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## NAVIGATING EMPLOYEE MISCONDUCT: LEGAL APPROACHES TO DISCIPLINARY ACTIONS

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### 1.1 ABSTRACT:

The paper reviews disciplinary action against employees misconduct, which can be minor or serious. The legal framework applicable in the course of such an action then follows, with a highlight on the principles of natural justice - that is, the right to a fair hearing and the rule against bias. This paper underlines the role of timely and impartial inquiries. It therefore carries that an employer needs to follow certain procedures for the purpose of fairness to avoid falling into legal problems. This paper describes a different kind of misconduct ranging from negligence and insubordination to fraud and theft, with their respective penalties. This paper also delves into the function of preliminary inquiries, charge sheets, and disciplinary committees in the course of an investigation that is dissected. Finally, it concludes by giving practical proposals on how this might be achieved in a manner that enhances both the efficacy and equity of the disciplinary procedure; indeed, calling for a proper balance in nurturing a sense of responsibility and fairness in the workplace.

**Keywords:** Misconduct, Workplace, Changes and Enquiries, Disciplinary actions.

## 1.2. INTRODUCTION-MISCONDUCT?

Any Act Or Omission On The Part Of An Employee Which Is A Breach Of Any Duty, Obligation Or Assignment Arising Under Or Flowing From Any Law Or Contract Of Employment Or Service Rules, Standing Orders, Settlements Or Awards Or Improper Conduct Or Wrongful Behavior Is A Misconduct.

Every breach of discipline may amount to misconduct, the penalty for the same varying with the gravity thereof. It would not be possible to lay down exhaustively as to would constitute misconduct and indiscipline. The conclusion would depend on the examination of facts in each case. It would at the same time depend on the nature of the services the employee was engaged to perform.

Existence of a duty is the foundation of the misconduct arising out of non observance, negligence, breach or dereliction of duty. Misconduct will include, lying, forgery making of application for leave on false grounds, maternity of fraudulent claims, giving wrong information concealment of real and correct facts, embezzlement, frauds, thefts, misappropriations, sabotage, corruption working against the interests of the employer or secretly in compilation with him, damage to employers property, etc.

Misconduct may be in various forms, such as workman may be insolent, may use indecent or indiscreet, filthy, abusive or even obscene language with superiors or co-workmen. Both the words spoken and the tone of expression of the language may be offensive, may be threatened, assaulted or injured, defamed, etc.

Misconduct will also include drinking liquor while in duty, arrest and detention for crimes, sexual immorality, gambling drunkenness, becoming a nuisance to others, convictions by a criminal Court etc.

The Bombay High Court, in **Shankerprasad Onkar Prasad Tiwari Vs. Central Railway**<sup>1</sup>, summarized various acts or omissions which are treated as misconduct, which are follows:

- Any act or conduct which is prejudicial or is likely to be prejudicial to the interests

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<sup>1</sup> 1960 ILIJ 167 (Bom)

to the reputation of the employer

- Any act or conduct inconsistent or incompatible with the due or peaceful discharge of workers duty to his employer
- Act or conduct of the servant which is so grossly immoral as to make untrustworthy in the eyes of reasonable men
- Any act or conduct of the servant which makes it impossible for the master to rely to his faithfulness.
- Any act of the worker which disturbs the peaceful atmosphere at the place of work.
- Use of filthy or abusive language against co-workers, officers or employer.
- Insulting behaviour and insubordination as make it impossible to retain the relation of employer and employee.
- Habitual neglect of duties for which the worker is paid. The above enumeration is not exhaustive. Some other illustrative acts of misconduct are
- Theft, fraud or dishonesty in connection with the employer's business.
- Illegal strike
- Breach of duty, absence without leave, non performance of job duties, disobedience of orders.
- Breach of discipline, disrespects to or assaulting superiors or subversion of discipline, disrespect relations with co-employees.

### **1.2.1. MISCONDUCT MEANING OF**

Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. It comprises positive acts and not mere neglect or failure. Misconduct even if it is an offence under the Indian penal code is equally, 'misconduct'.

### **1.2.2. NEGLIGENCE Vs. MISCONDUCT**

Negligence is a civil wrong which arises out of the breach of a duty of care owed by one party to another with resulting harm. It is remedied by an action for damages in the civil Courts. The law recognizes that in some relationships where one of the parties is likely to have more knowledge or influence than the other, a duty of care will always arise, for example the relationship between doctor and patient, professional advisers and their clients etc. In more general terms we all owe a duty of care to anyone we could anticipate might be affected by our actions or in some cases our inaction.

The law, however, does not require perfection, all harm is not necessarily actionable and the fact that course of treatment has not resulted in a cure does not mean that the veterinary surgeon was necessarily at fault. What the law does require is a reasonable standard of care. What is regarded as reasonable will be measured against the standard expected of any member of a particular trade or profession. A higher standard will, however, be expected of those with higher qualifications or additional training.

Misconduct and negligence are distinct concepts. While some negligence can be considered misconduct, not all negligence qualifies as misconduct. Misconduct requires clear proof and cannot be merely inferred. For instance, if a barrel of flour fell from a warehouse onto a passerby below, this would be considered sufficient evidence of negligence for a jury to review, demonstrating that the negligence was apparent without needing further evidence.

### **1.2.3. MISCONDUCT OUTSIDE EMPLOYMENT**

In the context of government employees' behavior both during and outside of their employment, it has been established that according to common law principles governing employer-employee relationships, it is not a prerequisite for a master to take disciplinary action against their servant that the misconduct occurs within the servant's employment rather than outside of it.

The determining factor in each situation will be whether the servant's conduct aligns with the faithful fulfillment of obligations they have committed to, either explicitly or implicitly, when accepting the position. This inconsistency may result from any action by the servant, whether within or outside of their employment, that harms or has the potential to harm the master's

business or interests.

In the case of a private servant, it is at the discretion of the master to decide on disciplinary action against their servant. However, for public servants, decisions regarding misconduct are made by specific officers in accordance with relevant laws or regulations, rather than a single master. If government employees could not be held accountable for their off-duty conduct, the government would only be able to terminate their service if they committed a criminal offense or violated specific behavioral rules. This would give public servants excessive immunity, placing the government in a more restricted position than an ordinary employer. The authority of the State to dismiss any government employee, although subject to safeguards outlined in Article 311 of the Constitution and other constitutional provisions, still exists.<sup>2</sup>

#### **1.2.4. MISCONDUCT – OTHER CONCEPTS**

In case, when the misconduct has been condoned by the employer or the government, no action is possible, against the alleged misconduct.<sup>3</sup> A government employee's primary duty is to follow lawful orders from their employer regarding their work's execution, including when, how, and where it should be done. The employee must also perform their duties faithfully. Willful disobedience of lawful orders is grounds for immediate dismissal.

Misconduct for a government employee involves breaching service obligations, and its definition has evolved with societal changes. What was once considered misconduct, such as leaving to see a dying relative without permission, may no longer be viewed as such. To determine misconduct, employers should consider whether there is a subversion of discipline, intentional disobedience of lawful orders, or willful absenteeism. While punishment can occur without an enquiry, the nature and procedure of an enquiry depend on the severity of the misconduct and the proposed punishment. In the absence of specific rules, the enquiry must adhere to the principles of natural justice.<sup>4</sup>

In order to inflict a punishment on government servant for an alleged act of misconduct, an enquiry may be such as would be permissible under the rules applicable in general or to the

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<sup>2</sup> Laxmi Narai v. District Magistrate, AIR 1960 All 55.

<sup>3</sup> GEC Pvt. Ltd., Naini v. Labour Court, Allahabad, AIR 1969 SC 235

<sup>4</sup> Shushila v. Union of India, (1988) 6 ACT 100

department in particular. The nature of enquiry would vary according to the nature of the breach of the rules of conduct and the punishment proposed to be inflicted.

### **1.2.5. MISCONDUCT IN CERTAIN CIRCUMSTANCES IS OFFENCE**

In some occasions, misconduct of an employee will constitute penal offence for which the punitive action will also be the consequence in addition to disciplinary action. It would not constitute double jeopardy. To sustain the charge of misappropriation, ingredient of criminal misappropriation must be proved.<sup>5</sup>

Demand of illegal gratification is, by itself, misconduct.<sup>6</sup> In relation to vicarious responsibility an employee can be charged only when he is associated with others in the act itself. Absence of employee at the material time, when misconduct is alleged is not a misconduct on the part of the absentee employee.<sup>7</sup>

Like a criminal case, it is not necessary that the misconduct of an employee has to be proved beyond doubt. In the absence of any special circumstances each such person should be jointly and severally liable to account for the goods given in his possession or handled by him.<sup>8</sup>

### **1.3. PRELIMINARY ENQUIRY**

On receipt of a complaint or the facts coming otherwise to the knowledge of the Authority competent to take disciplinary action, it is open to him to make such preliminary enquiry as he deems proper to ascertain the prima facie truth of the allegations and the evidence available in support thereof.

In order to frame a charge, it is permissible to have a preliminary enquiry. This preliminary enquiry may be *exparte* and it would be permissible to interrogate the delinquent. Such preliminary enquiry is not only permissible but is a very desirable step, because government employees should not be charged with offences recklessly and without reason.<sup>9</sup>

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<sup>5</sup> Sachita Nand Parijai v. Union of India, (1987) 2 ATC 813

<sup>6</sup> Sohal Pal v. Commissioner of Sales Tax, (1987) 3 ATC 370

<sup>7</sup> V.K. Gupta v. Union of India, (1987) 4 ATC 185

<sup>8</sup> Union of India v. Ram Autar Pandey, (1987) 4 ATC 481

<sup>9</sup> Bagwandass v. Senior Superintendent, Way and Works, AIR 1956 Pat. 23

But there is one important limitation to such an enquiry. It is no substitute for the departmental enquiry itself. The preliminary enquiry is merely for the purpose of framing a charge, and the results cannot be deemed to be conclusive. If there is a report, this cannot be an evidence unless the delinquent has been furnished with it and afforded an opportunity of meeting it.<sup>10</sup>

Evidence heard at such preliminary enquiry must be repeated at the enquiry, if it is considered necessary to rely upon it.<sup>11</sup> Evidence received need not be produced in departmental enquiry. The material which is in possession of the department to enable it to initially make up its mind to proceed against the petitioner may not be relevant in connection with the subsequent department enquiry.<sup>12</sup>

Whenever, there is a preliminary enquiry, the Enquiry Officer shall prepare a report of his opinion out of such enquiry. As we discussed earlier, such report shall have to be furnished to the Delinquent. Failure to supply preliminary enquiry report to the Delinquent for cross examination is a denial of reasonable opportunity to defend as per Article 311 of the Constitution.<sup>13</sup>

### 1.3.1. CONSTITUTION OF DISCIPLINARY COMMITTEE - OBJECTION

In **Dr.G.Sarana v. University of Lucknow**<sup>14</sup>, a candidate appeared before the selection committee knowing fully well the members of the selection board and voluntarily appeared before it for interview. He did not raise any objection against the presence of any member on the Selection Board. But, when he was not selected, he objected that a member present in the board was ill-disposed and prejudiced against him and, therefore, the decision of the selection committee was vitiated. It was held by the Supreme Court that such a candidate cannot, after appearing before the board and taking a chance of favorable recommendation in his favor turn round and question the constitution of the board when the decision was unfavorable to him.

### 1.4. CHARGE SHEET

Charge-sheet is a document which contains charges against a delinquent. It contains the

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<sup>10</sup> High Commissioner for India v. M.Lal, AIR 1948 PC 121

<sup>11</sup> Choundhury v. Union of India, AIR 1956 Cal 662

<sup>12</sup> Indrashwar v. Union of India, AIR 1959 Ass 112

<sup>13</sup> P.Bhargava v. Superintendent of Police, 1980 LAB IC (NOC) 80

<sup>14</sup> AIR 1976 SC 2328

background on which the Delinquent is being charged. It also contains the list of witnesses and list of documents which the Department would rely upon to prove the charges against the Delinquent. The Charges would, generally, be distinct and specific to determine the guilt or otherwise of the Delinquent. It is no excuse to say that regard being had to the previous proceedings, the delinquent should be taken to have known all about the charge. Whether he knows it or not he must again be told of the charges to which he is called upon to show cause and these charges must be specific and all particulars must be stated without which a man cannot defend himself.<sup>15</sup>

Where there is a single charge and a single punishment is proposed, it is advisable to mention the punishment since this obviates the necessity of a second show cause notice. But where there are more than one charge or more than one proposed punishment, it is necessary to serve a second show cause notice to convey to the delinquent the information as to what charge has been proved and what punishment proposed to be inflicted upon a proved charge.<sup>16</sup> The object of furnishing a charge sheet is to give an opportunity to the person who is charged with misconduct to give an explanation to defend himself. The rule of natural justice requires that the person charged should know the nature of offence with which he is charged and should be given an opportunity to defend himself and to give a proper explanation.<sup>17</sup>

Finding of guilt for a charge not included in the charge sheet is unsustainable.<sup>18</sup> Where the employee was informed of the charges by the Court of enquiry and was afforded opportunity to cross examine the witnesses and put in his defence, non issuance of charge sheet does not violate the principle of natural justice and does not affect the enquiry.

Where the charge is of raising offensive slogans, disclosure of actual words in the charge sheet is not necessary.<sup>19</sup> It is not necessary to mention specific obscene language uttered by charged employee. The charge sheet was issued in English and there was no objection during the enquiry. Propriety of charge sheet and enquiry cannot be challenged. A fresh charge sheet is used in suppression of the earlier one before the holding of enquiry under the earlier charge

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<sup>15</sup> Amulya Ratan Mukerjee v. Deputy Chief Mechanic Engineer, Eastern Railways, AIR 1961 Cal 40

<sup>16</sup> A.R.S.Choudhury v. Union of India, AIR 1956 Cal 662

<sup>17</sup> Ziakh v. Firestone Tyre & Rubber Co. Ltd., 1954 ILLJ 284

<sup>18</sup> Y.K.Verma v. Union of India, (1988) 1 SLR 15

<sup>19</sup> Ram Pati Yadav v. General Manager, Gun Carriage Factory, (1986) 1 ATC 488



sheet is legally valid. Delay in serving charge sheet if it does not affect adversely the employee in his defence is not fatal.<sup>20</sup>

#### 1.4.1. Alteration of Charge-Sheet

Disciplinary authorities can change the charges and frame fresh charges which may on further consideration appear to be appropriate charge to be preferred.

#### 1.4.2. No delegation of charge framing

In **Shardul Singh v. State of Madhya Pradesh**<sup>21</sup>, it has been held inter alia that the factum of the framing of charge cannot be delegated by a dismissing Authority to any of its subordinates.

#### 1.4.3. Explanations

Calling for an explanation on the charges framed is out of the main stages of enquiry. In order to enable the framing of the charge, it is permissible to interrogate the delinquent, submitting explanation is a right of the person charge. There could be no compulsion on him to submit an explanation and he shall not be compelled to be a witness against himself i.e. right against self incrimination.<sup>22</sup> Failure to submit an explanation would entitle the Authority to proceed with the enquiry exparte. Submitting an explanation includes an opportunity to deny the fault.<sup>23</sup>

The delinquent to whom a charge-sheet has been served has no right to inspect the documents for submitting an explanation. But he is definitely entitled to inspect the evidence collected against him before the commencement of the examination of witnesses against him. Failure to produce the documents collected against him is violation of rules of natural justice as held in **State of West Bengal v. Saillkiora Natha Bose**.<sup>24</sup> A government employee was issued with a charge sheet giving 48 hours to submit his explanation. He made no protest nor asked for more time. Then, he cannot complain about it in subsequent time.<sup>25</sup>

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<sup>20</sup> Sudhir Chandra Haldar v. Union of India, (1988) 8 ATC 605

<sup>21</sup> AIR 1966 MP 193

<sup>22</sup> Article 20 of the Indian Constitution, 1950

<sup>23</sup> "Principles of Administrative Law" by M. P. Jain and S. N. Jain

<sup>24</sup> AIR 1964 Cal 184

<sup>25</sup> Prafulla Kumar v. Calcutta Corporation, AIR 1963 Cal 116

#### 1.4.4. Enquiry:

Enquiry is a collection of information on behalf of the Disciplinary Authority. A functionary who has to decide an administrative matter, can obtain the material on which he is to act in such a manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial matter.

In **K.R.Sharma v. State of Punjab**<sup>26</sup>, it was held that the purpose of a departmental enquiry held against a government employee is merely to help the government to come to a definite conclusion, regarding the conduct of a government employee and to decide what penalty, if any, should be imposed upon him. Such a proceeding before the enquiry officer cannot be held, to be of a criminal or quasi-criminal nature even assuming that the charges which the said servant has been called upon to meet are in substance the same which will be covered by section 5(2) of the Prevention of Corruption Act and Sections 161 and 109 of the Indian Penal Code.

#### 1.4.5. Admission of charges that amounts to

There appears to be no dispute in this case that the petitioner accepted each item of charges as revealed in the state of allegations but at the same time the petitioner also explained his default due to circumstances which, as stated by him, were beyond his control. In **Re. C.Raghava Menon's case**<sup>27</sup> it was held that to show that misappropriation, even though temporary, must be established on proving dishonest intention. From here, the statements made by the delinquent, in any event, did not amount to a clear or unambiguous admission of his guilt. That being so, in the formal enquiry which as held, the charges of temporary misappropriation must have to be established in evidence. But there no evidence in this case in proof of the charges against the petitioner the enquiry proceedings, though held, ended in empty formalities. In fact, as already noticed, the disciplinary Authority before issuing a second show cause notice felt convinced about the truth of the circumstances stated by the petitioner in support of the charges made against him.<sup>28</sup>

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<sup>26</sup> AIR 1956 Punj 27

<sup>27</sup> AIR 1941 MAD 250

<sup>28</sup> Mahanand Bhaduri v. S.E.Railway, 1974 IC 1054

#### **1.4.6. Enquiry where not necessary**

It is only where a government employee tenders an unqualified apology; there is no necessity of holding an oral enquiry. It is, however, one thing to politely deny a charge and beg for pardon. It is quite another to unreservedly own one's fault and throw oneself at the mercy of the superior officer concerned. Where the fault is not accepted in unqualified language, an enquiry would be necessary.

To imagine that in view of the admissions made by a delinquent, the enquiry would have served no useful purpose would be a matter of speculation which would be wholly out of place in dealing with cases of order passed against public servants terminating their services as has been held in **Ramlal v. Union of India**.<sup>29</sup>

#### **1.4.7. Malafide exercise of power in disciplinary proceedings**

Malafide exercise of power can be attached independently on the ground that it is malafide. Such exercise of power is always liable to be quashed on the main ground that it is not a bonafide exercise of power. If malafide are not alleged and bonafides are assumed in favour of the appellant, its conclusion on a question of fact cannot be successfully challenged even if it is manifest that there is no evidence to support it. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. There may be cases of such evidence even where the government is acting bonafide; the said infirmity may also exist where the government is acting malafide and in that case, the conclusion of the government not supported by any evidence may be the result of malafide but does not mean that if it is proved that there is no evidence to support the conclusion of the government a Writ of certiorari will not issue without further proof of malafides.<sup>30</sup>

#### **1.4.8. Dismissal set aside by Court & fresh enquiry- when can be made**

Where the dismissal order passed against a government employee was set aside by the Court not on the merits of the case, but only on the ground that the principles of natural justice were not observed and the petitioner was not given a chance in the enquiry to meet the charge

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<sup>29</sup> AIR 1963 RAJ 57

<sup>30</sup> Union of India v. HC Goel, AIR 1964 SC 364

against him, in such a case the disciplinary Authority is entitled to rectify the mistake and hold a fresh enquiry in respect of the same allegation.

The second departmental enquiry held against a person will not amount to punishing him more than once for the same offence and hence, no question of double jeopardy at all arises.

When an initial dismissal order was overturned by a court and the appellant was reinstated, a second enquiry into the same charges was promptly initiated without suspension. The disciplinary authority, when reinstating the appellant, decided that the charges should be pursued further. The appellant was subsequently dismissed again based on the second enquiry's findings. It was determined that conducting the second enquiry was lawful.

When a government dismisses an officer, it is performing an administrative function and can delegate the enquiry to another officer if desired. The government has discretion in collecting evidence and can choose not to accept an enquiry report, sending it back for further investigation. As long as the officer is given a fair chance to respond to the charges, the dismissal process remains valid even if the matter is returned for additional enquiry.

#### **1.4.9. Propriety of second enquiry**

Where first enquiry vitiated owing to a technical defect, a fresh enquiry on the same old charges can be held on merits. Reinstatement order which followed quashing of the reversion order based on the first enquiry, held, would not invalidate the second enquiry.<sup>31</sup> Enquiry was held bad and reinstatement ordered fresh enquiry, can still be held on merits but holding such enquiry after a long lapse of time may be inequitable and unjust.<sup>32</sup>

#### **1.4.10. Delay**

Delay is always not fatal to the enquiry. However, if there is any change in circumstances and fair enquiry becomes impracticable government can be prohibited from proceeding with the enquiry, Where financial loss has been caused to government due to the proceeding with the enquiry, Where financial loss has been caused to government due to the

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<sup>31</sup> Anand Narain Shukla v. State of M.P., (1980) 1 SCC 252

<sup>32</sup> Union of India v. M.B.Patnaik, (1981) 2 SCC 159

employee, delay would not be an impediment to enquiry. However, framing of charge after nine years it, oppressive.<sup>33</sup>

## **1.5. TYPE OF MISCONDUCTS**

There are two types of misconducts. They are, (i) Minor misconducts, and (ii) Major misconducts.

### **1.5.1. Minor Misconducts**

The following acts or omission on the part of an employee shall amount to minor misconduct:

1. Late Coming
2. Absence from Duty without Leave for a short period
3. Loitering, Gossiping in department during working hours
4. Failure to wear tight clothes/specified uniform.
5. Negligence of duties or neglect of work.

### **1.5.2. Major Misconducts**

The Following Acts Or Omission On The Part Of An Employee Shall Amount To Major Misconduct:

1. Willful insubordination or disobedience of any lawful and reasonable order of a superior.
2. Going on legal strike or abetting, inciting, instigation.
3. Willful slowing down in performance in work or instigation there of.
4. Theft, fraud or dishonesty in connection with the employer's business or property.

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<sup>33</sup> M.O.Nagalinga Reddy v. State of Andhra Pradesh, (1988) 6 ATC 246

5. Taking or giving bribes or any illegal gratification.
6. Habitual absenteeism for a long time without leave or over staying the sanctioned leave without sufficient grounds.
7. Collection without the permission of the manager or any money within the premises of establishment.
8. Engaging in trade within the premises of establishment.
9. Drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment.
10. Commission of any acts subversive of discipline or rude behavior on the premises of the establishment.
11. Habitual neglect of work or habitual negligence.
12. Willful damage to work in process or any property of the establishment.
13. Holding meetings inside the premises of establishment without the permission of the manager.
14. Disclosing to any unauthorized person any information in regard to the processes of the establishment.
15. Gambling within the premises of establishment.
16. Smoking or spitting on the premises of the establishment, where it is prohibited.
17. Refusal to accept a charge sheet order or other communication served in accordance with the standing orders.
18. Unauthorized possession of lethal weapon in the establishment.<sup>34</sup>

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<sup>34</sup> Section 14 in The Industrial Employment (Standing Orders) Central Rules, 1946

### **1.5.3. PENALTIES FOR MINOR MISCONDUCT**

Censure, Fine, Passing Adverse Entry In Service Records, Recovery of loss of goods for which the concerned workmen is accountable, Recovery from wages of the whole or part of any loss caused by the workman through negligence.

### **1.5.4. PENALTIES FOR MAJOR MISCONDUCTS**

The following penalties may be imposed for good and sufficient reasons if an employee found guilty of major misconduct.

- Warning Or Censure
- Withholding Of Increment
- Fine
- Stopping Promotion
- Demotion
- Suspension
- Discharge
- Dismissal
- Vacation of company quarters
- Any other punishment which the Authority may deem fit.

### **1.6. DISCIPLINARY ACTIONS**

Discipline may be considered as a force that prompts individual or groups to observe the rules, regulations and procedure which are deemed to be necessary for the effective functioning of an organization. The principal ingredients of a sound disciplinary action system are:

- The responsibility for maintaining discipline should be entrusted to a responsible person
- Rules and regulations are properly and carefully formulated and communicated

to the employees

- Rules should be continually be re-evaluated to ascertain whether they are applicable to changing organizational conditions
- Disciplinary action should be taken in private is essential because the main objective of a disciplinary action is to ensure that a wrong behavior is corrected and not the wrong doer should be punished, or held up to ridicule.
- A disciplinary action thus takes a variety of forms, varying from a simple oral reprimand to discharge. The offences for which an employee may be discharged are listed below:
  - Theft
  - Falsifying application for employment
  - Possession of narcotics
  - Willful damage to company property
  - Profession of firearms or other weapons
  - Falsifying records of work
  - Fighting
  - Off the job criminal activities
  - Failure to report injuries
  - Unauthorized strike
  - Subversive activity
  - Drunk while at work
  - Punching another employees time card

### **1.7. GENERAL RULES FOR DISCIPLINARY ACTION**

Justice delayed is justice denied. If the penalty is imposed long after a violation of rules has been committed, it loses its positive and corrective influence and may even induce



resentment, which may not have developed if the penalty had been imposed in time. An individual is presumed to be innocent until he is proved to be guilty.

Before taking any disciplinary action, it should be made sure to get and keep adequate records of offences and warnings. A punitive action must satisfy the condition of natural justice.

Once the subordinate has been disciplined, the superior officer should assume that he is starting them with clean state, he should not harbor a grudge that makes<sup>35</sup> others assume that he is prone to engaging in vendettas. When the officer knows he is right that the rule was broken, that adequate warning is given, that the penalty is not too severe he should not back down or compromise on penalty especially once the decision is announced.

The philosophy behind administering a disciplinary action is that a negative motivation should be handled in a positive manner that is it should be brought home to the employee that a negative approach does not pay.

The Following conditions must necessarily be satisfied before an employee is discharged from service by way of punishment for misconduct:

1. The misconduct of the employee is of such nature as to indicate that his discharge of dismissal would be appropriate punishment.
2. An enquiry must be held by the employer into the misconduct with which an employee has been charged.
3. An enquiry should be held in such a manner as to ensure that it would be fair and proper and in conformity with the principles of natural justice.
4. The officer holding the enquiry should not be one who may be disqualified on the ground of bias, personal interest, or on the ground of his having been an eye witness to the misconduct with which the employee is charged.
5. At the conclusion of the enquiry, the findings, based on recorded evidence should be recorded by the enquiry officer.

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<sup>35</sup> "Administrative Law and Natural Justice" by A. K. Kaul

6. The findings must necessarily be based on recorded evidence and should not be perverse.
7. The order of dismissal or discharge against the employee must be passed in good faith.
8. The order must be duly communicated to the employee against whom it has been passed.

If lawful orders are disobeyed, then no constructive work can be accomplished. Order must be lawful and these must be obeyed. Every defiance of a lawful order is punishable. But orders must be clear and must be conveyed to those who are supposed to carry them out.

Before deciding whether disciplinary action is appropriate and the form it should take, consideration should be given to the following

- The employee's disciplinary record and whether he or she is aware of the standard required.
- The employee's age, position, length of service and general performance.
- Any circumstances, for example domestic problems which make it appropriate to lessen the severity of the action. Whether the disciplinary procedure indicates what the likely action will be as a result of the particular misconduct.
- The action taken in similar cases in the past.

Whether the proposed action is reasonable in all the circumstances

### **1.8 CONCLUSION,SUGGESTIONS,RECOMMENDATIONS:**

The ultimate objectives of the Departmental or Domestic Probe is to determine or draw inference as to whether a Punishment should be inflicted upon an employee or not for the misconduct. In the Disciplinary actions, the Twin-Pillars name, right to hear other side and the rule against bias are to be strictly adhered and they shall be put into two words-Impartiality & Fairness.

The Principles of Natural Justice are crucial for ensuring fair treatment of employees during disciplinary enquiries. Understanding these principles is essential for conducting domestic enquiries properly. Despite the frequent occurrence of such cases, the fundamental process for handling departmental enquiries remains consistent. Employers must pay careful attention to these principles to avoid potential pitfalls in disciplinary actions.

Justice delayed is justice denied. Imposing a penalty long after a rule violation can reduce its effectiveness and potentially cause resentment. Therefore, penalties should be applied promptly after the infringement to maintain their corrective impact and fairness. If a decision to terminate an employee is just, it should be carried out without delay.

At the same time, Justice hurried is Justice buried has to be considered and procedure shall be followed giving sufficient, adequate and abundant opportunities to the delinquent to put for the case effectively.

An individual is presumed to be innocent until he is proved to be guilty. The burden of proof is on the employer and not on the employee. The kind of proof that would be needed for this purpose would depend on the gravity of the offence that has been committed. As such, rule of adversarial system is followed in the Departmental enquiry as well.

Before taking any disciplinary action, it should be made sure to get and keep adequate records of offences and warnings. It is always better to let the subordinate fully explain what happened and why it happened. It may then be discovered that there were mitigating circumstances, or that he was not aware of the rules, or that the person had conflicting orders or even permission to break the rule for some reason.

Insofar as the disciplinary actions are concerned, the management must act without bias and without vindictiveness; it should always indicate that its disciplinary action against an employee is based on justice and fair play. The punishment should be commensurate with the gravity of the offence and it should be corrective or reformatory rather than retributive.

As deliberated above, the Disciplinary Authority shall scrupulously adhere with the Principles of Natural Justice. There are umpteen number of cases of the Supreme Court and various High Courts giving light to us regarding the disciplinary proceedings. Even then, we

come across several discrepancies in the departmental proceedings which are being struck down as *ultravires*.<sup>36</sup>

Therefore, it is necessary that the Disciplinary Authorities shall be given wide training regarding the scope of misconduct and the disciplinary action and they shall be given refreshment courses regarding the disciplinary proceedings and the deliberations be made to them regarding the impact of non-adherence of the Principles of Natural Justice.

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<sup>36</sup> "Principles of Natural Justice" by V. S. Deshpande

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