

POLICE CIRCULAR ORDER NO. 262/1986 30-4-1986

A doubt is at times entertained in some quarters, as to whether it is the responsibility of the inquiring officer, of a disciplinary proceeding to take necessary action for securing the attendance of defence witnesses for examination in the enquiry or the responsibility of the charged officer to produce them, of his own, for examination on his behalf. In this context provisions contained in Rule 7 (c) of P.M. Appendix 49 are clear, which lays down, that the charged officer shall be allowed to examine his witness as he may wish, provided that the inquiring authority may for sufficient reasons to be recorded in writing, refuse to call a witness. The object of examination of the witnesses should be to bring out the truth during the enquiry.

The examination of the defence witness in a departmental proceeding is equally important as examination of State witnesses, the object being to find out the truth. When the charged officer files a list of witnesses to be examined on his behalf, the enquiring officer should satisfy himself about the relevancy of the evidence of each such witness and should proceed to examine those witnesses, whose evidence is considered to be material for securing the ends of justice. If the charged officer expresses his inability to produce either of his witnesses allowed by the enquiring officer to be examined in the proceeding, it shall be the responsibility of the enquiring officer to take necessary action for securing their attendance. It is contrary to the canon of natural justice to do away with examination of defence witnesses on the ground that they are not produced by the charged officer, in cases where their evidence is material and relevant to the charge.

The enquiring officer has powers u/s 4 of the Orissa Disciplinary Proceedings (Summoning of witnesses and production of documents) Act, 1954 to compel attendance of witnesses and production of documents by issue of summons/notices to the witnesses concerned. The summons/notices are required to be forwarded to the S.D.M., within whose jurisdiction the witness resides, for causing service on the witnesses as per the provision of the Act. Disobedience to the process so issued by any witness is punishable u/s 9 of the public servants (enquiry) Act, 1850. Recourse can be had to these provisions when it becomes difficult to secure the attendance of any witness as the normal process.

As regards payment of travelling allowance to the defence witnesses they should be treated on an equal footing as witnesses examined on behalf of the State.

In the case of Mumtaj Hussain Ansari Vrs. State of Uttar Pradesh, reported in A.I.R. 1984, Supreme Court of India at page 1116, it has been held by the Supreme Court that the responsibility for payment of travelling allowance to defence witnesses in a departmental enquiry conducted under section 7 of the Police Act, is of the Government and it is not open to the enquiry officer to lay down a condition that the travelling expenses should be first deposited by the charged officer before the witness is called or examined. It is, therefore, necessary that the charged officer should on no account be asked to pay towards travelling expenses of the defence witnesses. The payment to the defence witnesses should be made in the same manner as is done in case of witnesses for the State.

Under the existing instruction issued by the Government in P.& S. Department No. 15565—2R—1—32—62 dated 21-12-1962, where the witnesses (which includes the defence witnesses) summoned to attend the departmental enquiry, is an officer of the State Government, he is entitled to receive T.A. as on tour under the O.T.A. Rules from the department under which he is serving for the time being on the basis of a certificate of his attendance issued by the enquiring officer. Where the witness is not a Government Servant, he is entitled to be paid T.A. as per rule 146 of the O.T.A. Rules by the department under whom the charged officer is serving for the time being.

The above instruction should be followed by all officers, while conducting departmental enquiries and on no account the responsibility for production of defence witnesses should either be thrown on the charged officer or he shall be required to deposit or defray the T.A. of the defence witnesses.

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