

# **Disciplinary Committee U/s 21B (1)**

## **Presiding Officer**

**1. CMA Bibhuti Bhusan Nayak**

## **Members**

**2. CMA Manoj Kumar Anand**

**3. CMA Ashwin G. Dalwadi**

**4. Shri Saraswati Prasad, IAS (Retd.)**

**5. Mrs Meenakshi Sharma, IA&AS (Retd.)**

## **Secretary**

**CMA R K Jain, Director (Discipline)**

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## **Provisions relating to Disciplinary Committee**

### **The Cost Accountants Act, 1959**

21B. Disciplinary Committee.

- (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy: Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.
- (2) The Disciplinary Committee while considering the cases placed before it, shall follow such procedure as may be specified.
- (3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being

heard before making any order against him and may thereafter take any one or more of the following actions, namely:-

- (a) reprimand the member;
- (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

The allowances payable to the members nominated by the Central Government shall be such as may be specified

21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court.

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the

Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation.-For the purposes of sections 21, 21A, 21B, 21C and 22, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

## **Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007**

### **CHAPTER V DISCIPLINARY COMMITTEE**

#### **16. Constitution and functioning of Committee.-**

- (1) The Council may constitute a Committee and more than one Committee, if it considers necessary which may be located in one or more Regional Headquarters :

Provided that at least one Committee shall function at the place where the Directorate is situated.

- (2) All questions which come up before the Committee shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Presiding Officer or in his absence, the person presiding, shall have a second or casting vote.
- (3) The quorum for meeting of the Committee shall be three members, of which at least one shall be a member nominated by the Central Government under subsection of section 21B of the Act.
- (4) In the event of the Presiding Officer not being able to attend a meeting of the Committee, the seniormost member amongst the members nominated by the Central Government under subsection (1) of section 21B of the Act shall act as the Presiding Officer.

**Explanation.** — The seniormost member is the member who has been nominated earlier by the Central Government, and in case both the members are nominated on the same date, then the Central Government shall indicate the name of the seniormost member, either at the time of nominating the members or on a written request for the same from the Secretary of the Institute.

- (5) The Presiding Officer of the Committee constituted at place where the Directorate is situated, wherever considered appropriate, may transfer a matter from one Committee to another.
- (6) The Committee shall, subject to the other provisions of the Act and these rules, regulate its own procedure for matters not covered under this Chapter.

#### **17. Allowance to the members nominated by the Central Government.-**

- (1) The members of the Committee nominated by the Central Government would be paid Rs. 1,000 as allowance for each day of sitting:

Provided that if such a member is holding position under the Central Government or State Government or any statutory authority, he would be not be eligible for any such allowances :

Provided further that the Central Government may revise the allowances from time to time, through notification in the Official Gazette.

**Explanation.** — For the purpose of this rule, holding position under the Central Government shall also include a person holding position under the Comptroller and Auditor General of India, Reserve Bank of India or any other organization under or controlled by Government of India, and holding position under a State Government shall also include holding position in an organization under or controlled by the State Government.

- (2) The Presiding Officer and other Members of the Committee, while on tour, shall be entitled to the travelling allowance and daily allowance as admissible to them in their official capacity and in case the member is not a Government Servant, he shall be entitled to the travelling

allowance and daily allowance as admissible to an officer holding a post carrying a scale of pay of a Joint Secretary to the Government of India.

**18. Procedure to be followed by the Committee.-**

- (1) The Committee shall be guided by the principles of natural justice and shall follow the procedure in dealing with all cases before it, as laid down in this Chapter.
- (2) If the Committee decides to proceed further under clause (b) of sub-rule (2) of rule 9 or if it receives a reference from Board of Discipline under clause (b) of sub-rule (3) of rule 9, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of the following,—

(a) *prima facie* opinion formed by the Director; and

(b) particulars or documents relied upon by the Director, if any, during the course of formulation of *prima facie* opinion.

- (3) The Committee shall inform the respondent, as the case may be to file a written statement, within such time as may be specified:

Provided that the Committee may give him additional time for submitting his written statement, on application by the respondent on his adducing sufficient reasons to the satisfaction of the Committee for seeking additional time:

Provided further that such additional time shall not be given more than once and if the respondent still does not submit a written statement, the Committee shall presume that he has no further submissions to make and shall proceed to decide the case on merits.

- (4) The respondent shall send a copy of his written statement, along with supporting documents and a list of witnesses, to the Director and the complainant within the stipulated time.
- (5) The complainant or the Director may, after receipt of the written statement, submit a rejoinder to the Committee, with a copy to the respondent, along with supporting documents, if any.
- (6) The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of *prima facie* opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

**Explanation.**—For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary.

- (7) During the first hearing, the Committee shall read out the charge or charges to the respondent along with the summary of *prima facie* opinion arrived at by the Director, and ask the respondent whether he pleads guilty to the charge or charges made against him :

Provided that if the respondent does not appear for the first hearing even after one adjournment, the reading out of charge or charges along with the summary of *prima facie* opinion shall be made in his absence and the case proceeded with in accordance with the provisions of this Chapter.

- (8) If the respondent pleads guilty, the Committee shall record the plea and take action as per provisions under rule 19.
- (9) If the respondent does not plead guilty, then the Committee shall fix a date for examination of witnesses and production of documents.
- (10) The Committee may, on application of the Director, issue notice for appearance to any of his witnesses directing him to attend or to produce any other document or material evidence.
- (11) On the date so fixed, the Committee shall proceed to take all such evidence as may be produced by the Director, including oral examination of witnesses and production of documents:

Provided that the Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

- (12) After the presenting of evidence by the Director is over, the complainant shall be given an opportunity, if present during the hearing, to present any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by the Director.
- (13) The respondent shall be then called upon to enter upon his defence and produce his evidence.
- (14) If the respondent applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing.
- (15) The witnesses summoned at the instance of the complainant under sub-rule (12) or the respondent under sub-rule (14) shall not be eligible for reimbursement of expenses incurred for attending the hearing.
- (16) After evidences have been presented, the Director and the respondent shall present their arguments before the Committee :

Provided that after the Director has presented his argument, if the complainant, provided he is present during the hearing, feels that any vital argument has been left out by the Director, may present the argument, after convincing the Committee of the same.

- (17) The Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.
- (18) The Committee may, at the request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing:

Provided that such adjournment shall not be given more than once at any stage of the proceedings.

**Explanation.**—For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, or appear shall not be treated as a valid reason for adjournment of a hearing.

#### **19. Orders of the Committee.-**

- (1) On arriving at a finding under sub-rule (8) or sub-rule (17) of rule 18 that the respondent is guilty of professional or other misconduct, the Committee shall give the respondent an opportunity to be heard before passing any order under sub-section (3) of section 21B of the Act : Provided that if the respondent does not appear before the Committee at the time directed to do so when given such an opportunity to be heard, the Committee shall presume that he has nothing more to represent before it and shall pass orders under sub-section (3) of section 21B of the Act.
  - (2) On arriving at a finding under sub-rule (17) of rule 18 that the respondent is not guilty of professional or other misconduct, the Committee shall pass orders closing the case.
  - (3) The Committee shall send, free of charge, to the Director, respondent and the complainant, a certified copy of the final order.
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