

Copy of Punjab Government Circular Letter No. 6613-GI-58/20259, dated the 7th July, 1958 from the Chief Secretary to Government, Punjab addressed to all Heads of Departments etc., etc.

*Subject* :—Treatment of cases of Government servants not fully exonerated in departmental enquiries.

Sir,

I am directed to say that three types of situations arise when a Government servant is charge-sheeted and subjected to a departmental enquiry, whether under the Punjab Civil Services (Punishment and Appeal) Rules, 1952, or under any other rules applicable to the Government servant concerned.

- (i) *Either* the charge is fully proved;
- (ii) *Or* the Government servant is fully exonerated;
- (iii) *Or*, as most frequently happens, the case falls in the area between (i) and (ii).

Cases coming under category (iii) may be described as 'doubtful cases.'

2. No difficulty is experienced in respect of cases of category (i), in case there is an element of corruption or dishonesty in the charge, instructions already exist that the only right penalty in such cases is dismissal. Punjab Government letter No. 122-ACC-48/38539, dated the 19th July, 1948 may be referred to in this connection.

3. Similarly, cases of category (ii) also present no difficulty. If the Government servant was under suspension prior to the date on which the competent authority holds him to have been fully exonerated, he is immediately reinstated and under sub-rule (2) of rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, he is entitled to full pay and allowances for the period of suspension. Further under sub-rule (4) of the same rule, he is entitled to have the period of his absence from duty treated as duty for all purposes.

4. Cases falling under category (iii) present certain difficulties and it is the object of this letter to clarify the policy of Government about how such cases should be treated. Difficulties arise in 'doubtful cases' for the following reasons :—

- (a) It is not always clear from the Inquiry Officer's report that the case is a doubtful one, and the tendency is for punishing authorities to treat all unproved cases as cases of exoneration, unless there is specific finding from the Inquiry Officer, in so many words, that the case is a doubtful one.
- (b) Where a case does get identified as doubtful whether at the level of the Inquiry Officer or at the level of the punishing authority, no attempt is made to classify the degree of doubt with the result that when any action is taken, it tends to be somewhat unjust in that no distinction is made between cases in which there is a high degree of doubt and cases in which this is not so.
- (c) Generally, no action is taken in doubtful cases because of a mistaken impression that on the analogy of criminal cases, where acquittal is the only alternative to conviction, exoneration and consequent reinstatement (if necessary) are the only alternatives to a finding of guilty in departmental enquiries.
- (d) Where this impression is not present, the question as to what action should be taken in doubtful cases not having been covered by any specific instructions of Government, the action actually taken has tended to vary according to how strongly the particular punishing authority feels about inflicting penalties in doubtful cases.

5. Regarding (a) and (b), I am to emphasize that it is the duty of every punishing authority to satisfy himself on the following issues while considering the report of an Inquiry Officer :—

- (i) Whether the charge has been proved;
- (ii) If not, whether there is case for fully exonerating the Government servant concerned;
- (iii) If not, what is the degree of doubt.

experienced about issue No. (iii), as there can obviously not be a mathematical valuation of the degree of doubt in any particular case. However, Government are satisfied that, applying broad principles of judgment some reasonable assessment can be made. On one extreme, there would be causes in which the hypothesis of guilt is only a possible one. On the other extreme there may be cases in which it can be said that the hypothesis of guilt is a highly probable one or that the conduct of the charge-sheeted officer is highly suspicious.

6. Rule 7(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, requires Inquiry Officers to include in the proceedings a statement of their findings and the grounds thereof. Similar provisions exist in other rules applicable to special categories of Government servants who are not governed by the Punjab Civil Services Rules. For the future Government desire that, in order to assist punishing authorities in arriving at definite conclusions on the issues mentioned in para 5, Inquiry Officers should in respect of each charge, express their findings and the grounds thereof clearly on the lines indicated in the preceding paragraph.

7. Regarding (c) in para 4, I am to clarify that the analogy of criminal cases is not applicable to departmental enquiries. The structure of the criminal law rests on the right of every citizen to enjoy individual liberty, and it follows from this that, is the event of a case not being proved, the accused must be immediately set at liberty. The principle on which the concept of departmental enquiries rests is not this. It is simply the right of the public to have reliable reasons in public service. In departmental cases, therefore, it is necessary for the punishing authority to ensure justice not only to the charge-sheeted Government servant but also to the public, who have a right to see that no officer continues in service in respect of whose reliability there is serious doubt. It follows from this that all doubtful cases in which the degree of doubt is substantial should result in some penalty being inflicted on the Government servant concerned. The assumption that has prevailed that the only option with Government or other punishing authorities in all doubtful cases is to reinstate the officer being proceeded against is incorrect, and the principle that the "benefit of doubt" must always go to the charge-sheeted Government servant does not hold good in the same manner in departmental enquiries as it does in criminal trials. Government desire that, in future, there should be no misunderstanding on this point.

8. Regarding (d) in para 4, Government wish to lay down certain broad principles indicating the action that should be taken in 'doubtful cases'. In this connection, I am first to invite your attention to the provisions of sub-rules (3) and (5) of Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, according to which, when a suspended Government servant is reinstated following a departmental enquiry, in which he has not been fully exonerated, he is to be given such proportion of his pay and allowances for the period of suspension as the competent authority may prescribe. His period of absence from duty is not to be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purposes. I am to point out that these provisions only deal with such doubtful cases as merit reinstatement, and there too, they deal only with the question of pay and allowances during the suspension period and the nature of the service rendered during the same period. It must not be assumed from this rule that in doubtful cases, reinstatement is invariably to be ordered, or that where reinstatement is justified on merit, no action other than the one contemplated in sub-rules (3) and (5) can be taken. Government are of the view that, where the punishing authority is satisfied after going through the papers of the departmental enquiry, that the hypothesis of guilt is a probable one or that the conduct of the charge-sheeted officer is definitely suspicious some penalty short of dismissal should be inflicted. Its severity will depend on the facts of each case. In the worst cases, where dishonesty or corruption is involved, and the finding is one of the hypothesis of guilt being a highly probable one or the most probable one, or that the conduct of the charge-sheeted officer is highly suspicious, the penalty should be as severe as possible. No Government servant who has a bad reputation and abundant suspicion against him has any right to be kept in service and in such cases, therefore, the possibility of ordering removal should also be considered. In other cases, less severe penalties should be considered, taking all the circumstances of each case into account. When penalties other than removal are inflicted, the Government servant concerned would be reinstated (if under suspension) and the penalty to be imposed would be over and above the action to be taken in pursuance of sub-rules (3) and (5) of rule 7.3 *ibid*.

9. I am to add that, although the policy explained in this letter is a departure from the present practice in some departments, Government are advised that it is entirely within the law and in accordance with the principles governing questions of punishment and discipline amongst Government servants. I am to request that the instructions now being conveyed should be strictly followed by all concerned.