helps employees to rectify, improve or even to upgrade their knowledge / skill gaps, if any which were responsible for the earlier breaches and thereby prevent future recurrences.

The **3rd pillar** is to ensure that bona fide decisions are protected while non-compliances which are in the nature of misconduct or serious lapses or against the interest of the Bank are dealt with in the appropriate manner, while also affording all opportunity for the employee to explain his / her position and maintaining fairness and transparency.

INSTITUTING A SYSTEM OF 'WHITE FLAG' POINTS AND 'RED FLAG' POINTS FOR FULLY-COMPLIANT AND NON-COMPLIANT BEHAVIOURS RESPECTIVELY:

As part of the second pillar for Administrative enforcement of accountability in the Bank, this system of **'White Flag'** points and **'Red Flag'** points to be awarded to employees for exhibiting full compliance behaviour and for non-compliance behaviour respectively, is being instituted.

These 'White flag' or 'Red flag' points, so awarded to employees for full compliant behaviour or for non-compliance, shall form part of their employee records / history and can be an indicator of the quality of work and performance of employees over a period of time or relatively when compared with other employees.

WHITE FLAG POINTS SYSTEM:

The White Flag points are to be awarded to employees for recognizing their positive and fully compliant behaviour. These White flag points that shall be awarded to employees shall be only for continued display of such behaviour over a period of time and not for any single instance of compliance. The White flag points for varying categories of periodicity are proposed as under:

- Category 1 - 1 White flag point
- Category 2 - 3 White flag points
- Category 3 - 5 White flag points

The applicable periods for the above 3 categories of the White Flag points has been mentioned against each of the areas / activities in **Annexure A-1** (Annexure A-1 is given in the above mentioned circular).

RED FLAG POINTS SYSTEM:

This system of checks and red flag points ensures that employees are careful and diligent while performing their roles and voluntarily observe due diligence required to carry out their work responsibilities so as to ensure that there is no non-compliance.

Day to day work processes that have to be handled diligently and seriously and not in a matter of fact or casual manner. This helps create a sensitivity and vigilance in employees towards the need for compliance in their day to day functioning.

- Low Risk area :1 Red flag point
- Medium Risk area :3 Red flags points
- High Risk area :5 Red flags points

While the non-compliance areas are classified as "Low Risk", "Medium Risk" and "High Risk" and the red flag points to be awarded for the same are varying as per the severity of the risk, it is also proposed that in case the non-compliance in any Risk category, continues for more than -2- occasions, it will automatically be categorized for the applicable red flag points of the higher risk category on the **3rd occasion**. e.g. If an employee has been committing a non-compliance in a low risk area continuously, even after being awarded the red flag points on previous occasions, then on the **3rd occasion**, he / she will be awarded the red flag points of Medium risk, even for a low risk non-compliance item.

IMPLEMENTATION OF THE SCHEME:

A record of the White Flag / Red flag points as part of the employee history will be maintained in Bank's HRMS system. **However, employees during probation period will be exempted from the purview of AEOA scheme.**

ACCUMULATION OF THE POINTS FOR FUTURE IMPLICATIONS:

White Flag points accumulated	Implication
XX Points (*)	Certification and Felicitation by Zonal Head in Zonal Reward function
XX++ Points (*)	Certification and felicitation from ED / MD in Bank's annual Rewards function. Relaxation in service eligibility for promotion to higher grade / scale) - specific relaxation to be decided subsequently and made a part of the promotion policies
XX++++ Points (*)	Special Training program at a premier institute (in India or abroad, as per specific training requirements that may be suitable for the said employee)

(*): To be decided after 2 years from the date of implementation of the scheme or on achieving a bigger sample size of 10000 plus white flags.

Red Flag Categories	Points accumulated	Implication.
Category 1	>30 red flag points (after netting of white flag points)	Employee put under a " <u>Watch-list / improvement plan</u> "
Category 2	>60 red flag points (after netting of white flag points)	<u>Initiation of Disciplinary action</u> for general non-compliance and non-confirming to established rules or for violation of rules and guidelines.

WATCH-LIST / IMPROVEMENT PLAN" FOR EMPLOYEES (RED FLAG CATEGORY 1):

- Immediate removal from any sensitive assignment, if so placed and to be posted in a non-sensitive area.
- Undertaking of a Correctional Training program / knowledge enhancement in the area of non-compliance.
- Put under a mentor from the Compliance/ Audit dept /Sr. Executive for 3 months.
- Employee submitting a weekly report on his adherence to compliance aspects in his area of work for next 3 months to his / her mentor.

INITIATION OF DISCIPLINARY ACTION (RED FLAG CATEGORY 2):

- An employee coming under this category will be liable for direct initiation of Disciplinary Action without any further process of investigation / calling of explanation and replies etc. and without any further loss of time.

LINKAGES OF THE RED FLAG POINTS WITH OTHER HR ASPECTS:

- Inclusion in HRMS bio-data proforma of an employee.
- Linkage with Promotions.
- Linkage to placement in sensitive positions:

OPPORTUNITY FOR EMPLOYEES TO RAISE OBJECTIONS / APPEAL AGAINST THE RED FLAGS AWARDED:

Employees who have been awarded red flag points for non-compliance under the above guidelines shall be given an opportunity to raise any objections / appeal against the red flag points awarded to him / her.

The mechanism of resolution of appeals (i.e. Authority) and time line has been specified in the scheme.

OPPORTUNITY TO EMPLOYEES TO WIPE OFF THE RED FLAG POINTS HISTORY WITH WHITE FLAG POINTS:

While the Red flag points are intended to serve as a check and warning on the employee to help him to correct, it also enables him to improve on his compliance behaviour in future and earn the white flag points through which his negative records can also get wiped off.

For detailed scheme of AEOA please refer circular no BCC/BR/115/415 dated 20/07/2023. Activity wise award of White / Red Flags, parameters has been given in Annexure A-1 and Annexure-A-2 respectively in tabular form in this circular.



CHAPTER - 6

ROLE OF DEFENCE REPRESENTATIVE (DR)

An officer employee, in the domestic or departmental proceedings against him, may take the assistance of the any other officer employee. Regulation 6 (7) of the BOB Officer Employees' (Discipline and Appeal) Regulations permits the charged employee to take the assistance of the any other officer employee but does not permit a legal practitioner to be engaged to defend the charged employee unless the Presenting Officer (PO) appointed by the Disciplinary Authority (DA) is a legal practitioner or the DA having regard to the circumstances of the case, so permits.⁹ Regulation 6(7) is intended to allow the charged officer to have the assistance of an officer employee who has got sufficient experience in defending the charged employees in similar circumstances. The assistance of the officer employee as a Defence Representative (DR) may boost the confidence of the charged employee which may finally lead to the proof of his innocence.

The role of DR starts from the point of his identification as a Representative to defend the charged officer. The first pre-requisite of the DR is that he must have got thorough knowledge about the principles of natural justice and must have thorough acquaintance with the procedures in the disciplinary enquiries under BOB Officer Employees' (Discipline and Appeal) Regulations so as to be capable to defend the charged employee effectively. DR is expected to be vigilant at every stage of the disciplinary proceedings whether the disciplinary proceedings are being conducted in a fair manner observing the principles of natural justice. Further the **DR, while representing the charged officer, has not only to prove the case of the charged officer but also to disprove the stand or case of the PO.**

BURDEN OF PROOF LIES WITH THE PRESENTING OFFICER:

It is always desirable for the purpose of effectively defending the charged officer that the DR should have the knowledge of the basic principles relating to burden of proof. The DR, while defending the case of the charged officer, should always keep in mind that the burden of the proof lies on the person making allegation. **The onus of proving the charges always lies first on the PO rather than on the DR.**

CAREFUL SELECTION OF DOCUMENTS AND WITNESS:

The DR should further carefully select his documents and witnesses on which he intends to rely and brief the defence witnesses before the examination-in-chief. The DR should make himself thoroughly conversant with the facts so as to marshal them systematically for the purpose of conducting the cross examination of the management witnesses and examination in chief of the defence witnesses. DR should understand the line of action of the prosecution case and conduct diligently the case of charged officer from the preliminary stage and should be capable of moulding the case suitably keeping the line of the action of the prosecution.

⁹ According Regulation 6(7) of the BOB Officer Employees' (Discipline and Appeal) Regulations, an officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority having regard to the circumstances of the case, so permits. Regulation 6(7) further states that the officer employee shall not take the assistance of any other officer employee who has two pending disciplinary cases on hand, in which he has to give assistance.

RELIANCE OF DOCUMENTS / USE OF DOCUMENTS:

The DR to the extent possible should rely on the documentary evidence¹⁰ (both of management and charged officer) available to him. It is legally permissible and possible to exploit the gaps found in the documentary evidence of the management to the advantage of the charged officer and the DR should bring out such gaps so as to demolish the evidence or stand taken by the management.

PREPARATIONS FOR CROSS EXAMINATION OF MANAGEMENT WITNESS:

The DR while cross examining Management Witness should be diligent enough and be aware of the type of questions which he has to put to the management witnesses and at what point should he stop to draw proper conclusions and should be bold enough to assert his rights and at the same time acquit himself politely while participating in the proceedings.

CAREFUL LISTENING OF THE MATERIAL FACTS BEING PRESENTED BY THE PO:

The DR should carefully listen to the material facts which the PO is trying to put forward. It is permissible for the DR to make objections in case any irrelevant issues or questions are raised by the PO. To enable him to make valid objections, the DR may take down the points on or relating which he has to raise objections.

BE CAREFUL WHILE CROSS EXAMINING:

The Defence Representatives, while cross examining the witnesses of the management, should bear in mind that -

- Not to put too many questions
- The purpose of the cross examination is to test the veracity, correctness and completeness of the statement of the witnesses
- To cleverly elicit questions to the management witnesses to make them confess the truth
- The contradictory statements made by the management witnesses would be more useful than the defence made by the witnesses.
- The DR should also bear in mind not –
 - a) To raise any frivolous questions.
 - b) To obstruct the proceedings of enquiry which may result in making the mind of the Inquiry Authority (DR) prejudiced towards the charged officer.
 - c) To come into conflict or clash with the PO except on technical flaws prejudicial to the charged officer.
- It may be noted that the outcome of the enquiry proceedings purely depends on ingenuity, tact and cleverness of the DR.

¹⁰ A fact can be proved either by documentary or oral or circumstantial evidence or admission or confession by the charged officer himself.

DR, however, has to maintain discrete silence during the course of inquiry when

- i. the IA as per the regulation 6(8)(c) of the Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations enquires with the charged officer as to whether he pleads guilty or has any defence to make¹¹
- ii. the IA, on the completion of the management case, as per regulation 6(15) Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations ¹²asks the charged officer whether he still wants to defend
- iii. the IA, as per the regulation 6(17) Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations¹³ is making the general examination

PREPARING DEFENCE WITNESS TO FACE CROSS EXAMINATION BY PO:

The DR, on the completion of the presentation of the management case shall produce defence witnesses for the purpose of examination in chief. On completion of examination in chief of the Defence witnesses, the PO shall cross examine the defence witnesses. In the interest of the charged officer, the DR may brief the defence witnesses about the stand taken on behalf of the charged officer and the possible questions that may be asked by the PO during the cross examination. DR may also be permitted to conduct re-examination in case further clarification is needed on a point.

PREPARE CSO FOR GENERAL EXAMINATION BY IA AS PER NEED:

The DR, keeping in view the possible general examination of the charged officer by the IA, may also prepare the charged officer to the general examination which should be in consonance with the stand taken on behalf of the charged officer. It may be noted that the admission made by the charged officer during the general examination may go against the charged officer. Therefore it is in the interest of the charged officer, the Deference Representative should alert the charged officer not to make any admission during the general examination.

PREPARATION OF DEFENCE BRIEF BY DR / CSO:

The DR, on the receipt of written brief of the PO, should prepare the written brief for or on behalf of the charged officer. The DR, while preparing the brief for the charged officer, should note that

- All allegations to be denied unless expressly admitted
- all allegations to be answered paragraph-wise as per the records
- to proceed to put forward his arguments on behalf of the charged employee with the supporting documentary evidence or circumstantial evidence if no direct evidence is available

¹¹ According to regulation 6(8) (c) the Inquiry Authority shall ask the officer employee whether he pleads guilty or has any defence to make and if he pleads guilty to any the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

¹² According to regulation 6(15), when the case in support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

¹³According to regulation 6(17) the Inquiry Authority may after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

- he can use the inconsistencies or contradictions to discredit the witnesses of the management.

SUBMISSION TO DA ON IA'S FINDINGS:

The completion of the arguments of both sides does not bring the role of the DR to an end. The DR, even after the arguments, can render his assistance to the charged officer. The completion of arguments as stated in the preceding chapters shall be followed by the submission of the report or findings of the IA to the DA. There upon the DA shall furnish a copy of such report or findings of the IA to the charged officer for the comments of the charged officer. At this stage the role of the DR comes in so as to prepare comments or representation on behalf of the charged officer. The DR, while preparing comments or representation has to

- Highlight those charges which are held as not proved by the IA
- Put forward the arguments on behalf of the charged employee on the charges held as proved by producing the evidence either direct, oral or circumstantial
- Bring out the inconsistencies and contradictions in the statements or depositions of the management witnesses
- Bring to the notice of the DA in case a vital piece of evidence is overlooked or ignored by the IA
- Explain the mitigating factors such as clean record, first time charge, achievements if any, apology etc. of the charged officer so as to mitigate the rigor of the charges.

The DA, after examining the findings of the IA and representation of the charged officer, may pass the final order.

APPEAL TO THE APPELLATE AUTHORITY IN CASE OF DISPROPORTIONATE PUNISHMENT BY THE DA:

In case the quantum of punishment awarded by the DA is disproportionately high to the gravity of charges, the punishment so awarded by the DA can be challenged by way of appeal before the Appellate Authority.

At the Appellate stage, the DR will have an opportunity to prepare the draft of appeal highlighting

- The charges held as not proved by the IA
- The representation of the charged officer on charges held as proved but not considered by DA
- clean record, first time charge, achievements if any, apology etc
- Totality of the case to the Appellate Authority with a request to take an objective view to exonerate or to reduce punishment.

SOME PRACTICAL SUGGESTIONS FOR DRS IN INTERNAL INQUIRY PROCEEDINGS, BASED ON EXPERIENCES DURING INQUIRY PROCEEDINGS -

We can defend an officer at five stages of the Disciplinary Process -

- At the time of investigation** when the investigating officer finds staff accountability against any officer he has to bring it to notice of the officer and has to record his version in the investigating report. The officer is suggested that he has to go through the records meticulously and present his version.

The mistakes are of 2 types rectifiable and Un-rectifiable. Some omissions can be rectified at this stage i.e. If any proposal is not signed or F135 is not filled up properly or kept blank etc. it can be rectified at that stage, sometimes certain papers are kept separately in a different file or with some other file, such things can be rectified ab-initio, thus reduce the non-compliances.

- b. At the time of Explanatory Note** - Here whatever reply DR / CSO submits, he must corroborate his/her reply with evidences / Circulars in support. It is important to note that this EN is the basis for framing a Charge Sheet, if officer is able to counter some allegations at this stage, he will be able to minimize the allegations and in turn seriousness of Charges. Here, it is important to note that IAC (Internal Advisory Committee) classifies any case into Vigilance / Non Vigilance on the basis of Investigation report / EN issued and Reply to EN submitted by the CSO and observation of DA.
- c. At the time of submitting his reply against the Charge Sheet.** In case DR observes that any allegation which was in EN as lapses and in his reply to EN he has submitted sufficient proof and the allegation is not tenable, he should again boldly represent in his reply against the Charge sheet in his / her statement of defence (SOD).
- d. At the time of Inquiry** – During inquiry Process,
- e. Finally in final submission**, if any new evidences came to the notice of the CSO / DR or he is of the opinion that any evidence submitted by him is not correctly taken or has not been considered, he can represent the same while submitting his Final Submission against the Inquiry Findings before the DA.

We can divide various Disciplinary Proceeding cases in to 3 broad types where Disciplinary proceedings are initiated -

- 1. Cases where operational lapses / irregularities are observed** and there are losses to the bank. In all such cases laid down procedures and systems are not adhered to. Staff accountability in NPA accounts falls under this category, Usage of passwords, Reckless Financing etc.
- 2. Cases with mala fide** - Cheating, forgeries, Misappropriations by staff with vested interests and there are sufficient evidences available.
- 3. Cases where a fraud is committed by outsiders** and there are omissions on the part of Officer and there are certain procedural lapses.

Other cases may be related to Disciplinary cases or HR issues.

• In case 1:

- The DR must thoroughly study / examine the charge-sheet and verify the accuracy of all the allegations/charges by cross-referencing the available records. It is crucial for the CSO/DR to determine whether the alleged incidents occurred during the CSO's tenure.
- It should be noted that many charge sheets are based on the observations of investigating officers, which may sometimes not factual or supported by

documents e.g. allegations related to certain reports etc. are not on record. The DR should carefully review the records and present the case accordingly. (For example pre sanction inspection report is not on record is observed as Pre sanction not carried out.)

Furthermore, the DR should evaluate the involvement of third-party agencies such as advocates, valuers, and ZIAD auditors.

- Additionally, the DR should assess whether the allegations are the direct cause of the incurred loss. In the case of NPA accounts, the DR should determine if these lapses are the actual reason for the account's classification as NPA, and accordingly prepare their defense. If the lapses are not the true cause of the loss or NPA classification, there should be no accountability (a point that is often missing in investigation reports).

• **In case 2:**

- There is very less to do in such cases because there is Zero Tolerance in such cases, However a DR may present his case on circumstantial evidences like what prompted a CSO to do so / Circumstances at that time / past record of the Officer etc. just to minimize the Criticality.
- DR must examine the circumstances prevailing at that time in the branch, role of administrative officers/ role of internal auditors / Why the act could not be detected earlier/ Role of outside agencies etc.

• **In case 3:**

- The DR should evaluate whether the allegations are the direct cause of loss incurred or the occurrence of fraud or it could have been avoided in case allegations are complied with.
- It is important to consider the circumstances prevailing at the branch during that time, such as staff strength, and determine if the officer's lapses were a continuous process because of the prevailing practices at the Branch or were influenced by specific circumstances.
- Additionally, the DR should assess what a reasonable person would do in that situation or at that particular time. The role of third-party agencies like advocates, valuers, and CIAD auditors should also be examined by the DR and be presented before the Inquiry in a strong manner. If the lapses are not the actual cause of the loss or NPA classification, there should be no accountability, which is a point often missing in the investigation reports. It should be presented in assertive way.

CERTAIN DEFICIENCIES OBSERVED DURING INQUIRY PROCESS –

The DR should be careful on the followings -:

- Sometimes DRs did not have elaborate knowledge of Officer's Regulations and D&A Rules and knowledge of the procedures of Disciplinary Proceedings specifically process of Inquiry.

- Sometimes DR does not have the knowledge of staff accountability Policy and thus does not synchronize their defence to Staff Accountability Policy which is very important to defend the charges.
- The DR should keep in mind that only “Preponderance” of any act is enough to hold accountable in internal domestic Inquiries.
- Sometimes they do not relate acts of Omissions / lapses to the actual cause of loss. If they are not directly related there is no staff accountability. It should be highlighted in SOD.
- Period of Omission / Lapses is also important i.e. if any incident has occurred-4-years’ back and this is not a fraud case. Then all subsequent incumbents / ZIAD auditors are also liable.
- Sometimes DR's do not represent / highlight deficiencies in the role of third party service providers e.g. Advocates / valuers / Concurrent Auditors / ZIAD auditors / Role of Regional Office etc.
- The DRs did not study the charge-sheet properly as well as they do not go through the circulars or guidelines of the Bank which have been violated by the CSE/CSO. They basically concentrate on Allegations and try to defend allegations on baseless evidences - e.g.
 1. Will submit a pre sanction report which does not have sufficient information / or will deny an allegation without any evidence or on the basis of a hypothetical ground.
 2. Sometime false / wrong statements also like - there is only one officer posted in a branch hence 4 eye principle not followed whereas there were 2 officers posted.
 3. The DR should concentrate on allegations in such a way that The CRITICAL CHARGES levelled against CSO are not proved like “Acts are unbecoming of an officer”, "Mala fide on the part of the officer", "Acts of the officer are the actual cause of the loss" etc. It should be effectively presented in the SOD and Defence Brief before the IA /DA.
 4. DRs also some time not study the Charge-sheet to find out the actual loss / actual Cause of loss to the Bank for the omission/commission of the CSO/CSE.
 5. The DRs did not properly examine the documents / evidences submitted before the IO by PO and questioned / pointed out its relevancy which resulted in same documents are presented as evidences before IO making the Inquiry lengthy and cumbersome.
 6. Leading question is one which indirectly elicits the expected answer to the question. Leading questions are prohibited during examination in chief and re-examination. There is no bar on asking a leading question during cross examination. This means that one cannot ask a leading question from one’s own witness; but can ask a leading question from the witness presented by the opposite side. **So, DRs can only ask leading questions to any witnesses**

presented by PO (Management Witness) and not to any witness presented by them (Defence Witness).

7. During the cross-examination, DRs Fail to ask relevant questions related to incident which consumes valuable time of the Inquiry proceedings. In many times, questions asked by the DRs annoy or vex the witnesses. Also, DR should not ask any judgmental / descriptive questions. DR should do an in depth research / analysis about the case of the CSO. He / She should prepare a questionnaire if the Management / PO decides to present Management Witness before the Inquiry.
8. DRs should not accept this role unwillingly and should not feel it as a burden. Otherwise they will fail to study and present the case of CSO / CSE properly before the IO. It is suggested that DR should properly study the following three important material **(A)** case file **(B)** relevant Documents available **(C)** related circulars / Bank's guidelines etc. and present his defence in an organized manner which will strengthen their case / Part of CSO. Also thus will reduce the time taken in inquiry process which is ultimately in favour of the CSO.
9. In Defence Brief, the DR seldom provide details/reasons for not accepting any charges/allegations. DR has to refer to related documents submitted as evidences before the IO and have to analyse and provide reason to deny any allegation/charges.
10. Defence Representatives does not submit the Defence Brief in time which prolong the whole process of Inquiry increasing the woes of the CSO / CSE. After completion of the Regular Hearing IA directs PO and DR to submit their brief within a stipulated time. Normally it is directed that PO has to submit the PO's Brief within 10 days and DR has to submit his / her brief before IO within 10 days from receiving the PO's Brief.
11. With the merger of VIJAYA BANK and DENA BANK, the circulars / guidelines of eVB or eDB are applicable in the cases of officers of merged bank of that period only and also the Staff accountability policy of those banks is applicable. It is observed that DR fails to provide these guidelines as evidences.
12. DR should make an independent scrutiny in to the Statement of Allegation and Article of Charges by visiting the office/Branch where the case has occurred and verify the content of the Charge-Sheets. Also DR should note his observation with a point of view to saving the CSO and present the same before Inquiry in pressing manner.
13. The DR should confidently and assertively refute the submissions of the PO by presenting compelling circumstantial evidence or striving to establish a greater weight of evidence in management favour.

EXPECTATIONS FROM DEFENCE REPRESENTATIVE (DR):

At the cost of repetition DRs are reminded not to accept and perform this assignment casually, because future of CSO rests in your hand.

Officers facing any kind of Disciplinary Action should seek the assistance from the Association, right from the time when Investigating Officer (IO) has asked the officer to record his "version", whose case has been investigated as per the Staff Accountability Policy.

Concerned DRs must take care on the followings-

1. Knowledge of Principles of Natural Justice.
2. Acquaintance with the procedure of Disciplinary Enquiry.
3. Thoroughly go through the Explanatory Note, comparative study of Explanatory Note vis-à-vis Charge Sheet, Charge Sheet under Minor Penalty proceedings, Imputation of Lapses.

Charge Sheet under Major Penalty Proceedings:

- a. Statement of Allegations.
- b. Article of Charges.
4. **Free and frank interaction of DR with CSO, without inhibition to understand the case, and encourage CSO to narrate the incident / background of the case / or circumstances. Ask CSO to speak out his mind freely and honestly.**
5. To defend the case / stand of CSO.
6. To disprove the case / stand of PO.
7. **Always bear in mind the burden of proof of allegations lies with the Presenting Officer.**
8. Preparation of list of documents.
9. Careful selection of documents and witness to defend the case and to look into whether Management Documents are relevant.
10. Examination of Documents – Defence Documents and Management Documents. If needed submit supplementary list of documents.
11. Maximum use of Management Documents to disprove the allegations.
12. Preparation of Cross Examination of management witness.
13. Careful listening and taking note of the arguments furnished by the PO at the time of disciplinary proceedings during regular hearing.
14. **The DR should ensure all the objections raised by him are properly recorded in the “DAILY ORDER SHEET” during regular hearing. Refuse to sign it, if your objections are not recorded, because such recording of the objections will be useful to the DR / CSO at the later stage of proceedings, while preparing written brief, to prove that Natural Justice has been denied to the CSO.**
15. Prepare the defence witness to face the cross examination by the PO.
16. Prepare the CSO for facing general examination by the Inquiring Authority (IA), as per need.
17. Preparation of written brief for CSO **on receipt of PO’s written brief**, once the enquiry proceedings are over.

18. Preparation of written brief for CSO on receipt of IA's report / findings for submission to the Disciplinary Authority (DA).
19. Always remain watchful and careful that IA conducts the proceedings in a fair manner or else record your objections.
20. In case of punishment awarded by the DA is disproportionate, prepare appeal for submission to the Appellate Authority (AA) within stipulated period of 45 days on receipt of DA's final order.

OBSERVATIONS:

- DR takes this responsibility as a BURDEN and plays his role in a casual manner.
- DR does not himself thoroughly study the Charge Sheet and try or make attempt to know the charge sheet by putting questions to the CSO for the purpose of defending the CSO.
- DR is not frequently interacting with the CSO to dispel confusions arisen during enquiry proceedings.
- DR and CSO being found meeting for the first time at the time of Enquiry Proceedings - while appearing before the IA.

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CHAPTER - 7

IMPORTANT CASE LAW

Given below is the gist of the important cases relevant for the purpose of defence. These cases are based on the well-established principles of law, equity and natural justice.

REASONABLE OPPORTUNITY OF HEARING:

It is well established that the parties, especially the Charged Officer (CO), during the proceedings should be given reasonable opportunity to be heard. It is the obligation of the Inquiry Authority (IA) to provide reasonable time & opportunity to both the Management and CO.¹⁴

INQUIRY AUTHORITY TO CONDUCT THE PROCEEDINGS IN A FAIR MANNER:

The IA is not only to provide reasonable opportunity to the charged employee but also under obligation to conduct the proceedings in a fair manner based on equity and principles of natural justice.¹⁵

A PERSON WHO HAS AN INTEREST IN THE PROCEEDINGS CANNOT ACT AS A DECIDING AUTHORITY:

The Disciplinary Authority (DA) who himself is witness to the incident of misconduct cannot act as the deciding authority.¹⁶

STATUS OF BANK'S SERVICE REGULATIONS:

Rules governing Bank employees' service conditions have acquired the status of the statutory regulations. Hence, it is obligatory for the management to follow the said regulations governing the service conditions of the officer employee.¹⁷

RIGHT OF TAKING NOTES AT THE TIME OF INSPECTION:

Justice and fairness demand that the CO should be allowed to take notes during the course of the inspection of the record.¹⁸

FINDING OF THE INQUIRY AUTHORITY WITHOUT REASONING:

The finding of the IA without the reasoning is no finding in the eye of law.¹⁹

CONDUCTING PROCEEDINGS AND PASSING OF AWARD WITH THE APPLICATION OF MIND:

It is obligatory for the IA to conduct the proceedings of domestic inquiry. It is also obligatory for the DA to apply his mind before passing the award.

¹⁴ Board of Trustees of Port Trust of Bombay Vs D R Nadkarni & others

¹⁵ State Bank of India Vs D C Agrawal

¹⁶ D J Vakari Vs K V Karanjikar

¹⁷ Indian Bank Vs Evalappan

¹⁸ Union of India Vs Indernath

¹⁹ Sur Enamel & Stamping Works Ltd.

SUPPLY OF RELEVANT DOCUMENTS:

All relevant documents should be provided to the CO or DR, for the purpose of giving a fair opportunity to defend and to enable to prove the innocence of the CO. **And the relevance of the documents will be determined not from the angle of the prosecution but from the angle of the CO.** The test is whether or not a particular document is to be given **is not what the charged employee loses if he is provided that document**, but the prosecution loses if the document is given.²⁰

GIVEN BELOW ARE SOME OF THE PRINCIPLES DEDUCED FROM THE CASES DECIDED:

Examination of the charged employee and his witnesses always to be conducted after the examination of the management witnesses.²¹

Denial of time to the CO for the submission of explanation or refusal to provide relevant documents amounts to arbitrariness and violates the principles of fair play and natural justice.²²

Services of a lawyer to defend the CO are to be allowed, when the Presenting Officer is a legal mind and experienced.²³

CO should be given sufficient time to enable him to produce his witnesses. Denial of time without any justification amounts to arbitrariness which leads to violation of principles of natural justice.²⁴

Penalty is to be imposed in proportion to the gravity of the misconduct. **Double penalties for a single charge are not permissible** because a person is constitutionally protected from being convicted twice for the same offence. Similarly penalty not provided for in the regulations cannot be imposed.²⁵

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²⁰ K Chidambaram Vs Government of Tamil Nadu

²¹ Central Railway Vs Reghubhir Saran

²² Angappan Vs Tamil Nadu Electricity Board.

²³ J K Aggarwal Vs Haryana Seeds Devp Corporation Ltd.

²⁴ Narayana Shetty Vs LIV Cuddapah

²⁵ State of Punjab Vs Inderson

CHAPTER - 8

DOS AND DON'TS FOR DEFENCE REPRESENTATIVES

Who is a Defence Representative? Or Defence Assistant?

The word 'Defence Representative' or 'Defence Assistant' is nowhere defined and also does not figure in BOB Officer Employees' (Discipline & Appeal) Regulations. Regulation 6(7) of BOB Officer Employees' (Discipline & Appeal) Regulations only states that an officer employee may take assistance of another employee.

But the word 'Representative', however, is used in Chapter XIX of the Bipartite Settlement. Therefore, in the context of Chapter XIX of the Bipartite Settlement an officer who assists another officer may be termed as 'Defence Representative' or 'Defence Assistant' who for the sake of brevity is usually known as 'DR' or 'DA'. The expression 'DA' however, is not synonymous to Disciplinary Authority and must not be construed as such. **Therefore, the letters DR, with a view to avoid confusion, are used throughout hereinafter.**

Classification Vs Chronology:

Dos and Don'ts for Defence Representative (DR) may be classified into categories viz., **(1)** quantitative Dos and Don'ts **(2)** qualitative Dos and Don'ts.

Quantitative Dos and Don'ts refer to the quantified acts or tangible actions of DR. On the other hand, qualitative Dos and Don'ts refer to the qualities of the DR.

The above classification however has no practical utility except academic value.

Therefore the DR, to have better understanding of his job role and also to enable him to defend effectively Charged Officer (CO), has to arrange the Dos and Don'ts in a chronological order. The arrangement in chronological order would enable DR to have a stage-wise graphic picture from starting point till final order or review or appeal as the case may be, and what actions or acts the DR has to take up or perform and from what actions he has to refrain himself.

Source of Dos and Don'ts:

One must realise that the above referred Dos and Don'ts are not the rules or regulations superimposed on the DR. They stem from **(1)** the job role of the DR **(2)** BOB Officer Employees' (Disciplinary and Appeal) Regulations. **(3)** Bank's staff accountability policy **(4)** Bank's compliance policy **(5)** Book of Instructions Volume – 13. It may be noted that diligent performance by the DR of his role as per the BOB Officer Employees' (Disciplinary and Appeal) Regulations automatically results in compliance of Dos and in avoidance of Don'ts. The diligent performance will finally lead to the assistance of fellow employee or officer in the hour of need through observance of the regulations at different stages of the disciplinary proceedings.

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CHAPTER - 9

DOs FOR THE DEFENCE REPRESENTATIVES

The disciplinary proceedings against an erring employee shall be deemed to have commenced from the date of serving of the charge sheet (CS).

The Charged Officer (CO), in reply to the charge sheet served on him, is entitled as per regulation 6(3) of the Bank of Baroda Officer Employee (D&A) Regulations²⁶ to defend himself by submitting statement of defence (SOD). It would be prudent for the CO to approach the Association for preparation of SOD and Association should appoint an officer as Defence Representative (DR) at that relevant point of time looking to the gravity of the allegation and charges so that the DR gets well versed with the case from very beginning and prepare the SOD himself.

The Disciplinary Authority (DA) on receipt of the SOD, in case, finds that the defence raised or answer offered is satisfactory, may close the matter at that stage itself after obtaining concurrence of the Chief Vigilance Officer (CVO), if the case is Vigilance **OR** may proceed with the proceedings, if the defence raised or answer given is not satisfactory and initiate inquiry proceedings through appointment of the Inquiry Authority (IA) and Presenting officer (PO).

Thereupon, on the initiation of the inquiry proceedings, the concerned CO should contact office bearers of Association for suggesting / approving the name of DR for defending his case. **After obtaining consent of DR, CO should inform the IA in writing about his DR and get it recorded at the time of Preliminary Hearing.**

The DR on his appointment should immediately contact the CO and obtain a copy of the documents such as **(1)** Explanatory Note (EN) if any, and the reply thereto **(2)** Memorandum **(3)** Articles of Charges **(4)** Statement of Allegations / Imputation of Lapses served to the CO and also his SOD **(5)** List of documents / witnesses (Regulation 6(3) of Bank of Baroda officer employees (Discipline and appeal) regulation 76). All these documents form part of the charge sheet.

In case EN is issued, the DR should study the contents and compare the contents of the EN with the contents of the charge sheet, so as, to find the omissions and commissions in the EN. This implies that the DA has accepted the explanation offered by the CO on the point not figuring in the charge sheet. The comparative reading of the EN with the charge sheet will help the DR in preparing the written brief.

Therefore, the DR, for the purpose of inquiry proceedings, should focus his attention on the contents of the charge sheet (CS) and the SOD, so as, to examine them critically to mark out

²⁶ Regulation 6(3) states that “ where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charge on the basis of the allegations against the officer employee and the articles of charge together with a statement of allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee who shall be required to submit within such time as may specified by the Disciplinary Authority(not exceeding -15-days) or within such extended time as may be granted by the said Authority a written statement of his defence.

Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall allow the officer employee inspection of such documents within a time specified in this behalf.

the contradictions / gaps or inconsistencies, if any, and to discuss the same with the CO and also to identify the specific allegations / charges leading to major penalty. The DR from this stage itself should think of the questions or queries which he can put to the CO for the purpose of defending him effectively based upon the discussion with him. The defence representative should also check that -:

- a) Allegations are according to bank's policy / guidelines prevailing at that time.
- b) Circumstances / Staff Position in the branch at that time & also practices being adopted by that branch / other branches at that time.
- c) To assess the actual loss to the bank, since actual loss may differ at the time of charge sheet against at the time of investigation.
- d) To identify the actual reasons for loss, sometimes may be due to external factors.
- e) To discuss with the CO regarding actual reasons / circumstances in which that decision was taken.
- f) Sometimes certain allegations are like Pre Sanction not done / Appraisal not done / PSR not sent etc, the reason behind these allegations are that Investigating Officer (IO) did not find these reports at that time. DR to discuss these allegations with CO if these documents are available in any other file.

In the interest of the CO it would be essential to have exclusive discussion with DR on one to one basis, so as, he can speak out his mind freely, frankly without inhibitions and reservations. During the discussion in person, the DR to the extent possible should refrain from putting forth his questions or queries; instead should encourage or should allow the CO to narrate the background of the incident or subject matter, the circumstances that led to the inquiry proceedings and any other attendant circumstances and facts. The idea is to allow the CO to speak out his mind freely without being influenced by the questions or queries of the DR. The DR after hearing the charged employee should proceed with the questions and queries.

The DR should note down the back ground or circumstances narrated by the CO which may come in handy for him at the time of the examination-in-chief and also cross-examination, in a case, where oral evidences of the witnesses is relied upon, and also will be useful for the purpose of preparing the written brief.

The DR, having thoroughly discussed the case with the CO, has to proceed to prepare a list of the documents. The list shall be prepared purely for the convenience of the DR and not for submission to the DA or IA or any other agency or representative. The idea behind the preparation of the list of documents is to avoid wastage of time and to enable the DR to have a clear idea on documents which the defence can examine at the time of inspection and the documents so listed and inspected many times shall be useful in drawing the final defence.

The DR, in addition to the principal defence, may also file supplemental defence which may be used for the purpose of demolishing averments of the PO who tries to establish the management case through documents. It is, therefore, obvious that the DR shall be able to build up supplemental defence, only after receiving a list of Management Documents (MDs) and having inspection of them after preliminary hearing.

The DR should obtain a copy of notice - with respect to preliminary hearing, specifying the venue, date and time served to the CO and should approach his reporting authority for permission to grant on-duty-leave to enable to attend preliminary hearing. The days spent for attending the preliminary hearing shall be treated as "on duty". The DR shall be entitled to Travelling Expenses, Diem Allowance and the actual lodging and boarding expenses (made

available in 8th Joint Note signed with IBA on 11th Nov 2020) for attending the preliminary hearing. If the proceedings, preliminary and regular, take place or are held at places other than the place of the charged employee then he will be entitled to reimbursement of actual hotel expenses as per regulation applicable at that time.

The DR on the commencement of the inquiry proceedings shall submit a copy of the letter of appointment to the IA. This enables the DR to attend, henceforth, the proceedings until the appointment is withdrawn or cancelled or otherwise.

The appointment of DR, though generally not required to be approved by the DA, may be subject to the approval of the DA in a case where the Commissioner of Departmental Enquiry (CID) is appointed as IA at the behest of the Central Vigilance Commission, New Delhi. Therefore, in a case where CID is appointed as IA, it is always advisable for the DR to arrange to send a letter of the approval of the DA to CID who is appointed as IA. Once the letter of approval of the DA is produced, it would not be necessary for the DR to obtain any further letter from the Officers' Association.

The preliminary hearing commences with IA's inquiry on whether the CO has received the charge sheet and whether he admits his guilt or charges. **The DR, before admitting the charges by CO, should thoroughly discuss the consequences of such admission as it immediately makes him liable.** It is open for the CO to admit all or any of the charges. Therefore, it is prudent to deny the charges / allegations at the preliminary stage so as to enable DR to collect the information favourable to the CO and prepare the defence accordingly. It may be noted that the intervention of the DA at this stage would not be permitted.

Once the charges are denied, the CO may demand for the list of documents on which management wants to rely upon and or list of witnesses through the management proposes to prove the case.

Thereafter, the IA may pass an order allowing inspection of documents by the CO and also for submission of list of witnesses, if any, on behalf of the CO. The CO and the DR should obtain as much time as possible to enable them to have sufficient time for inspection of records and references. If the time granted by the IA is not sufficient or the inspection could not be completed due to valid and justifiable reasons in the stipulated time. **The CO and the DR may request for more time** with specific reasons as may be necessary.

The DR, while participating in the proceedings, should sign the **daily order sheet (rojnama)**, which shall be prepared by IA and shall contain the progress and details of the every hearing i.e. time frame for the inspection, venue, date and time etc. **The DR, therefore, before signing the daily order sheet, should diligently go through the contents to ensure that it is the faithful reproduction of the proceedings at the preliminary hearing.**

The IA shall issue necessary letters to the concerned branch or office for making available the original documents and necessary files for inspection by the CO and the DR so as to enable them to prepare the list of the documents. The CO and the DR should satisfy himself about the originality of the documents. The CO or DR may request the concerned branch or office to take legible copies, if possible prior to the visit of the CO and the DR, so that they can cross check the same. If the such hand written noting, remarks, comments or instruction are not clear or legible, the CO may request the official of the branch or office to issue a letter to IA giving specific reference to the concerned documents. If the branch official for any reason is not agreeable to issue a letter as stated above, the CO may request the PO for the relevant documents, in original, for producing the same before the IA at time of regular

hearing (RH) so as to enable the IA to verify such hand written noting, remarks, comments or instruction.

The DR, on the completion of the inspection is required to prepare a certificate in respect of having taken the inspection of documents as directed by IA during the preliminary hearing. The certificate is required to be prepared with reference to the list of documents submitted by the PO at the time of preliminary hearing with particular reference to illegible document if any. Such certificate is required to be signed by the CO.

The DR, apart from obtaining the list of documents of management, should also prepare a list of documents of the defence on behalf of the CO. This may be done simultaneously at the time of taking inspection of original management documents. The DR, after locating the documents for principal defence, should look for the documents of the management to counter the documents contained in the list of documents of the management. To illustrate an instance, one of the allegations may be failure on the part of the CO to comply with a letter containing instructions of the controlling office and the DR should look for the documents evidencing compliance of such instructions any other steps branch has taken to protect bank's interest. It may be added that whatever mentioned in the preceding paragraph regarding illegible photo copies of management documents shall also equally apply to illegible photo copies of the defence documents.

Sometimes it would not be possible to inspect the original documents on account of the custody of the original documents with CBI or police or any agency competent in his behalf. The DR, in such circumstances, in consultation with the CO, may with a view to avoid delay, accept certified copies of the documents if otherwise in order or legible.

It is possible that the management at times may claim privilege in respect of certain document/s requested by the DR. Regulation 6(12) of the Discipline and Appeal Regulations²⁷ specifically provides that the management may claim privilege if the production of such document/s will be against the public interest or the interest of the bank. The DR, in case claiming such privilege by the management, may ask the IA, to record the claim of the management which the DR may, at later stage take advantage at regular hearing (RH) by projecting that the principles of natural justice have not been observed during the proceedings. Nevertheless, it is possible as a matter of right to obtain any document/ information under Right to information Act.

The principle of relevance, just as it applies to the defence, also applies equally to documents filed by the management, for example, the statement of allegation may not contain any allegation as to lack of follow up where as the management documents sometimes may include some communication from controlling office which mentions lack of follow up. The DR at regular hearing in such circumstances may take objection of inclusion of such documents in the list of exhibits if no other allegation is proposed to be proved by the said document.

There upon the DR should prepare the list of defence witnesses. If for any reason whatever if the defence witnesses are unable to come or attend the proceedings, the DR may pray IA for the change of venue convenient to the witnesses to enable them to attend the

²⁷ Regulation 6(12) states that the on the receipt of the requisition under sub-regulation 11 from the Inquiry Authority, the Authority having the custody or possession of requisitioned documents, shall arrange to produce the same before the Inquiry Authority on the date, place and time specified in the requisition: provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In the event, it shall inform the Inquiry Authority accordingly.

proceedings. If the IA declines, The DR may file his objections insisting for the change of venue on the ground of violation of principles of natural justice, if venue is not changed.

It is important to note that on the Regular hearing, documents of both sides shall be taken on record and shall be numbered serially with a prefix for the purpose of easy identification, for example, the documents of the management shall be prefixed either “M” (M stands for Management) or “S” (S stands for State) or “P” (P stands for prosecution) and “D” (D stands for Defence). The DR therefore should take sufficient care that the management documents served to him on behalf of the CO, are prefixed and number in the same way as are numbered in the copies of the IA and PO. Once the documents are numbered, they will be identified only with the number allotted to the document which are referred as exhibits for example, management documents shall be referred as ME1, ME2 etc. and defence documents shall be referred as DE1, DE2 etc. and so on. For page-wise identification, further the exhibits may be numbered, for example, DE1, DE1.1, DE1.2 so on and so forth.

The DR, before attending to hearing, has to brief the defence witnesses, if any, the factual position, the likely questions that may be put to them and the answer that should be given. The DR, during the examination-in-chief, should confine himself only to the extent briefed by him. It is likely that any question beyond briefing puts the witnesses in an embarrassing position which may force the witnesses to depose against the CO. Hence the DR during the examination-in-chief to the extent possible must avoid asking question, unless a simple question, falling beyond the briefing.

The DR should impress upon the witnesses to keep their answers during examination-in-chief and cross examination as short as possible. If the answers of the defence witnesses are lengthy, it likely the witnesses directly or indirectly agree admit facts which may go against the CO which may become easy for the PO to demolish the case of the defence side.

It is common practice that the examination of witnesses, management and defence shall commence with examination-in-chief followed by cross examination. The DR during the course of the examination-in-chief (EIC) and cross examination (CE) must take down the questions put to the witness and the answers given by him. The noting of the questions and answers shall come in handy for the DR at the time of the cross examination of the management witnesses.

In consonance with the prevailing practice, the proceedings at the regular hearing shall commence with the examination-in-chief of the witnesses of the management side followed by the cross examination of each of them by the DR. In case the management witnesses are led by leading questions, the DR may take objection and see the witnesses are not guided by leading questions. The DR, after the examination and cross examination of the management witnesses, in the same way as in the case of management side, shall initiate the witnesses of the defence side for the chief examination followed by cross examination by the PO.

The DR all through the chief examination and cross examination should be clear about the type or nature of answers which he needs to disprove any one or more of the allegations. The DR, in order to elicit the type of answers he needs, should frame the questions which facilitate the answers he needs. As the DR plays a major role during the examination and cross examination, he needs to consult the CO and to listen what the CO does say. Such consultation or listening, if it is during the course of the chief examination and cross

examination, has to be done quickly without wasting time as IA may not allow break in the proceedings.

The DR, even after the chief examination and cross examination, may re-examine his own witnesses based on what is brought out in the chief examination. Similar opportunity of re-examination shall also be available to the PO. Even if there is no mention of the re-examination in the Discipline & Appeal Regulations, natural justice demands that the both the parties should be the right of re-examination but the right of re-examination is limited to what is brought out in the examination and cross examination.

Once the stage of examination and cross examination is over (i.e. once the stage of the evidence is over) the IA will carry out general examination of the CO if the CO is not examined or cross examined as a witness. Keeping this in view the DR should brief the CO beforehand likely questions and the clarifications or answers the CO should offer there for. As per the BOB Officer Employee's Disciplinary and Appeal Regulations, the IA questions the CO on the circumstances appearing against the CO in order to allow the CO to explain the circumstances against him. The DR should ensure that the general examination of the IA is within the limits set out in the BOB Officer Employee's Disciplinary and Appeal Regulations should not allow to go beyond the limit in the Disciplinary and Appeal Regulations.

The deposition or evidence of a witness may be in the form of (1) question and answer or (2) narrative. Recording of proceedings in 'question and answer form' has an obvious advantage over the 'narrative method' as it would be easy for the DR to go through them and pick out the necessary answer to disprove the case of the management which is not case with the narrative form. In narrative form deposition, the DR has to wade through the whole deposition for the purpose of picking out the relevant points or points. Because of the obvious advantage, the DR may request the IA to record the deposition in the form of 'question and answer' rather than 'narrative' form.

After the completion or closing of the stage of evidence or deposition, both PO and DR shall be given time to file their respective written briefs (arguments). A copy of the written brief of the PO shall be furnished to the CO. The written brief may in the form of a letter addressed to the IA composed of (1) salutation (2) first paragraph referring to Regular hearing order sheet (3) second paragraph specifying the date of receipt of the written brief of the PO (4) third paragraph describing the written brief of the CO.

The DR, the defence brief being a vital document to disprove the case of the management, should prepare it utmost care and answer all the allegation in paragraph-wise and brought out the contradictions and inconsistencies in the written brief of the PO and evidence so as to discredit the stand of the PO with the supporting documents available on the record. This pattern may be repeated separately to all the allegations.

After disproving the allegations, the DR shall categorically state and declare that all the allegations stand disproved.

The DR while preparing the defence brief should make use of factual position to the advantage of the CO by describing the record of the unblemished service of the CO, the awards and appreciation, if any he has got and the promotions the CO has got, if any after the incident before charge sheeted.

The written brief so prepared should be submitted to the IA with the signature of the charged employee retaining a copy for the reference of the CO and DR.

After the submission of the written brief, the DA will forward a copy of the inquiry report submitted by the IA to CO so as to enable the CO to make a representation against such report. Therefore the DR in consultation with the CO should mark out the allegations held proved by the IA so as to file a rejoinder if evidence on record warrants so. The DR in the rejoinder should try to bring out the material on record so as to prove that the IA has not given due weight to a particular fact which the IA ought to have considered which may be used to discredit the reasons given by the IA.

Besides, it is open to the CO to prefer an appeal before the Appellate Authority against the order of imposition of penalty by the DA followed by a review petition to the Reviewing Authority. The DR at this stage also must play a vital role in preparing the para-wise defence in the appeal and review petition.



CHAPTER - 10

DON'Ts FOR DEFENCE REPRESENTATIVES

If the Defence Representative (DR) diligently performs his 'Dos' suggested in chapter VI, such diligence shown by the DR automatically results in avoidance of the 'Don'ts'. Yet, the specific Don'ts suggested below shall be useful for the Defence Representatives throughout the proceedings:-

The DR on his appointment should not immediately plunge into action without carefully and thoroughly studying the charge sheet. If the DR is faced with any genuine constraints which hamper his working or causes delay, the same should be brought to the notice of the concerned functionary of the Association. The Association, there upon shall decide the DR concerned should continue or not. **Further, one should not accept the role of DR merely on the grounds that he has been nominated by the Association, rather he should accept the job only when he, in true sense, has internal urge to defend the Charged Officer (CO).**

- The DR should not take up the assignment with prejudiced or closed mind as that will hamper his thought process while evaluating the evidence on record and the attendant circumstances.
- The DR should not give any false hope to the CO by painting a rosy picture. At the same time the DR should not indulge himself in frightening the CO with the resultant consequences, if in case, the charges are proved against him.
- The DR should not speculate about the events that may or may not take place and on the other hand should firmly base his defence with the proof available on the record especially with the supporting documents.
- The DR should **not indulge in memorising** the facts or events. Instead he should **make noting** of the facts and circumstances from the records available and also deposition of the witnesses during the course of the examination and cross-examination and answer the issues with the support of evidence.
- The DR should not allow himself to be clouded by the unnecessary and irrelevant documents, instead he should rely more on documents which are available with the Presenting Officer (PO) because the PO shall be cross examining the defence witnesses relying on those documents.
- **The DR should not produce witnesses without proper justification. It is likely that the witness so produced may make contradictory statements which may result in damaging the defence arguments. In view of such risks, it is always preferable to rely on documentary proof rather than on the evidence of the witnesses.** (Witnesses are always preferable in cases which are originated from HR Department alleging behavioural issues of the CO e.g. if the CO has been alleged that he always misbehaves with his colleagues, he has abused his colleagues etc. because in this type of case, defence will not find any documentary evidence).
- Neither the DR nor the PO should indulge in asking **leading questions**. If one party puts leading questions to the witness, the other party will have right to oppose such

leading questions. **Therefore, the DR should take objection if the PO is indulged in asking leading questions to his witnesses.**

- The DR at any stage of the proceedings may make an objection, if he is of the opinion that conducting of the proceedings is not fair and leading to injustice to the CO. A few instances illustrated as under shall be helpful for the DR:
 - a) Delay in holding preliminary hearing;
 - b) Not making available the relevant files for inspection;
 - c) Fixing unfavourable time, dates and venue for hearing;
 - d) Non-admission of one or some of the document/s of the CO without justification on the ground that it is or they are not relevant;
 - e) Without any justification, not allowing any particular document to be examined by the CO / DR on the ground that the same is privileged;
 - f) Rejecting the persons proposed by the defence as witness;
 - g) Causing frequent obstruction to the DR while asking questions during the proceedings;
 - h) Granting too short or too long time for submission of written brief;
 - i) Delay in submission of the inquiry report.
- **Another instance where the DR can rightly take objection is that if the PO and Inquiry Authority (IA) are well known or related to each other or have worked together earlier etc. The DR should raise objection on the above ground preferably at the preliminary hearing and it is also permissible to lodge above objection with the Disciplinary Authority (DA) at the earliest possible preferably before the preliminary hearing. The DR should ensure all the objections raised by him are properly recorded in the daily order sheet. Such recording of the objections shall be handy / useful to the DR at the later stage of the proceedings to show how the natural justice has been denied to the CO.**
- The DR should not produce any such witness, who in his opinion / understanding is not reliable and may cause more harm than good, even if the production of that witness is necessary.
- The DR should not send any communication without retaining sufficient copies at least two i.e. one for the CO and another for him. Similarly, the DR should ensure a copy for himself for all the communications received by the CO.

The DR to the extent possible must prepare the defence in the same form or structure suggested in the succeeding chapter. This may make the reading of the defence brief easy for the IA.

The DR need not sign anywhere except the daily order sheet.

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CHAPTER - 11

DRAFTING OF WRITTEN BRIEF OF THE CHARGED OFFICER

'Written Brief' is the most important single document by or through which the Charged Officer (CO) can submit his arguments or averments in response to the averments made by the Presenting Officer (PO).

'Written Brief' being a document containing the arguments or averments of the CO, shall be culmination of evidence or proof, for or against the CO both in documentary or oral form. Therefore it is for the CO or as the case may be the Defence Representative (DR) to analyse the evidence to the Inquiry Authority (IA) or Disciplinary Authority (DA) so as to make them understand that the charges against him are not true and without proof (disproving) and to make them understand that there exists truth in the submission made by him or on his behalf.

Therefore, in the light of the above, the CO or as the case may be his representative must prepare or present the brief aiming to demolish, on one hand, the allegations against the CO and prove, on the other hand, his submissions or averments.

WHAT ARE THE SOURCES OF INFORMATION FOR DRAFTING THE 'WRITTEN BRIEF' ON BEHALF OF THE CO?

It may be noted that the (1) charge sheet (2) evidence, both documentary or oral, brought on record (3) written brief of the PO are three sources of information for drafting the draft written brief of the CO. **Minutes of the Regular Hearings** (RHs) will also help the DR to draft the written brief if he has been able to get his favourable arguments presented before the IA and got it recorded during the proceedings in the "**Daily Order Sheet**".

CHARGE SHEET:

Charge Sheet is one of the best sources of information containing allegations against or act of misconduct on the part of the CO. The charge sheet may also contain mere statement of fact without alleging any misconduct of on the part of the CO. Charge Sheet therefore may be a mix of allegations and factual position. In order to effectively answer the allegations, the charge employee or as the case may be the DR must segregate the allegations from the factual position and answer the allegations while preparing the defence brief.

EVIDENCE:

Evidence may be both in documentary or oral form. Both forms of evidence are admissible in the disciplinary proceedings. The evidence, apart from the charge sheet, which is available on the record, constitutes another best source of information providing the necessary proof for the CO to demolish the charges against him or to support his side of the story with supporting evidence/proof available on record. The CO or as the case may be the DR may also look out for a statement, if any, made by the PO on behalf of the management, favourable to the CO, has been recorded in the Daily Order Sheet and the same should be appropriately used at the time of preparing defence brief.

WRITTEN BRIEF BY THE PRESENTING OFFICER (PO):

The written brief filed by the PO on behalf of the management is third source of information containing allegations against the CO. **It may be noted once the PO submits his brief he has to confine his arguments to the specific allegations mentioned in the brief. The PO will not be allowed to go beyond what is stated in his brief.** It is possible that the written brief filed by the PO, sometimes may omit to mention or refer certain allegations. The CO or as the case may be the DR, in case of omission of certain allegations as stated above, may take a plea stating the allegation so omitted cannot be held proved against him.

In case PO has submitted anything, **beyond the purview of charge sheet or has added any new dimension irrelevant to the charge sheet** in his written brief, it **MUST** be strongly objected to in writing by the CO / DR in his defence brief, as a counter to the PO's written brief.

WHAT SHOULD BE THE FORM OF THE WRITTEN BRIEF? WHAT SHOULD IT CONTAIN?:

There is no specific form or format prescribed anywhere for the written brief. The written brief by convention shall be prepared or arranged in a letter form in paragraphs specifically numbered, for example,

- 1st paragraph:** contains reference to the relevant to the regular hearing order sheet.
- 2nd paragraph:** date of receipt of Presenting Officer's written brief
- 3rd paragraph:** Charged Officer's written brief in a structured form, allegation-wise
- 4th paragraph:** being concluding paragraph requesting IA to hold that no allegation is proved and consequently no charge stands proved.

The written brief should be neatly typed and well-spaced so as to have an impressive look

The written brief should be paragraphed or sub-paragraphed allegation-wise and should be suitably numbered to facilitate back and forth reference by all the participating parties including the CO or as the case may be for DR.

The written brief should be prepared as a self-contained document in a simple and convincing language to make it easily readable and understandable especially to the IA or the Disciplinary Authority.

The procedure stated below however may be useful to the CO or DR as the case may be while preparing or submitting the defence brief:-

- ✓ The CO or the DR with the help of available evidence must try to discredit or demolish the arguments of the PO so as to disprove the averments of the management. The allegations as contained in the charge sheet should be reproduced verbatim giving numbers to each of the allegations.
- ✓ After the reproduction of the allegations, it would be essential to refer to or focus on the arguments presented by the PO. The CO or as the case may be DR must answer each of the arguments raised by the PO.

- ✓ The CO or as the case may be DR may use the evidence available to his advantage and try to discredit or demolish the management's case with the clever use of the available evidence.

The following 5 'Cs' may be considered the hallmark of the effective defence brief and as such may be useful in the preparation or drafting of an effective defence brief -:

Clarity:

Clarity of thought or mind is an essential element, the DR should possess while preparing the defence brief. Clarity of thought or mind will enable the defence representatives to present the matter effectively. Clarity of thought or mind is not only necessary at the time of preparing or drafting the defence brief but also at the time of putting forward the arguments and citing the evidence on half of the CO.

Conciseness:

The DR while ensuring the arguments on behalf of the CO full-fledged, should also ensure that they are concise direct to the point rather than with conjectures interspersed here and there.

Cohesiveness:

The DR must also ensure that the written brief must not appear disjointed but ensure that it is cohesive and persuasive without any contradictions and inconsistencies.

Completeness:

The defence brief should be complete in all respects and should answer all the allegations or points raised in the written brief of PO with a view to discredit or disprove the case of the management. After putting forward all the arguments as stated above, the DR may put forward the blemish less character and the meritorious service rendered by the CO so as to have a mitigating effect on the charges levelled. Such details of the meritorious service however should be highlighted at the concluding stage of the arguments rather than in the beginning of the arguments.

Conclusive:

The defence brief should emphatically and conclusively contain that the allegations against the CO are not proved.

Signatory to Written Brief:

The written brief, before filing, is required to be **signed by the CO** and will not be signed by the DR

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CHAPTER - 12

DRAFTING OF APPEAL

Appeal can be made to the Appellate Authority (AA) under **regulation 17** of Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations 1976.

CSO can make appeal to the Appellate Authority against disproportionate punishment awarded by the Disciplinary Authority (DA).

Appeal should be submitted to the AA for sympathetic consideration **within 45days** of the receipt of DA's order.

The language of appeal should be polite, submissive and convincing.

Through appeal CSO has to draw kind attention of the AA how he or she feels that his / her punishment is disproportionate and justice has been denied.

In the first paragraph mention the punishment order in bold letters.

SUBMISSION:

Honourable Sir, I am aggrieved because I have been denied justice.

THE GROUNDS OF APPEAL:

1. My humble submission to DA through my statement of defence dated _____ in response of IA's findings dated _____ has not been considered, rather ignored. I am of the firm belief, had there been proper assessment and appreciation of the evidences / documents produced by me to counter allegations and charges levelled against me and the circumstances by the DA he must have not awarded such severe punishment.
2. IA has overlooked / not taken in consideration the defence documents produced by me during the enquiry proceedings.
3. CSO may mention if any relevant documents have not been allowed by the IA, which would have helped him in countering the allegation.
4. CSO should mention if the objection raised during the Regular Hearing have not been recorded despite pleading to the IA, which was pertinent to counter points raised by PO or any irrelevant Management Document admitted.
5. CSO should mention total no. of allegations and charges levelled against him / her and out of that how many not proved / partially proved / proved.

6. If CSO feels that his / her submission against allegations / charges has been not heard, he / she can highlight the same in appeal.
7. CSO can mention in his appeal if IA has not followed / observed stipulated guidelines of conducting the Disciplinary Proceedings.
8. CSO should highlight adverse impact of punishment, how much financial loss he has been inflicted upon.
9. CSO should draw the attention of the AA how the punishment awarded to him / her is going to adversely affect his career progression. Impact of rigour of punishment in case of major penalty should be mentioned.
10. CSO should highlight his contribution / achievements / award / incentives / appreciation certificate he has been given for his performance in the past – YEAR WISE.
11. In case any new MATERIAL fact / evidence has come into the picture, which was not known at the time of inquiry AND HAS DIRECT IMPACT on the findings of the inquiry may also be submitted.
12. If in case quantum of loss has also declined due to some recovery or through sale of asset in comparison to considered at the time of inquiry may also be brought into the knowledge of AA.

CSO should mention unblemished track record of ____ years of his / her service to the Bank.

LAST PARAGRAPH:

Sir, it is my humble appeal to your honour to consider that whatever allegations attributed to me are unintentional and happened inadvertently.

I have always been a committed dedicated, sincere and honest officer throughout my career.

I appeal to your honour to commute my punishment awarded by the Disciplinary Authority which is disproportionate.

Sir, I assure I will be extreme careful in future and endeavour my level best to come out up to the expectation of the higher authorities.

I shall remain ever grateful to your good self for sympathetic consideration of my appeal.

Yours faithfully,

(-----name-----)

EC No. _____

Enclosure - Charge Sheet dated _____
SOD dated _____
DA's order dated _____

NOTE:

- Appeal will vary from case to case, hence it should be drafted under the guidance of an experienced senior who has thorough knowledge of disciplinary matters.
- **Appellate Authority has the discretion to reduce / maintain status quo / enhance the punishment awarded by the DA.**
- Appeal should be preferred in genuine cases where CSO genuinely feels his / her punishment is disproportionate and merits consideration by the Appellate Authority.



CHAPTER - 13

BANK BARODA OFFICER EMPLOYEES' (CONDUCT) REGULATIONS 1976

In exercise of the powers conferred by section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Board of Directors of Bank of Baroda in consultation with the Reserve Bank and with the previous sanction of the Central Government hereby makes the following regulations, namely

SHORT TITLE, COMMENCEMENT AND APPLICATION

1. (1) These Regulations may be called Bank of Baroda Officer Employees' (Conduct) Regulations 1976.
- (2) They shall come in to force on 1st October 1976.
- (3) They shall apply to all officer employees of the bank, recruited in India whether working in India or outside India but shall not apply to:
 - (i) The Chairman of the bank;
 - (ii) The Managing Director of the bank; -
 - (iii) Any whole time Director, if any; -
 - (iv) Those who are in casual employment or paid from the contingencies;
 - (v) Award staff; -

DEFINITIONS

2. In these Regulations unless the context otherwise requires-
 - (a) "Act" means the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);
 - (b) "Award staff" means the persons covered by the "Award" as defined in the Industrial Disputes (Banking Companies) Decision Act, 1955 (41 of 1955);-
 - (c) "Bank" means Bank of Baroda;-
 - (d) "Board" means the Board of Directors of the bank; -
 - (e) "Competent authority" means the authority appointed by the Board for the purpose of these regulations; -

(f) "Family" Means-

- (i) In the case of male officer employee, his wife whether residing with him or not, but does not include a legally separated wife and in the case of woman officer employee, her husband whether residing with her or not, but does not include a legally separated husband.
- (ii) Children or step-children of the officer employee, whether residing with the officer employee or not, and wholly dependent on such officer employee but does not include children or step- children of whose custody the officer employee has been deprived of by or under any law; and
- (iii) Any other person related to, by blood or marriage, to the officer employee or to his spouse and wholly dependent upon such officer employee; -

(g) "Government" means the Central Government;

(h) "Managing Director" means the Managing Director of the bank; -

(i) "Officer employee" means a person who holds a supervisory, administrative or managerial post in the bank or any other person who has been appointed and is functioning as an officer of the bank, by whatever designation called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other public sector bank or the Reserve Bank of India or any other organization but shall not include casual, work charged, or contingent staff or the Award staff;-

(j) "Public sector banks" means-

- (i) a corresponding new Bank specified in the First Schedule to the Act; -
- (ii) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955); -
- (iii) a Subsidiary Bank constituted under the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959); and
- (iv) any other bank, which the Central Government may determine to be a public sector bank for the purpose of these regulations, having regard to its manner of incorporation.

GENERAL

3. (1) Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.
- (2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.
- (3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

Provided wherever such directions are oral in nature the same shall be confirmed in writing by his superior official.

- (4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

OBSERVANCE OF SECRECY

4. Every officer employee shall maintain the strictest secrecy regarding the bank's affairs and the affairs of its constituents and shall not divulge directly or indirectly any information of a confidential nature either to a member of the public or to an outside agency or to any other employee of the bank not entitled to such information unless.
 - I. divulging of such information is in-accordance with the law or in-accordance with the practices and usages customary amongst banks; -.
 - II. he is compelled to divulge such information by judicial or other authority; -.
 - III. instructed to do so by a superior officer in the discharge of his duties.

EMPLOYMENT OF MEMBERS OF FAMILY OF BANK OFFICERS IN FIRMS ENJOYING THE BANK'S CLIENTAGE AND GRANT OF FACILITIES TO SUCH CONCERNS

5. (1) No Officer employee shall use his position or influence directly or indirectly to secure employment for any person related, whether by blood or marriage to the employee or to the employee's wife or husband, whether such a person is dependent on the employee or not.
- (2) No officer employee shall, except with the prior permission of the competent authority permit his son, daughter or any other member of his family to accept employment in any private undertaking with which he has

official dealings or in any other undertaking having to his knowledge official dealings with the bank;-

Provided that where the acceptance of the employment cannot await prior permission of the competent authority or is otherwise considered urgent the matter shall be reported to the competent authority within 3 months from the date of the receipt of offer of employment and the employment may be accepted provisionally subject to the permission of the competent authority.

- (3) No officer employee shall, in the discharge of his official duties, knowingly grant or authorize the grant of any advance or banking facilities to or enter into or authorize entering into by or on behalf of the bank any contract, agreement, arrangement or proposal in any matter or give or sanction any contract or loan to any undertaking or person if any member of his family is employed in that undertaking or under that person or if he or any member of his family is employed in that undertaking or under that person or if he or any member of his family has interests in such matters or contracts in any other manner and the officer employee shall refer every such matter or contract or loan to his superior officer and the matter or contract or loan shall thereafter be disposed of according to the instructions of the authority to whom such reference is made.

EXPLANATION: A person is not deemed to have any interest in an undertaking for the purpose of this sub-regulation, if he is only a shareholder having not more than 2 per cent of the paid-up capital of the undertaking in his name.

TAKING UP OUTSIDE EMPLOYMENT

6. (1) No officer employee shall, except with the previous sanction of the bank, engage directly or indirectly in any trade or business or undertake any other employment;-

Provided that an officer employee may, without such sanction, undertake honorary work of a social or charitable nature or occasional work of literary, artistic, scientific, professional, cultural, educational, religious or social character, subject to the condition that his official duties do not thereby suffer but he shall not undertake or shall discontinue such work if so directed by the competent authority after recording reasons for the same.

EXPLANATION: Canvassing by an officer employee in support of the business of insurance agency or commission agency, owned or managed by a member of his family shall be deemed to be a breach of this sub-regulation.

- (2) Every officer employee shall report to the bank if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.
- (3) No officer employee shall, without the previous sanction of the bank except in the discharge of his official duties, take part in the registration, promotion or management of any bank or other company which is required to be registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force or any co-operative society for commercial purposes:

Provided that an officer employee may take part in registration, promotion or management of a co-operative society registered under the Co-operative societies Act, 1912 (2 of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (21 of 1860) or any corresponding law in force.

- (4) No officer employee shall accept any payment, in the form of fee, remuneration, honorarium, and the like in cash or kind for any work done by him for any public body or any private person without the sanction of the competent authority.
- (5) No officer employee shall act as an agent of, or canvass business in favour of, an insurance company or corporation in his individual capacity.

CONTRIBUTION TO NEWSPAPERS, RADIO ETC.

7. (1) No officer employee shall except with the previous sanction of the competent authority, own wholly or in part or conduct or participate in the editing or management of any newspaper or any other periodical publication.
- (2) No officer employee shall except with the previous sanction of the competent authority or except in the bonafide discharge of his duties participate in radio broadcast or contribute any article or write any letter either in his own name or anonymously or in the name of any other person to any newspaper or periodical or make public, or publish or cause to be published or pass on to others any document, paper or information which may come into his possession in his official capacity.
- (3) No officer employee shall except with the previous sanction of the competent authority publish or cause to be published any book or any similar printed matter of which he is the author or not or deliver talk or lecture in public meetings or otherwise:

Provided that no such sanction is, however, required if such broadcast or contribution or publication is of a purely literary, artistic, scientific, professional, cultural, educational, religious or social character.

DEMONSTRATION

8. No officer employee shall engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence.

JOINING OF ASSOCIATIONS PREJUDICIAL TO INTERESTS OF THE COUNTRY

9. No officer employee shall join or continue to be a member of an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or Public order or morality.

GIVING EVIDENCE

- 10.** (1) Save as provided in sub-regulation (3) no officer employee shall except with the previous approval of the competent authority give evidence in connection with any enquiry conducted by any person, committee or authority.
- (2) Where any approval has been accorded under sub-regulation (1) no Officer employee giving such evidence shall criticise the policy or any action of the Government or of a State Government or of the Bank.
- (3) Nothing in this regulation shall apply to any evidence given-
- (a) at an enquiry before an authority appointed by the Government, State Government, Parliament or a State Legislature: or
 - (b) in any judicial enquiry: or
 - (c) at any departmental enquiry ordered by the competent authority.

PUBLIC DEMONSTRATION IN HONOUR OF BANK OFFICERS

- 11.** (1) No officer employee shall except with the previous sanction of the competent authority, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour, or in the honour of any other employee of the bank:

Provided that nothing in this sub-regulation shall apply to-

- (a) a farewell entertainment of a substantially private and informal character held in honour of the officer employee or any other employee of the bank on the occasion of his retirement or transfer of any person who has recently quit the service of the bank: and
 - (b) the acceptance of simple and inexpensive entertainment arranged by association of employees of the bank.
- (2) (a) No officer employee shall either directly or indirectly exercise pressure or influence on any employee of the bank to induce or compel him to subscribe towards any farewell entertainment.
- (b) No officer employee shall collect subscription for farewell entertainment from any intermediate or lower grade employee for the entertainment of any employee belonging to any higher grade.

SEEKING TO INFLUENCE

12. No officer employee shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the bank.

ABSENCE FROM DUTY

13. (1) No office employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the competent authority:

Provided that in the case of unavoidable circumstances where availing of prior permission is not possible or is difficult, such permission may be obtained later subject to the satisfaction of the competent authority that such a permission could not have been obtained.

- (2) No officer employee shall ordinarily absent himself in case of sickness or accident without submitting a proper medical certificate:

Provided that in the case of temporary indisposition or sickness of a casual nature, the production of medical certificate may, at the absolute discretion of the competent authority, be dispensed with.

ACCEPTANCE OF GIFTS

14. (1) Save as otherwise provided in these regulations, no officer employee shall accept or permit any member of his family or any person acting on his behalf to accept any gift.

Explanation: The expression “gift” shall include free transport, boarding, lodging or other service or any other pecuniary advantage when provided by any person other than a near relative or a personal friend having no official dealings with the officer employee.

Note: A casual meal, lift or other social hospitality shall not be deemed to be a gift.

- (2) On occasions such as marriages, anniversaries, funerals or religious functions, when the making of gifts is in conformity with the prevailing religious or social practice, an officer employee may accept gifts from his near relatives but he shall make a

report to the competent authority if the value of the gifts exceeds Rs.500/

- (3) On such occasions as specified in sub-regulation (2) an officer employee may also accept gifts from his personal friends having no official dealings with him but he shall make a report to the competent authority if the value of such gifts exceed Rs.200/-.
- (4) In any other case, the officer employee shall not accept any gifts without the sanction of the competent authority if the value of the gifts exceeds Rs.75/-.

Provided that when more than one gift has been received from the same person or concern within a period of 12 months, the matter shall be reported to the competent authority if the aggregate value thereof exceeds Rs.500/-.

Note: As a normal practice an officer employee shall not accept any gift from any person or institution having official dealings with the officer employee.

- (5) No Officer employee shall
 - (a) give or take or abet the giving or taking of dowry or
 - (b) demand, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry.

EXPLANATION: For the purposes of this Regulation 'dowry' has the same meaning as in the Dowry Prohibition Act, 1961 (28 of 1961)

LENDING AND BORROWINGS

15. No officer employee shall, in his individual capacity-
 - (i) borrow or permit any member of his family to borrow or otherwise place himself or a member of his family under a pecuniary obligation to broker or a money lender or a subordinate employee of the bank or any person, association of persons, firm, company or institution, whether incorporated or not, having dealings with the bank:
 - (ii) buy or sell stocks, shares or securities of any description without funds to meet the full cost in the case of purchase of scripts or delivery in the case of a sale:
 - (iii) incur debts, at a race meeting:
 - (iv) lend money in private capacity to a constituent of the

bank or have personal dealings with such constituent in the purchase or sale of bills of exchange, Government paper or any other securities; and

- (v) guarantee in his private capacity the pecuniary obligations of another person or agree to indemnify in such capacity another person from loss except with the previous permission of the competent authority:

Provided further that an officer employee may give to or accept from a relative or personal friend a purely temporary loan of a small amount free of interest, or operate a credit account with a bonafide tradesman or make an advance of pay to his private employee:

Provided further that an officer employee may obtain a loan from a co-operative credit society of which he is a member or stand as a surety in respect of a loan taken by another member from a co-operative credit society of which he is a member.

ADVANCE DRAWAL OF SALARY

16. No officer employee shall, draw his salary in advance or overdraw his account with the bank against security or otherwise, without the previous sanction of the competent authority.

SUBSCRIPTIONS

17. No officer employee shall except with the previous sanction of the competent authority, ask for or accept contributions to or otherwise associate himself with the raising of any funds or other collections in cash or in kind in pursuance of any objective whatsoever.

SPECULATION IN STOCKS AND SHARES AND INVESTMENTS

18. No officer employee shall speculate in any stock, share or securities or commodities or valuables of any descriptions or shall make investments, which are likely to embarrass or influence him in the discharge of his duties:

Provided that nothing in this regulation shall be deemed to prohibit an officer employee from making bonafide investment of his own funds in such securities as he may wish to buy.

Note: Frequent purchase or sale or both of shares or securities or other investments shall be deemed to be speculation for the purpose of this regulation.

INDEBTEDNESS

19. An officer employee shall so manage his private affairs so as to avoid habitual indebtedness or insolvency. An officer employee against whom any legal proceedings are instituted for the recovery of any debt due from

him or for adjudging him as an insolvent shall forthwith report the full facts of the legal proceedings to the bank.

MOVABLE/IMMOVABLE AND VALUBALE PROPERTY

20. (1) Every officer employee, on his first appointment, and every other employee of the bank, on promotion to a post of an office employee in the bank, shall submit return of his assets and liabilities giving full particulars regarding-

- (a) the immovable property inherited by him or owned or acquired by him or held by him on lease or mortgage, either in his name or in the name of any members of his family or in the name of any other person:
- (b) shares, debentures and cash including bank deposits inherited by him or similarly owned or acquired or held by him:
- (c) other movable property inherited by him or similarly owned or acquired or held by him; and
- (d) debts and other liabilities incurred by him directly or indirectly:

Provided that in the case of an officer employee who is already in service in the bank on the date these regulations come into force, shall submit a return in terms of this regulation within three months of coming into force of these regulations, the return being with reference to the assets and liabilities as enumerated above of the officer employee on the date these regulations come into force.

- (2) Every officer employee shall every year submit a return of his movable, immovable and valuable property including liquid assets like shares, debentures as on 31st march of that year to the bank before 30th day of June of that year.
- (3) No officer employee shall except with the previous knowledge of the competent authority acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the competent authority shall be obtained by the officer employee if any such transaction is-

- (a) with a person having official dealings with the officer employee;

(b) otherwise than through a regular or reputed dealer.

- (4) Every officer employee shall report to the competent authority every transaction concerning movable property owned or held by him either in his own name or in the name of a member of his family if the value of such property exceeds Rs.25,000/-.

Provided that the previous sanction of the competent authority shall be obtained if any such transactions is-

(a) with a person having official dealings with the officer employee or

(b) otherwise than through a regular or reputed dealer.

- (5) The bank may at any time, by general or special order, require an officer employee to furnish within a period to be specified in the order a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order.

Such a statement shall, if so required by the bank, include the details of the means by which or the sources from which such property was acquired.

VINDICATION OF ACTS AND CHARACTER OF AN OFFICER EMPLOYEE

- 21.** No officer employee shall, except with the previous sanction of the bank have recourse to any court or to the press for the vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character:

Provided that nothing in this regulation shall be deemed to prohibit an employee from vindication his private character or any act done by him in his private capacity and where any action for vindicating his private character or any act done by him in private capacity is taken, the officer employee shall submit a report, to his immediate superior within a period of three months from the date such action is taken by him

RESTRICTIONS REGARDING MARRIAGE

- 22. (1)**
- (i) No officer employee shall enter into, or contract a marriage with a person having a spouse living and
 - (ii) No officer employee having a spouse living, shall enter into, or contract a marriage with any person:

Provided that the bank may permit an officer employee to enter into, or contract any such marriage as is referred to in clause (i) or clause (ii) if it is satisfied that-

- (a) Such marriage is permissible under the personal law applicable to such officer employee and the other party to the marriage; and
- (b) there are other grounds for so doing.

(2) An officer employee who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Bank.

CONSUMPTION OF INTOXICATING DRINKS AND DRUGS

23. An officer employee shall:

- (a) strictly abide by any law relating to intoxicating drinks or drugs in force in any area in which he may happen to be for the time being;
- (b) not be under the influence of any intoxicating drink or drugs during the course of his duty, and shall also take care that the performance of his duties at any time is not affected in any way by influence of such drink or drug.
- (c) refrain from consuming any intoxicating drinks or drug in a public place;
- (d) not appear in a public place in a state of intoxication;
- (e) not use any intoxicating drink or drug to excess.

EXPLANATION: For the purpose of this rule 'public place' means any place or premises (including clubs even exclusively meant for members where it is permissible for the member to invite non-member as guests, bars and restaurants, conveyance) to which the public have or are permitted to have access, whether on payment or otherwise;

SAVINGS: Save and except in so far it is expressly provided here above in these regulations nothing contained in any other rules/regulations in force by virtue of sub-section (13) of section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 shall be affected by these Regulations.

ACTS OF MISCONDUCT

24. A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank of Baroda Officer Employee's (Discipline and Appeal) Regulations, 1976

24A Prohibition of Sexual Harassment of Working Women:

- (1) No officer employee shall indulge in any act of sexual harassment of any woman at her work place.

- (2) Every officer employee who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

EXPLANATION: For the purpose of this regulation, “sexual harassment” includes such unwelcome sexually determined behaviour (whether directly or otherwise) as-

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

INTERPRETATION

- 25.** If any question arises as to the application or interpretation of any of these regulations, it shall be referred to the Board for its decision

REPEAL AND SAVING

- 26.** (1) Every rule, regulation, bye-law or every provision in any agreement or resolution corresponding to any of the regulations herein contained and in force immediately before the commencement of these regulations and applicable to the officer employees to whom these regulations are applicable is hereby repealed;
- (2) Notwithstanding such repeal any order made or action taken under the provisions so repealed shall be deemed to be made or taken under the corresponding provisions of these regulations.

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ESTD. 1964

CHAPTER - 14

BANK OF BARODA OFFICER EMPLOYEES' (DISCIPLINE AND APPEAL) REGULATIONS, 1976

In exercise of the powers conferred by section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Board of Directors of Bank of Baroda in consultation with the Reserve Bank and with the previous sanction of the Central Government, hereby makes the following regulations, namely:

1. SHORT TITLE AND COMMENCEMENT

1. (i) These Regulations may be called Bank of Baroda Officer Employees' (discipline and appeal) Regulations, 1976
- (ii) They shall come into force on 1st October, 1976.

2. APPLICATION

2. These Regulations shall apply to all officer employees of the bank but shall not apply to-
 - a) the Chairman of the bank;
 - b) the Managing Director;
 - c) any whole-time Director, if any;
 - d) those who are in casual employment or paid from contingencies;
 - e) the Award staff; and
 - f) the officers on contract.

3. DEFINITIONS

3. In these regulations, unless the context otherwise require-
 - (a) "Act" means the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).
 - (b) "Appellate Authority" means the authority specified in the schedule to dispose of appeals.
 - (c) "Award staff" means the persons covered by the "award" as defined in the industrial disputes (Banking Companies) Decision Act, 1955 (41 of 1955)
 - (d) "Bank" means Bank of Baroda;
 - (e) "Board" means the Board of Directors of the Bank;
 - (f) "Competent Authority" means the Authority appointed by the Board for the purposes of these regulations;
 - (g) "Disciplinary Authority" means the authority appointed by the Board for the purposes of these regulations;

- (h) "Government" means the Central Government:
- (i) "Managing Director" means the managing director of the Bank:
- (j) "Officer employee" means a person who holds a supervisory administrative or managerial post in the Bank or any other person who has been appointed and is functioning as an officer of the bank by whatever designations called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other public sector bank or the Reserve Bank of India or any other organisation, but shall not include casual work charged for contingent staff or the award staff:
- (k) "Public financial institutions" means:
- I. the Industrial Credit and Investment Corporation of India Limited, a company owned and registered under the Companies Act, 1956 (1 of 1956)
 - II. the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act 1948 (15 of 1948)
 - III. the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act 1964 (18 of 1964)
 - IV. the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act 1956 (31 of 1956)
 - V. the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963):
 - VI. any other financial institution which is declared by the Central Government by notification to be a public financial institution;
- (l) "Public sector Bank" means
- I. A corresponding new Bank specified in the First Schedule of the Act.
 - II. A corresponding new Bank specified in the First Schedule to the Banking Companies (Acquisition & Transfer of undertakings) Act 1980 (40 of 1980)
 - III. The State Bank of India constituted under the State Bank of India Act 1955 (23 of 1955)
 - IV. A subsidiary Bank constituted under the State bank of India (subsidiary Banks) act 1959 (38 of 1959); and
 - V. Any other bank which the Central Govt., may determine to be a public sector Bank for the purpose of these Regulations having regard to its manner of incorporation.
- (m) "Public servant" means a person as defined as public servant in section 21 of the Indian Penal Code (45 of 1860);
- (n) "Reviewing Authority" means the authority specified in the Schedule;
- (o) "Schedule" means the Schedule appended to these regulations.

4. PENALTIES

The following are the penalties, which may be imposed on an officer employee, for acts of misconduct or for any other good and/or sufficient reasons.

MINOR PENALTIES

- (a) Censure,
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;
- (e) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension.

MAJOR PENALTIES

- (f) Save as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (g) Reduction to a lower grade or post;
- (h) Compulsory retirement;
- (i) Removal from service, which shall not be a disqualification for future employment;
- (j) Dismissal, which shall ordinarily be a disqualification for future employment.

Explanation: The following shall not amount to a penalty within the meaning of this regulation namely:-

- (i) withholding of one or more increments of an officer employee on account of his failure to pass a prescribed departmental test or examination in accordance with the terms of appointment to the post, which he holds.
- (ii) Stoppage of pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;
- (iii) non promotion, whether in an officiating capacity or otherwise of an officer employee, to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

- (iv) reversion to a lower grade or post, of an officer employee officiating in a higher grade or post, on the ground that he is considered, after trial to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;
- (v) reversion to his previous grade or post, of an officer employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment or rules or orders governing such probation,
- (vi) reversion of an officer employee to his parent organization in case he had come on deputation;
- (vii) termination of the service-
 - (a) of an officer employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment, or the rules or orders governing such probation;
 - (b) of an officer employee appointed in a temporary capacity otherwise than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;
 - (c) of an officer employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and
 - (d) of an officer employee on abolition of post;
- (viii) retirement of an officer employee on his attaining the age of superannuation in accordance with the rules and orders governing such superannuation.
- (ix) termination of employment of a permanent officer employee by giving 3 months' notice or on payment of 3 months' pay and allowances in lieu of notice;
- (x) termination of employment of an officer employee on medical grounds, if he is declared unfit to continue in bank's service by the bank's medical officer.

5. AUTHORITY TO INSTITUTE DISCIPLINARY PROCEEDING AND IMPOSE PENALTIES

- 5 (1) The Managing Director or any other authority empowered by him by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the bank.
- (2) The disciplinary authority may himself institute disciplinary proceedings.
- (3) The disciplinary authority or any authority higher than it, may impose any of the penalties specified in regulation 4 on any officer employee.

6. PROCEDURE FOR IMPOSING MAJOR PENALTIES

- 1. No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j), of regulation 4 shall be made except after an enquiry is held in accordance with this Regulation.

2. Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an officer employee, it may itself enquire into, or appoint any other person who is, or has been a public servant (hereinafter referred to as the inquiring authority) to inquire into the truth thereof.

Explanation: When the Disciplinary Authority itself holds the inquiry any reference in sub-regulation (8) to sub regulation (21) to the inquiring authority shall be construed as reference to Disciplinary Authority.

3. Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a Statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of Statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

"Provided that wherever it is not possible to furnish the copies of documents, disciplinary authority shall allow the officer employee inspection of such documents within a time specified in this behalf"

4. On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under sub-regulation (2) an Inquiring Authority for the purpose.

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record findings on each such charge.

5. The Disciplinary Authority shall, where it is not the inquiring authority, forward to the inquiring authority:

- (i) a copy of the articles of charges and statements of imputations of misconduct or misbehaviour;
- (ii) a copy of the written statement of defence, if any, submitted by the officer employee;
- (iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;
- (iv) a copy of statements of the witnesses, if any
- (v) evidence proving the delivery of articles of charge under sub-regulation (3);
- (vi) a copy of the order appointing the 'presenting officer' in terms of sub- regulation (6).

6. Where the Disciplinary Authority itself inquires or appoints an Inquiring authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.
7. The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner, or the Disciplinary Authority having regard to the circumstances of the case, so permits. The Officer employee shall not take the assistance of any other officer employee who has two pending disciplinary cases on hand, in which he has to give assistance.
8. (a) The inquiring Authority shall by notice in writing specify the day on which the officer employee shall appear in person before the inquiring authority.
(b) On the date fixed by the Inquiring Authority, the officer employee shall appear before the Inquiring Authority at the time, place and date specified in the notice.
(c) The Inquiring Authority shall ask the officer employee whether he pleads guilty or has any defence to make and if he pleads guilty to any the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.
(d) The inquiring Authority shall record a finding of guilt in respect of those articles of charge to which the officer employee concerned pleads guilty.
9. If the officer employee does not plead guilty, the inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority
10. (a) The Inquiring Authority shall, where the officer employee does not admit or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be proved.
(b) The Inquiring Authority shall also record an order that the officer employee may for the purpose of preparing his defense
 - (i) inspect within 5 days of the order or within such further time not exceeding five days as the Inquiring Authority may allow the documents listed;
 - (ii) submit a list of documents and witnesses that he wants for the Inquiry
 - (iii) be supplied with copies of statements of witnesses, if any, recorded earlier, and the Inquiring Authority shall furnish such copies not later than three days before the commencement of

- examination of the witnesses by the Inquiring Authority;
- (iv) give a notice within 10 days of the order or within such further time not exceeding 10 days as the Inquiring Authority may allow for the discovery or production of documents referred to in item (ii).

NOTE: The relevancy of the documents and the examination of the witnesses referred to in Item (ii) shall be given by the officer employee concerned.

11. The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.
12. On the receipt of the requisition under sub-regulation (11), the authority having the custody or possession of requisitioned documents, shall arrange to produce the same before the inquiring Authority on the date, place and time specified in the requisition:
- Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Bank. In that event, it shall inform the Inquiring Authority accordingly.
13. On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the Presenting Officer shall be examined by the presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring Authority. The inquiring Authority may also put such questions to the witnesses, as it thinks fit.
14. Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such case the officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the officer employee to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

15. When the case in support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.
16. The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers, the witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority
17. The Inquiring Authority may after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.
18. The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the officer employee or permit them to file, written briefs of their respective case within -15- days of the date of completion of the production of evidence, if they so desire.
19. If the officer employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these regulations, the Inquiring Authority may hold the inquiry ex-parte
20. Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross examine and re-examine any such witnesses as herein before provided.

21. (i) On the conclusion of the inquiry the Inquiring Authority shall prepare a report which shall contain the following:
- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehavior;
 - (b) a gist of the defence of the officer employee in respect of each article of charge;
 - (c) an assessment of the evidence in respect of each article of charge;
 - (d) the findings on each article of charge and the reasons there for

Explanation: If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any article of charge different from the original article of charge it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge

- (ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include-
- (a) the report of the inquiry prepared by it under clause (i);
 - (b) the written statement of defence, if any, submitted by the officer employee referred in to in subregulation (15);
 - (c) the oral and documentary evidence produced in the course of the inquiry;
 - (d) written briefs referred to in sub-regulation (18), if any; and
 - (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

7. ACTION ON THE INQUIRY REPORT

1. The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

2. The Disciplinary Authority, shall if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
3. If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.
4. If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.

8. PROCEDURE FOR IMPOSING MINOR PENALTIES

1. Where it is proposed to impose any of the minor penalties specified in clauses (a) to (e) of regulation 4, the officer employee concerned shall be informed in writing of the imputations of Lapses against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the Disciplinary Authority and the defence statement, if any, submitted by the officer employee shall be taken into consideration by the Disciplinary Authority before passing orders.
2. Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in regulation 6.
3. The record of the proceedings in such cases shall include-
 - I. a copy of the statement of imputations of lapses furnished to the officer employee;
 - II. the defence statement, if any, of the officer employee; and
 - III. the orders of the Disciplinary Authority together with the reasons there for.

9. COMMUNICATION OF ORDER

Orders made by the Disciplinary Authority under regulation 7 or regulation 8 shall be communicated to the officer employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.

10. COMMON PROCEEDINGS

Where two or more officer employees are concerned in a case, the authority competent to impose a major penalty on all such officer employees may make an order directing that disciplinary proceedings against all of them may be taken in a common proceeding.

11. SPECIAL PROCEDURE IN CERTAIN CASES

Notwithstanding anything contained in regulation 6 or in regulation 7 or in regulation 8 the Disciplinary Authority may impose any of the penalties specified in regulation 4 if the officer employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial.

Provided that the Officer Employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made.

12. SUSPENSION

- (1) An officer employee may be placed under suspension by the competent authority-
 - (a) Where a disciplinary proceeding against him is contemplated or is pending;
or
 - (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.
- (2) An officer employee shall be deemed to have been placed under suspension by an order of the competent authority-
 - (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
 - (b) with effect from the date of conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation: The period of forty-eight hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent period of imprisonment, if any, shall be taken into account.

CLARIFICATION: It shall be the duty of the officer concerned who may have been arrested / detained for any reason, to intimate the fact of his arrest / detention and the circumstances connected thereto, to his immediate superiors / branch manager / head of the department/office promptly, even though he might have been subsequently released on bail or otherwise. Failure on the part of the officer employee to so inform his superiors, will be regarded as suppression of material information, and may render him liable to disciplinary action on this ground alone, apart from the action that may be called for. (REF: CO: BR: 92: 81 DATED 13.06.2000)

- (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any direction, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the Disciplinary Authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty

of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

- (5) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.
- (b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority, which made or is deemed to have made the order.

13. LEAVE DURING SUSPENSION

13 No leave shall be granted to an officer employee under suspension

14. SUBSISTENCE ALLOWANCE DURING SUSPENSION

- (1) An officer employee who is placed under suspension shall, during the period of such suspension and subject to sub-regulation (2) to (4) be entitled to receive payment from the bank by way of subsistence allowance on the following scale, namely: -

(a) Basic Pay:

- I. For the first three months of suspension 1/3rd of the basic pay which the officer employee was receiving on the date prior to the date of suspension irrespective of the nature of enquiry.
- II. For the subsequent period after 3 months from the date of suspension –
 - a. where the enquiry is held departmentally by the bank, 1/2 of the basic pay, the officer employee was drawing on the date prior to the date of suspension.
 - b. Where the enquiry is held by an outside agency, 1/3 of the basic pay which the officer employee was drawing on the date prior to the date of suspension for the next three months and 1/2 of the basic pay which the officer employee was drawing on the date prior to the date of suspension for the remaining period of suspension.

(b) Allowances:

1. For the entire period of suspension, dearness allowance and other allowances excepting conveyance allowance, entertainment allowance and special allowance will be calculated on the reduced pay as specified in items (i) and (ii) of clause (a) and at the prevailing rates or at rates applicable to similar category of officers
2. During the period of suspension an officer employee shall not be entitled to occupation of a rent-free house or free use of the bank's

car or receipt of conveyance or entertainment allowance or special allowance.

3. No officer employee of the bank shall be entitled to receive payment of subsistence allowance unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.
4. If, during the period of suspension an officer employee retires by reason of his attaining the age of superannuation, no subsistence allowances shall be paid to him from the date of his retirement.

15. PAY, ALLOWANCE AND TREATMENT OF SERVICE ON TERMINATION OF SUSPENSION

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct:

Provided that the payment of allowances under this subregulation shall be subject to all other conditions to which such are admissible allowances

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3) (a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2) the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

16. EMPLOYEES ON DEPUTATION FROM THE CENTRAL GOVERNMENT, STATE GOVERNMENT, ETC.

(1) Where an order of suspension is made or disciplinary proceeding is taken against an officer employee, who is on deputation to the bank from the Central Government or the State Government, or Reserve Bank of India or another public sector bank or banking company etc. or a public financial institution or an institution wholly or substantially owned by the Reserve Bank of India or a public financial institution or public undertaking, or a local authority, the Authority Lending his services (hereinafter referred to as the "Lending

Authority") shall forthwith be informed of the circumstances leading to the order of his suspension, or the commencement of the disciplinary proceedings, as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against the officer employee-

(a) if the Disciplinary Authority is of the opinion that any of the minor penalties should be imposed on him it may pass such orders on the case, as it deems necessary after consultation with the Lending Authority:

Provided that in the event of a difference of opinion between the Disciplinary Authority and the Lending Authority, the services of the employee shall be placed at the disposal of the Lending Authority.

(b) if the Disciplinary Authority is of the opinion that any of the major penalties should be imposed on him it should replace his services at the disposal of the Lending Authority and transmit to it the proceedings of the enquiry for such action as it deems necessary.

(3) If the officer employee submits an appeal against an order imposing a minor penalty on him under clause (a) of sub- regulation (2), it will be disposed of after consultation with the Lending Authority:

Provided that if there is a difference of opinion between the Appellate Authority and the Lending Authority, the services of the officer employee shall be placed at the disposal of the Lending Authority, and the proceeding of the case shall be transmitted to that authority for such action as it deems necessary.

17. APPEAL

(1) An officer employee may prefer an appeal to the Appellate Authority within 45 days from the date of receipt of the order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in regulation 12.

Provided that the Appellate authority may entertain the appeal after expiry of the said period, if it is satisfied that the applicant has sufficient cause for not preferring appeal in time.

(1) An appeal shall be presented to the Appellate Authority with a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies but shall not contain any disrespectful or improper language, and shall be complete in itself.

(2) The authority which made the order appealed against shall on receipt of a copy

of the appeal from the appellant, forward the same with its comments thereon together with the relevant records to the Appellate Authority within a period not exceeding forty five days from the date of receipt of the appeal.

- (3) The Appellate authority shall on receipt of the comments and records of the case from the authority whose order is appealed against, consider whether the order of suspension/ findings are justified or whether penalty is excessive or inadequate and pass appropriate orders. The Appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty/ suspension or remitting the case to the authority which imposed the penalty or to any other authority which imposed the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that:

- (i) If the enhanced penalty which the Appellate Authority proposed to impose is a major penalty specified in clauses (f), (g), (h), (i), and (j) of regulation 4 and an inquiry as provided in regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the inquiry and pass such orders as it may deem proper:
- (ii) if the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in regulation 6, the Appellate Authority shall give a show-cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer employee.
- (5) The Appellate authority shall dispose of the appeal within a period of ninety days from the date of its receipt from the appellant:

Provided that the time limit specified in this regulation shall not apply to cases having a vigilance angle and where major/minor penalty proceedings against the officer employee have commenced on recommendations of the Police or Central Bureau of Investigation or Central Vigilance Commission, as the case may be, investigating the matter.

- (6) The cases lying pending over ninety days shall be reviewed periodically by the Appellate authority and reasons for non-disposal of the cases shall be recorded in writing.

18. REVIEW

Notwithstanding anything contained in these regulations, the Reviewing Authority may at any time within six months of the date of the final order, either on his own motion or otherwise review the said order, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has

come or has been brought to his notice and pass such orders thereon as it may deem fit.

Provided that –

- (i) If any enhanced penalty, which the Reviewing Authority proposes to impose, is a major penalty specified in clauses (f), (g), (h), (i), or (j) of regulation 4 and an enquiry as provided under regulation 6 has not already been held in the case, the Reviewing Authority shall direct that such an enquiry be held in accordance with the provisions of regulation 6 and thereafter consider the record of the enquiry and pass such orders as it may deem proper.
- (ii) if the Reviewing Authority decides to enhance the punishment but an enquiry has already been held in accordance with the provisions of regulation 6, the Reviewing Authority shall give show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass an order after taking into account the representation, if any, submitted by the officer employee.

19. CENTRAL VIGILANCE COMMISSION – CONSULTATION

The Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle

20. SERVICE OF ORDERS, NOTICES, ETC.

Every order, notice and other process made or issued under these regulations shall be served in person on the officer employee concerned or communicated to him by registered post at his last known address

21. POWER TO RELAX TIME LIMIT AND TO CONDONE DELAY

Save as otherwise expressly provided in these regulations, the authority competent under these regulations to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay.

22. REPEAL AND SAVING

- (1) Every rule, regulation, bye-law or every provision in any agreement or a resolution corresponding to any of the regulations herein contained and in force immediately before the commencement of these regulations and applicable to the officer employee is hereby repealed.
- (2) Notwithstanding such repeal-
 - (a) any order made or action taken under the provisions so repealed shall be deemed to have been made or taken under the corresponding provisions of these regulations:

- (b) nothing in these regulations shall be construed as depriving any person to whom these regulations apply, of any right of appeal, which had accrued to him under any of the provisions so repealed;
- (c) an appeal pending at the commencement of these regulations against an order made before the commencement of these regulations shall be considered and orders thereon shall be made, in accordance with these regulations;
- (d) any proceedings which have already been initiated but not yet been completed at the commencement of these regulations shall be continued and disposed as far as may be, in accordance with the provisions of these regulations, as if such proceedings were proceedings under these regulations.



CHAPTER - 15

BANK OF BARODA OFFICER EMPLOYEE (ACCEPTANCE OF JOBS IN PVT.SECTOR CONCERNS AFTER RETIREMENT) REGULATIONS 1980

Short Title

1. i) These Regulations, may be called Bank of Baroda Officer Employees (Acceptance of Job in Private Sector Concerns after Retirement) Regulations 1980
- ii) These Regulations shall come into force on 11th August 1981.

Application

2. These Regulations shall apply to all officer employees of the Bank except
 - i. Chairman of the Bank
 - ii. Managing Director of the Bank
 - iii. Whole time Director, if any
 - iv. Those who are in casual employment or paid from contingency
 - v. The Award Staff
 - vi. Officer on Contract

Definitions

3. In these Regulations, unless the context otherwise required:

'Bank' means Bank of Baroda;

'Board' means Board of Directors of Bank of Baroda;

'Competent Authority' means the authority empowered by the board by any general or special rule order to discharge the functions or the use of the powers specified in such rule or order;

'Employment in Private Concerns' means an employment in any capacity including that of an agent under a company, co-operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and also includes a directorship of such a company and partnership of such firms but does not include employment under a body corporate wholly or substantially held or controlled by government.

'Officer Employee' means a person who has held a supervisory, administrative or managerial post in the bank or any other person who was appointed and or has functioned as an officer of the bank at the time of his retirement by whatever designation called.

4.(1) If a person who immediately before his retirement was holding the post of an officer employee and wishes to accept any job in private concern before the

*expiry of one year from the date of his retirement, shall obtain the previous sanction of the bank to such acceptance.*²⁸

(2) When an officer employee has applied for previous sanction to the Board or as the case may be, to the competent authority under sub-regulation (i), the Board or the case may be the competent authority shall either permit the employee to take up the employment in the private concern or refuse such permission after giving the employee an opportunity of being heard.

Provided that where the Board or the competent authority does not communicate its permission or refusal to the applicant within -90-days of the receipt of the application by it, the Board or Competent authority shall be deemed to have permitted the employee to take up the employment in the private concern.

Provided further that where the Board or the competent authority has called for further information or clarification from the employees, the period taken by the employee in furnishing the required information or clarification shall be excluded for the purpose of computing the aforesaid period of -90-d

Savings

5. These Regulations are without prejudice to the continuance of the Regulations, if any, already in force by virtue of section 19(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970²⁹ except in so far as it is expressly provided under these regulations.

The amendment to Regulation 4(1) above has made it necessary to make corresponding changes in regulation 50(1) and 50(6) of Bank of Baroda (Employees') Pension Regulations 1995.³⁰

²⁸ The amended regulation has been notified in the gazette of Government of India on 07.01.2014 after being approved by the Board of Directors of the Bank vide its resolutions no BR-35 dt.20.07.2013. The amended regulation came into effect on day on which it has been notified in the gazette of India.

²⁹ Section 19(3) Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970) states that until any regulation is made under Section (1), the articles of association of the existing bank and every regulation, rule or bye-law or order made by the existing bank shall, if in force at commencement of this Act, be deemed to be the regulations made under sub-section (1) and shall have effect accordingly and any reference therein to any authority of the existing bank shall be deemed to be a reference to the corresponding authority of the corresponding new bank and until any such corresponding authority is constituted under this Act, shall be deemed to refer to the custodian.

³⁰ The corresponding amendment to Regulation 50(1) and (6) of Bank of Baroda (Employees') Pension Regulations 1995 has come into effect 12.03.2014. The amended regulation 50(1) states that if a pensioner who immediately before his retirement was holding the post of an officer and wishes to accept any commercial employment before the expiry of one year from the date of his retirement, he shall obtain the previous sanction of the Bank to such acceptance.

The amended regulation 50(6) states that if any pensioner takes up any commercial employment at any time before the expiry of one year from the date of his retirement without the prior permission of the Bank or commits a breach of any condition subject to such permission to take up any commercial employment has been granted to him under this regulation, it shall be competent for the Bank to declare by order in writing and for reasons to be recorded therein that he shall not be entitled to the whole or such part of the pension and for such periods as may be specified in the order;

Provided that no such order shall be made without giving the pensioner concerned an opportunity to show cause against such declaration

Provided further that in making any order under this sub-regulation, the Bank shall have regard to the following factors namely

- i. The financial circumstances of the pensioner concerned;
- ii. The nature of, and the emoluments from, the commercial employment taken;
- iii. Any other relevant factor.

CHAPTER - 16

AMENDMENT IN SCHEDULE OF DISCIPLINARY AUTHORITIES UNDER BANK OF BARODA OFFICER EMPLOYEES' (DISCIPLINE & APPEAL) REGULATION, 1976 UNDER CIRCULAR NO BCC:DP:113:563 DATED 09.03.2021, BCC:DP:113:697 DATED 26.03.2021

Upon amalgamation of Dena Bank and Vijaya Bank into Bank of Baroda and for smooth functioning of Disciplinary Action proceedings in the amalgamated organization, Bank reviewed the complete process of Disciplinary Proceedings, accordingly Disciplinary Authority for each cadre of employee was advised vide circular number BCC:DP:111:SK:RM:1095 dated 11.06.2019.

The Disciplinary Authorities (DA), Appellate Authority (AA) and Reviewing Authority (RA) for respective cadre of employees are as under:

Disciplinary Authority / Competent Authority						
Category of employee	Award Staff / Officer			Retired Officer		
	Disciplinary Authority	Appellate Authority	Reviewing Authority	Disciplinary Authority	Appellate Authority	Reviewing Authority
Award Staff	Regional Head not below the rank of Assistant General Manager (SMG / S-V)	Deputy Zonal Head not below the rank of Deputy General Manager (TEG / S-VI)	MD & CEO	General Manager (DP), BCC, Mumbai	Executive Director	-----
Officers in Scale I & II	Deputy Zonal Head not below the rank of Deputy General Manager (TEG / S-VI)	Executive Director	MD & CEO	General Manager (DP), BCC, Mumbai	Executive Director	MD & CEO
Officers in Scale III	Zonal Head not below the rank of General Manager (TEG / S-VII)	Executive Director	MD & CEO	General Manager (DP), BCC, Mumbai	Executive Director	MD & CEO
Officers in Scale IV	Zonal Head not below the rank of General Manager (TEG / S-VII)	Executive Director	MD & CEO	Executive Director	MD & CEO	Board
Officers in Scale V	General Manager (DP)	Executive Director	MD & CEO	Executive Director	MD & CEO	Board
Officers in Scale VI	Executive Director	MD & CEO	Board	MD & CEO	Committee of the Board	Board
Officers in Scale VII	MD & CEO	Committee of the Board	Board	MD & CEO	Committee of the Board	Board

Further, **Competent Authority for calling Explanation** of concerned employees / ex-employees has also been modified vide circular number BCC:DP:113:563 dated 09.03.2021 and BCC:DP:113:697 dated 26.03.2021, the same is as under

Sr. No.	Category	Branch / Office	Competent Authority
1	Award Staff [Existing as well as Ex- employee]	Branch / Office under purview of Regional Office for administrative purpose	Deputy Regional Head not below the rank of CM in Scale IV
		Branch / Office under purview of Zonal Office for administrative purpose	In-charge of HRM at Zonal Office not below the rank of CM in Scale IV
		ZIAD / CIAD	In-charge of Office Administration at ZIAD / CIAD not below the rank of CM in Scale IV
		Baroda Apex Academy	In-charge of Office Administration at Apex Academy not below the rank of CM in Scale IV
		Corporate Office at Mumbai	In-charge of HRM, Office Administration, Corporate Office, Mumbai not below the rank of CM in Scale IV
		Head Office, Baroda	In-charge of HRM, Office Administration, Head Office, Baroda not below the rank of CM in Scale IV
2	All Officers in JMG/S-I and MMG/S-II [Existing as well as Ex- employee]	Branch / Office under purview of Region for administrative purpose	Regional Head not below the rank of AGM in Scale V
		ZIAD / CIAD	In-charge of Office Administration at ZIAD / CIAD not below the rank of AGM in Scale V
		Baroda Apex Academy	In-charge of Office Administration at Apex Academy not below the rank of AGM in Scale V
		Corporate Office at Mumbai	In-charge of HRM, Office Administration, Corporate Office, Mumbai not below the rank of AGM in Scale V
		Head Office, Baroda	In-charge of HRM, Office Administration, Head Office, Baroda not below the rank of AGM in Scale V
		RRBs / Subsidiaries / Associate Banks in the Region (on deputation)	Regional Head not below the rank of AGM in Scale V where these offices are located
		Overseas Branches	Territory Head
3	All Officers in MMG/S-III and SMG/ S-IV	Branch / Office under purview of Zone for administrative purpose	Deputy Zonal Head not below the rank of DGM in Scale VI
		ZIAD / CIAD	In-Charge of Office

	[Existing as well as Ex- employee]		Administration at ZIAD / CIAD not below the rank of DGM in Scale VI
		Baroda Apex Academy	In-Charge of Office Administration at Apex Academy not below the rank of DGM in Scale VI
		Corporate Office at Mumbai	In-Charge of Office Administration at Corporate Office, Mumbai not below the rank of DGM in Scale VI
		Head Office, Baroda	In-Charge of Office Administration at Head Office, Baroda not below the rank of DGM in Scale VI
		RRBs / Subsidiaries / Associate Banks in the Region (on deputation)	Deputy Zonal Head not below the rank of DGM in Scale VI where these offices are located
		Overseas Branches	In-Charge of International Banking, Corporate Office, Mumbai not below the rank of GM in Scale VII
4	All Officers in SMG/ S-V [Existing as well as Ex- employee]	All offices / Branches	Deputy General Manager, Disciplinary Proceedings Department, Corporate Office, Mumbai
5	All Officers in TEG/ S-VI [Existing as well as Ex- employee]	All offices / Branches	General Manager, Disciplinary Proceedings Department, Corporate Office, Mumbai
	All Officers in TEG/S- VII [Existing as well as Ex- employee]	All Offices / Branches	Chief General Manager, Human Resource Management Department, Corporate Office, Mumbai
	All Officers in TEG/S- VIII [Existing as well as Ex- employee]	All Offices / Branches	Executive Director

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