GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH
(Hospital Building), Sector 32-B, Chandigarh-160030 (Ph 0172-2665253-59, Fax 0172-2608488)
(ESTABLISHMENT BRANCH-IV)

Endst. No.: GMCH/EIV/EA3/2017/ ~~46559~~ 46598-99 Dated, Chandigarh the,

A copy of letter No. 28/4/94-IH(7)-2017/25284 dated 03.11.2017 received from the Department of Personnel, Chandigarh Administration is forwarded to the followings for information & necessary action :

1. The Office Superintendent (Estt. I, II, III, HA-I & HA-II), GMCH, Chandigarh.
2. The System Analyst, IT Centre, GMCH with a request to e-circulate/email the same to all the HODs/Branch Incharges of GMCH Chandigarh.

13/11/17

Superintendent (Estt-IV)
GMCH, Chandigarh.

GOVERNMENT MEDICAL COLLEGE & HOSPITAL, CHANDIGARH
(Hospital Building), Sector 32-B, Chandigarh 160030 (PH: 0172-2665253-59, Fax: 0172-2605458)
(ESTABLISHMENT BRANCH-IV)

Endst. No.: GMCH/EIV/EA3/2017/ Dated, Chandigarh the,

A copy of letter No. 28/4/94-IH(7)-2017/25284 dated 03.11.2017 received from the Department of Personnel, Chandigarh Administration is forwarded to the followings for information & necessary action :

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Superintendent (Estt-IV)
GMCH, Chandigarh.

(b)

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**No. 28/4/94-IH(7)-2017/ 25284**
**Chandigarh Administration**
**Department of Personnel**

Chandigarh, dated the 3-11-17

To

All the Administrative Secretaries/
Heads of Departments/Offices/
Boards/Corporations
Chandigarh Administration

DP/GMCH

**Subject: - Simultaneous action of prosecution and initiation of departmental proceedings.**

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Sir/Madam,

I am directed to refer to this department's letter No. 27/8/94-IH(7)-2007/18220 dated 13.09.2007 on the subject noted above and to enclose herewith a copy of letter No. No.11012/6/2007-Estt.(A-III), dated 21.07.2016 received from the Director (E), Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi which is self-explanatory for guidance and information.

Yours faithfully

Superintendent Personnel
for Secretary Personnel
Chandigarh Administration

Endst.No.28/4/94-IH(7)-2017/ 25285 Dated: 3-11-17

A copy is forwarded to all the Administrative Branches in the Chandigarh Administration Secretariat for information and similar necessary action.

Superintendent Personnel
for Secretary Personnel
Chandigarh Administration

different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation.

8. The judgement of the Hon'ble Supreme Court in *G.M. Tank vs State of Gujarat* (2006) 5 SCC 446 has reaffirmed the principles laid down in *R.P. Kapur* (supra). In *G.M. Tank* case, Court observed that there was not an iota of evidence against the appellant to hold that he was guilty. As the criminal case and the departmental proceedings were based on identical set of facts and evidence, the Court set aside the penalty imposed in the departmental inquiry also.

9. Ratio in the *G.M. Tank* judgement should not be misconstrued to mean that no departmental proceedings are permissible in all cases of acquittal or that in such cases the penalty already imposed would have to be set aside. What the Hon'ble Court has held that is no departmental inquiry would be permissible when the evidence clearly establishes that no charge against the Government servant may be made out.

**Action where an employee convicted by a court files an appeal in a higher court**

10. In many cases Government servants who have been found guilty by lower courts and have filed appeals in higher courts represent for reinstatement/setting aside the penalty imposed under Rule 19(i) of the CCS (CCA) Rules, 1965. In such cases, the following observations of the Hon'ble Supreme Court in *K.C. Sareen vs C.B.I., Chandigarh,* 2001 (6) SCC 584 are to be kept in view:

> When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until

he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office it impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself.

11. Thus action against a convicted Government servant should be taken straight away under Rule 19(1). An appeal against the conviction or even a stay on the sentence will have no effect unless the conviction itself is stayed.

12. In view of the law laid down in various judgements, including the ones quoted above, in cases of serious charges of misconduct, particularly involving moral turpitude, the Ministries/Departments should keep the following points in view to take prompt action:

(i) All incriminating documents should be seized promptly to avoid their tempering or destruction of evidence.
(ii) Particular care needs to be taken for retention of copies of such documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals.
(iii) In case the documents have been filed in a court, certified copies of documents may be obtained.
(iv) Documents and other evidence must be examined to see whether any misconduct, including favour, harassment, negligence or violation of rules/instructions has been committed. If there is a prima facie evidence of misconduct, charge sheet under the appropriate rule must be issued.
(v) Court judgements should be promptly acted upon:
    (a) in cases of conviction action is to be taken under Rule 19(i) of the CCS (CCA) Rules, 1965;
    (b) in cases of acquittal also, if the Court has not acquitted the accused honourably, charge sheet may be issued;
    (c) an acquittal on technical grounds or where a benefit of doubt has been given to the accused will have no effect on a penalty

F.No.11012/6/2007-Estt (A-III)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment A-III Desk
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North Block, New Delhi-110 001
Dated: 21st July, 2016

OFFICE MEMORANDUM

**Subject : Simultaneous action of prosecution and initiation of departmental proceedings.**

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The undersigned is directed to refer to the Department of Personnel and Training OM of even number dated the 1st August, 2007 on the above subject and to say that in a recent case, *Ajay Kumar Choudhary vs Union Of India Through Its Secretary & Anr,* Civil Appeal No. 1912 of 2015, (JT 2015 (2) SC 487), 2015(2) SCALE, the Apex Court has directed that the currency of a Suspension Order should not extend beyond three months if within this period a Memorandum of Charges/Charge sheet is not served on the delinquent officer/employee;

2. It is noticed that in many cases charge sheets are not issued despite clear *prima facie* evidence of misconduct on the ground that the matter is under investigation by an investigating agency like Central Bureau of Investigation. In the aforesaid judgement the Hon'ble Court has also superseded the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance .

3. In the subsequent paras the position as regards the following issues has been clarified:

(i)Issue of charge sheet against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court,

(ii) Effect of acquittal in a criminal case on departmental inquiry

(iii)Action where an employee convicted by a court files an appeal in a higher court

**Issue of charge sheet against an officer against whom an investigating agency is conducting investigation or against whom a charge sheet has been filed in a court**

4. It has been reaffirmed in a catena of cases that there is no bar in law for initiation of simultaneous criminal and departmental proceedings on the same set of allegations. In *State of Rajasthan vs. B.K. Meena & Ors.* (1996) 6 SCC 417 = AIR 1997 SC 13 = 1997 (1) LLJ 746 (SC), the Hon'ble Supreme Court has emphasised the need for initiating departmental proceedings in such cases in these words:

> It must be remembered that interests of administration demand that the undesirable elements are thrown out and any charge of misdemeanor is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings.

5. In *Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*, (1999) 3 SCC 679, the Supreme Court has observed that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

**Effect of acquittal in a criminal case on departmental inquiry**

6. The question as to what is to be done in the case of acquittal in a criminal case has been answered by the Hon'ble Supreme Court in *R.P. Kapur vs. Union of India & Anr. AIR* 1964 SC 787 (a five Judge bench judgement) as follows:

> If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted. Even in case of acquittal proceedings may follow where the acquittal is other than honourable.

7. The issue was explained in the following words by the Hon'ble Supreme Court in the following words in *Ajit Kumar Nag v G M, (PJ), Indian Oil Corporation Ltd.*, (2005) 7 SCC 764:

> Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely

imposed under CCS (CCA) Rules, 1965, as while in a criminal trial the charge has to be proved beyond reasonable doubt, in the departmental inquiry the standard of evidence is preponderance of probability.

(vi)An appeal by the accused against conviction, but where the conviction has not been overturned/stayed, will have no effect on action taken under Rule 19(i) of the CCS (CCA) Rules, 1965, even if Court has directed stay/suspension of the sentence.

13. All Ministries/Departments are requested to bring the above guidelines to the notice of all concerned officials for compliance.

14. Hindi version follows.

Mukesh Chaturvedi
Director (E)

**To**

All Ministries/ Departments of the Government of India.

**Copy to**:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. The Secretary, Staff Selection Commission, New Delhi.
9. The Secretary, Central Vigilance Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi.
12. Chief Vigilance Officers of all Ministries/Departments.
13. ADG (M&C), Press Information Bureau, DoP&T
14. NIC, Department of Personnel & Training, North Block, New Delhi for uploading the same on the website of this Ministry under the Head OMs & Orders → Establishment → CCS(CCA) Rules, and "What is New"
15. Hindi Section.