

No. ED(S&E)/Inquiry/guidelines/843

Dt. 23.09.2022

S&E Circular - Guidelines for conducting inquiry.

Sub: - General guidelines for conducting inquiry by S&E officers

Introduction

1. Security & Enforcement Department of MSEDCL (erstwhile Vigilance Security & Enforcement), in addition to performing Proactive Enforcement work, are given responsibilities of conducting enquiries in theft of energy cases, billing irregularities and loss of revenue cases detected by Flying Squads & S&E Units as per the orders of the Competent Inquiry. The Competent Authority may also direct S&E department to conduct enquiries in complaints or information received from various sources pertaining to acts of misconduct. The first thing to note here is that the S&E inquiry is a kind of Preliminary Inquiry. The main objective to conduct such enquiries is to put forward the facts and evidences of any particular case which would eventually serve as a foundation for detailed Departmental Enquiry (D.E.). Therefore the person charged with the responsibility to conduct a Preliminary Inquiry (Investigation Officer) should always be aware of the fact that the inquiry or investigation conducted by him or her is a preliminary one and the facts or evidences collected during this process will be testified later during the course of detailed Departmental Enquiry. Primarily being a Preliminary Inquiry, its purpose is to check the veracity or authenticity of complaint and if complaint is true, to collect the evidences in support of the charges or allegations. It is not a final investigation & no disciplinary action will be taken solely on the report of this Preliminary Inquiry/ Investigation. Enquiries can be broadly classified into two categories,

- (a) Discreet Inquiry
- (b) Open Inquiry.

Discreet Inquiry

2. Generally, if a complaint or allegations made are vague in nature and lacks clarity and is full of ambiguity and uncertainty and might be intended to malign the image or character of the employee against whom allegations are levelled, such complaints may be investigated by the way of Discreet Inquiry. On receiving orders for conducting Discreet Inquiry the Investigation Officer (IO) must conduct the inquiry in such a manner that the image of the employee under

suspicion does not get harmed. The IO must discreetly investigate into the allegations and verify whether charges levelled have any substance / are true in nature or otherwise. The recommended steps to be followed after receiving inquiry order in a Discreet Inquiry are as under:

- (a) On receiving an order to conduct Discreet Inquiry, the Unit In-charge should appoint an IO, he/she finds suitable to conduct the particular inquiry.
- (b) The IO should then take an entry of inquiry order in the Discreet Inquiry Register, mentioning allegations in brief, name & designation of accused (if any), name & designation of the IO, date of receipt of inquiry order, inquiry number etc.
- (c) The IO is expected to conduct the inquiry with utmost secrecy, by contacting witnesses & perusing the departmental records through sources. The objective here is to get information desired without attracting any unwanted attention and without declaring the subject matter of the enquiry.
- (d) Recording of written statements of the witnesses should be as far as possible completely avoided. Recording of written statements or collection of evidences should be done only if there is a risk of loss of evidences or the witnesses going hostile.
- (e) During the course of inquiry, if the IO finds any substance or truth in the allegations, the IO should recommend an Open Inquiry, seeking detailed investigation, and should be reported as Substantiated Inquiry, otherwise should be reported as Unsubstantiated Inquiry.
- (f) The inquiry should then be submitted before the Unit In-charge for his remark. Unit In-charge, if agrees with the recommendations of the IO, forward it to S&E Regional Office for necessary action with his remarks clearly bringing out the evidence on record indicating substance in allegations or otherwise.
- (g) Necessary entries of the same should be taken in the Discreet Inquiry Register.
- (h) Region office will then scrutinize the report received and if found correct forward it to Head Office with their recommendations. If for any reasons, the Scrutiny Officer is not satisfied with the findings of the inquiry report, can raise a query and revert it to Unit office for want of clarification with due approval of the Dy Director S&E. In such a case the IO has to resubmit the inquiry report in its entirety after addressing the query raised by Region Office and should not submit the answers to the query raised singly.
- (i) Normally, the Discreet Enquiries should be completed within 7 days from the receipt of inquiry order and all the correspondences should be done digitally to avoid postal delays and submit hard copy later.

Open Inquiry

3. Competent Authority, depending upon the gravity of offence may order an Open Inquiry in the complaints received by him. Open inquiry may also be ordered into substantiated discreet inquiry report with recommendations to conduct open inquiry. The recommended steps to be followed after receiving inquiry order in an Open Inquiry are as under:

- (a) On receiving order to conduct Open Inquiry, the Unit In-charge should appoint an IO, he/she finds Suitable to conduct the particular inquiry. The Unit In-charge can himself conduct Open Inquiry. Invariably, in the cases in which allegations leveled are against Senior Rank Officials, the In-charge should himself act as an IO and conduct Open Inquiry.
- (b) The IO should then take necessary entry of inquiry order in the Open Inquiry Register, mentioning allegations in brief, name & designation of accused (if any), name & designation of the IO, date of receipt of inquiry order, inquiry number etc.
- (c) The IO should then study and thoroughly analyse the complaint so as to list out detailed component of allegation/s that will guide in finalizing the course of investigation to be done in the subject matter.
- (d) List the facts that need to be verified & look out for the evidences related to the case.
- (e) The IO should discuss in detail about the inquiry with his Officer-in-charge and then should prepare a plan of action to conduct the inquiry. The officer-in-charge must approve the discussed and agreed plan of action.
- (f) Check whether any technical/non-technical site inspection is necessary depending upon the nature of allegations. Undertake such visits with the authorized/expert persons only
- (g) Identify if any evidence relating to the complaint is perishable or likely to undergo change in due course of time and due preference be given accordingly to collect such an evidence on priority.
- (h) List the documents & persons or witnesses who can provide information on the matters raised in the complaint.
- (i) Whenever a surprise check is necessary, carry out the same without any delay. In fact, surprise check, if necessary should be the first important action to be taken during the course of investigation.
- (j) If possible, try to collect all the relevant documents in a single swift move. This is very much important thing to do, as once the interested parties come to know about the investigation, efforts will be made to tamper with the documents & evidences by the interested parties.

(k) The next important step is to establish whether the complaint is pseudonymous or anonymous and contact the complainant and ask if he/ she can provide any additional information or evidence relating to the case. Recording of statement of the complainant is highly recommended. The complainant if has additional evidence, he/ she may provide it during investigation and same should be mentioned in his/ her statement. Refusal or unwillingness to give written statement by the complainant should be mentioned in the enquiry report

(l) Make contact with the witnesses and all the parties involved officially either by intimation to him through email or written communication and record their statements in writing. The witness must be made aware of the purpose of recording his statement and prompting of the witness should be avoided. As far as possible the statement recorded should be in witnesses own handwriting. As per clause 28 of Service Regulation 86(3), it is binding for an employee to record his statement or submit the information he or she possess if asked by any appropriate authority. If any employee denies to record statement, make him aware of the relevant clause of the Service Regulation. Inform him that denial to record statement will be treated as an act of violation of Service Regulation. In case the witness is not an employee of MSEDCL, it is not binding upon the witness to record statement. The IO should use his tact & persuasive skills to extract maximum information from an unwilling witness. Perhaps, this is the most challenging job for any IO.

(m) Due respect and courtesy to be extended to witnesses/ accused whenever investigating or recording their statement.

(n) If the inquiry is of technical nature, an opinion from a technical expert can be taken in written and can be used as an evidence.

(o) After collecting all the relevant documents and evidences and recording of statements, the IO should now record the statement of the accused, if felt necessary. While recording the statement of the accused, IO should reveal to him all the documentary or material evidences available and ask for his clarification regarding the allegations and evidences supporting it. This process, though not mandatory in the course of inquiry, it may be desirable course of action in most of the cases as the process will plug loopholes or answers to connect all the missing dots. Also, it will be an act of giving the accused sufficient opportunity to defend against allegations and charges against him and give evidence in support of his say which will be very handy and important to decide the case. Use of questionnaire may be resorted to so as to not to miss any clarification necessary in establishing the culpability or otherwise.

(p) Study all the information and evidences collected, statements recorded so as to formulate findings to decide whether a conclusion can be arrived at regarding the veracity of the allegation/s.

(q) If no conclusion can be arrived at, repeat the steps mentioned above and collect additional evidence.

(r) The report writing is an art and the incidence must be sequentially narrated usually depicting a time line followed by conclusively establishing what went wrong and later indicating as to who is responsible for such a wrong vis-a-vi his duties and responsibilities. Violation of any rules and regulations must be clearly brought out

(s) IO should prepare investigation report and submit it with the original documents collected or created during the investigation. It has been observed that few IOs start writing investigation report as & when they start collecting evidences and recording statements, even before they arrive at any logical conclusion to their investigation. This method, though some might find time saving, is not a preferred method of preparing investigation report. Such method of writing investigation report might lack continuity and the events might appear disintegrated. It also at times leads to situating the investigation rather than appreciating the incidence in correct perspective. Also, the overall flow of the report might appear interrupted or fragmented.

(t) Only if there is any kind of substantial documentary or material evidences against any particular employee then only he should be held responsible for that particular offence. **No one should be held responsible only on the basis of recorded statements or verbal evidences.**

(u) The violation of SR provisions in the enquiry report or minor or major acts of misconduct should be clearly brought out and mere reference should be avoided. Further violation of specific order, circular, rule, regulation should be clearly mentioned and copy of the same be attached as part of documentary evidence.

(v) While preparing the inquiry report the IO should always bear in mind that his report is not a final verdict and no penalty can be imposed based on the findings on his preliminary inquiry report without issue of formal charge sheet and conduct of formal Departmental Enquiry.

(w) The inquiry report should invariably be submitted within 01 months from the date of receipt of order. In exceptional circumstances, considering the scope of inquiry, extension of deadline can be requested. Excessive delay in submission of report leaves room for doubt and should be avoided at all costs.

As described above, these are the recommended essential steps to be followed while conducting an Open Inquiry. However, there might be some variations in the methods depending on the nature of allegations.

Principle attributes of an Investigation officer (IO)

4. Some of the principle attributes of an investigating officer are enumerated below

(a) **Knowledge** – The IO is not only expected to have knowledge of the rules and regulations, but also practices and procedures pertaining to the subject matter being investigated. If unaware then he must study the relevant subject thoroughly before commencing investigation.

- (b) **Visualization/ Imagination** – The IO has to visualize from where the relevant information is likely to be available and the people who are likely to know about it.
- (c) **Perseverance** – The IO is expected to possess “never-say-die” spirit. He is expected to be persistent in his efforts no matter whatever challenges are thrown at him.
- (d) **Eye for details** – the IO is expected to be always alert about any abnormal thing/event occurring during the course of inquiry and should be alert while collecting evidence in all forms.

Inquiry report writing

5. Some of the important aspects to be kept in mind by the IO while report writing are enumerated as under. However these are general in nature and the IO may deviate as necessary

- (a) **Introduction.** This includes the details of the inquiry ordered such as, when the inquiry was received, its order number and date and the source of the information such as name of the complainant etc.
- (b) **List of the allegations.** The IO should mention correctly the allegations upon which the inquiry is being conducted so that the inquiry remains focused and address each of the allegations clearly and that there is no deviation whatsoever.
- (c) **Background.** **The background of the situation be mentioned in brief so that the competent authority is introduced to the situation as to what happened or transpired leading to the anomaly or irregularity**
- (d) **Narration of incidence.** What, where, when and how of the incidence could be brought out in this section of the report.
- (e) **Irregularity / Anomaly.** In this section the IO must put forward all the evidence that he has collected (documentary, material or verbal) to support his argument as to how the irregularity has happened or otherwise. This may also include all the major activities carried out by the IO during the course of investigation. For example, the manner in which inquiry was conducted and evidences collected including expert opinion if obtained.
- (f) **Evidence Collected and evaluation of evidences.** The IO should mention in detail all the types of evidences collected, documentary, material or verbal. The IO should evaluate each and every evidence collected and the role it plays in reaching at the conclusion. The IO should also mention about the information gathered from recorded statements of the witnesses and the parties involved. All out endeavour should be made to clearly bring out Where, When, How, Why and by Whom about the incidence. While writing the report, “Should have done” or “could have done” statements by IO should be avoided unless there is/are supporting documentary evidences and not based upon the recorded statements and verbal evidences. As far as possible use of tables to represent data be resorted to than mentioning the data in the narration.

(g) **Conclusion.** The IO should mention, whether there is any substance in the allegations made, or otherwise. While fixing the responsibility, the authority must be

quoted by which it is binding upon the accused to do/ not to do the act that led to the mistake/ irregularity. It should be clearly mentioned whether the inquiry is a substantiated inquiry attracting disciplinary action or an unsubstantiated inquiry with recommendations for closure. Recommendations be clearly given at the end of the Substantiated Report to prevent reoccurrence of the mistake/ irregularity that has occurred.

(h) **Chart of Offenders/ delinquents (in case of substantiated inquiry).** This chart should be prepared and contain information about the delinquent employee/s such as his name, designation, CPF number, present place of working, date of birth, date of scheduled retirement, details of offence or misconduct and evidences to prove the same. The chart should also mention the appropriate clause and sub clause of the Service Regulation under which disciplinary action is recommended.

(j) **Documentation.** Inquiry report should be suffixed with the chart of delinquents followed by an index of all the documents enclosed with the inquiry report. Page numbering should be done on all the enclosed documents and appropriately mentioned in the index.

Components of written statements to be recorded in the course of inquiry

6. Some of the important components and precautions to be taken while recording the witness/accused statements are enumerated below. Each statement recorded should have some evidentiary value and if otherwise then recording of statement is not necessary.

(a) The written statement of the witness or accused must contain his name, CPF number, designation/occupation, present place of working, place of working at the time of occurring of irregularity, date of birth, scheduled retirement date etc.

(b) **Secrecy** regarding identity of the complainant should be maintained. Should the witness or the accused desire to see the complaint, arrangement should be made to conceal the identity of the complainant.

(c) The necessary and relevant details of the inquiry should be explained to the witness as well as the accused. All the evidences collected and its relation to the inquiry should be made clear to the witness or the accused.

(d) Cross disclosure of the recorded statements of the witnesses to the accused should positively be avoided.

(e) Sufficient opportunity should be given to the witness or the accused to express himself and submit any material or documentary evidence in support of his say. Do not prompt or lead the witness at any time while recording the statement.

(f) If during recording of statement, the accused employee accepts his mistake, then he may be given enough opportunity to submit the reason and the circumstances leading to such a mistake/irregularity.

(g) A writer should be allowed for writing statement on his behalf, if the witness or the accused is not in the position or incapable to write. A declaration should be mentioned regarding this in the statement itself duly signed by the witness or the accused.

(h) The person whose statement is being recorded should not be under the influence of any kind of intoxicants.


(i) Date and place where the statement is recorded should be invariably mentioned in the recorded statement.

(j) A copy of the recorded statement should be provided to the witness/accused with proper acknowledgement.

(k) As far as possible the investigating officer should visit the field office, where it would be convenient for the witness to be present, so that the witnesses day to day working is least affected.

(m) Where, due to paucity of time, distances involved or operational reasons, the statement of a witness cannot be obtained in person, in such an eventuality, it may be obtained in the form of questionnaire via an email.

7. These guidelines are promulgated in addition to those that are already in existence and shall not be restrictive in any manner to the Investigating officers while conducting the inquiries.


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