

**SEMINAR ON**

**LABOUR LAW**

# ***MISCONDUCT***

**SARITA SUCCORINA RODRIGUES**

S.Y. LL.M. (2013-14)

P.R. No: 96151059

SEMISTER- IV

G.R. KARE COLLEGE OF LAW

MARGAO, GOA

## INDEX

NO.	TOPIC	Pg No.
1	Introduction	3
2	Meaning of Misconduct	4
3	Types of Misconduct:- Minor Misconduct and Major Misconduct	8
4	Penalties: Minor Penalties and Major Penalties	10
5	Punishment	16
6	Validity of Rule 11 of C.C.S Conduct Rules	17
7	Disciplinary action Procedure	18
8	Determine Probable level of Misconduct	19
9	Address with Informal Discussion	20
10	Arrange appropriate support	20
11	Advise Employee of Potential Misconduct	21
12	Consider Suspension	21
13	Formal Investigation	21
14	Disciplinary Charges Issued	22
15	Disciplinary Meeting	22
16	Decision	22
17	Appeal	23
18	Final Outcome	23
19	Disciplinary Rules and Procedures for Misconduct	24
20	General Principles for the Formal Disciplinary Procedures	24
21	Formal Procedure	26
22	Steps for Minor Misconduct and Major Misconduct	26
23	Constitution of India with Reference to Disciplinary Proceedings	28
24	Confidential Report	32
25	Conclusions and Suggestions	34
26	Bibliography	36

## INTRODUCTION

Case laws have defined the meaning of misconduct to be any conduct on the part of employee which is inconsistent with the faithful discharge of his duties, or any breach of the express or implied duties of an employee towards his employer. It is also known as a form of improper behaviour or an intentional wrongdoing or a deliberate violation of a rule or standard of behaviour.

Section 14 of the Employment Act 1955 provides that an employer may punish an employee on grounds of misconduct after due inquiry. Due inquiry here means the Company must investigate the case and provide the employee an opportunity to defend himself before an independent panel before judgment is put on him. Section 14 goes on to provide that while investigating a matter, the Company has the right to suspend an employee from work if his presence at the workplace would affect investigations, i.e. by tempering with evidence or by threatening witnesses, etc. A Disciplinary Action is an act or procedure as defined in Standing Order which is initiated by the complainant authority after receiving specified complaint of any kind of Misconduct.

Related Terms :            1. Complaint            2. Misconduct            3. Punishment

A Complaint is any information or statement of fact in connection with misconduct committed by an employee/Workman during working hours and at working place. Main ingredients of the complaint:

1. Presence of employee on the date when a misconduct said to be done.
2. Details of allotment of job by the immediate supervisor or HOD, who so ever may be.
3. Narration of misconduct.
4. Any sort of disturbance in the process of production/Output.
5. Any sort of damage or loss after committing the misconduct by the employee.
6. Complaint is not an action and information of complaint is not an action.
7. A complaint is not a charge sheet nor a punishment.
8. Complaining Authority cannot advise any kind of punishment or quantum of punishment.
9. A complainant is also a part in the process of disciplinary action & without his involvement it can not be completed.

## MEANING OF MISCONDUCT

Meaning of misconduct and its classification.--The term "Misconduct " is not defined nor any acts are classified as misconducts in the CCS (CCA) Rules.

The dictionary meaning of the word is given as bad management, malfeasance or culpable neglect of an official in regard to his office--(Murray's Dictionary), 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--(Ballentine's Law Dictionary). It implies a wrongful intention and not a mere error of judgment--(Law Lexicon).

In *Rasabati Bewa v. Union of India*, AIR 1961 Orissa 113, the Orissa High Court laid down that-- Misconduct is something more than mere negligence. It is the intentional doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be.

In *J.J. Mody v. State of Bombay*, AIR 1962 Guj 197, the Gujarat High Court enumerated certain acts as misconducts.

1. Where the act or conduct of the servant is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master ;
2. Where the act or conduct of a servant is inconsistent or incompatible with the due or peaceful discharge of his duties to his master ;
3. Where the act or conduct of a servant makes it unsafe for the employer to retain him in service ;
4. Where the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted ;
5. Where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee ;
6. Where the servant is abusive or he disturbs the peace at the place of his employment ;
7. Where the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly ;
8. Where the servant is insulting and insubordinate to such degree as to be incompatible with the continuance of the relation of master and servant ;
9. Where the servant is habitually negligent in respect of the duties for which he is engaged; and
10. Where the neglect of the servant though isolated tends to cause serious consequences ;

Regulation 5 of the International Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 1987, lays down some acts to be misconduct--

Misconduct.--Without prejudice to generality of the term “misconduct”, the following acts of omission and commission shall be treated as misconduct for the purpose of these regulations, namely-

- (i) theft, fraud or dishonesty in connection with the business or property of the Authority or property of another person within the premises of the Authority.
- (ii) taking or giving bribes or any illegal gratification or any remuneration to which he is legally not entitled.
- (iii) possession of pecuniary resources or property disproportionate to the known sources of income by the employee or on his behalf by another person, which the employer cannot satisfactorily account for.
- (iv) furnishing false information regarding name, age, father’s name, qualifications, previous service or experience or any other matter in relation to the employment at the time of appointment, or during the course of employment.
- (v) acting in any manner prejudicial to the interest of the Authority,
- (vi) Willful insubordination or disobedience of any lawful and reasonable order of his superior.
- (vii) absence without leave or overstaying the sanctioned leave for more than four consecutive days without sufficient grounds or satisfactory explanation.
- (viii) habitual late coming or irregular attendance.
- (ix) neglect of work or negligence in the performance of duty including lingering or slowing down of work.
- (x) causing damage to any property of the Authority.
- (xi) interference or tampering with any safety device installed in or about the premises of the Authority.
- (xii) drunkenness or riotous or disorderly or indecent behaviour in the premises of the Authority or outside such premises when such behaviour is related to or connected with the employment.
- (xiii) gambling within the premises of the Authority
- (xiv) smoking within the premises of the Authority where it is prohibited.
- (xv) Collection, without the premises of the competent authority, of any money within the premises of the Authority except as sanctioned by any law or rules of the authority for the time being in force.

- (xvi) sleeping while on duty.
- (xvii) commission of any act which amounts to a criminal offence involving moral turpitude,
- (xviii) absence from the employees' appointed place of work without permission or sufficient cause.
- (xix) Purchasing from, or selling to, the Authority properties machinery, stores or other articles without express permission in writing from the competent authority,
- (xx) commission of any act subversive of discipline or of good behaviour
- (xxi) abetment of, or attempt to commit, any act which amounts to misconduct,
- (xxii) participating in an illegal strike or abetting, inciting, instigating or acting in furtherance thereof,
- (xxiii) willful damage to works of the Authority in progress, and
- (xxiv) failure to wear a uniform or badge, or both, wherever an employee is required to wear an uniform or badge while on duty.

Expression "gross misconduct" should not be viewed in abstract or as it appeared in perception of Court. However, it has to be construed rather with reference to acts and omissions enumerated in service conditions, such as para 521(6) of Sastri Award. On fact, it has been held that misconduct in question constituted gross misconduct.--*Regional Manager & Disciplinary Authority, S.B.I. v. S. Mohd. Gaffar*, (2002) III LLJ 529 (SC).

A misconduct committed even outside office premises, a disciplinary action can be taken there against. More so, assaulting a colleague even outside office is a misconduct.--*A. Jayaram v. Vice President*, 2004 (3) SLJ 95 (CAT-Bangalore).

Once unauthorized leave is treated as leave without pay, no misconduct exists there. Thus, in case of no misconduct, remanding the case to lower court by the High Court not permissible. *State of Punjab v. Baksish Singh*, 1993 (3) SLJ 1.

"Misconduct" is a generic term and means "to conduct amiss ; to mismanage, wrong or improper conduct, bad behaviour, unlawful behaviour or conduct". There is, a distinction between misconduct and grave misconduct. Misconduct in order to earn the epithet of gravity has to be gross or flagrant. Consequently the degree of misconduct to justify dismissal has to be higher or more serious. The words "gravest acts of misconduct" are incapable of definition. One has to apply one's mind to the words and give a meaning to each of them in the light of the actual deed, situation and circumstances. To look into the matter exclusively

from a grammatical angle, 'gravest' is the highest degree of misdeed as compared to what is just "grave". The superlative degree may be used either to denote the highest or maximum degree in a given aggregate, or simply to indicate a supreme or very high degree without definite comparison. It cannot be said that the intent of the framers of the Punjab Police Rules, 1934, Volume II, Chapter XVI, Rule 16.2 (1) was that absolutely the worst misconduct could alone merit dismissal, and so long as, comparatively speaking, there could be a possibility of a still worse conduct, it could not be termed the gravest act of misconduct. In the circumstances, the use of the superlative degree, appears to be intended to indicate super-eminent, or a very high degree of misconduct, and not, that the degree should be so high or so low as cannot be outclassed or excelled ; *Bhagwat Prasad v. I.G. Police*, AIR 1970 P&H 81.

Misconduct means, misconduct arising from ill motive, act, of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct, as per *Stroud's Judicial Dictionary*.

If servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct. It may not be correct to say that a Government servant is not answerable to Government for misconduct committed in his private life. It is sufficient, if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, *Pears v. Foster*, 17Q.B.D. 536. See also, *Esmine Gomes Martins v. Union of India*, 1977 (2) SLR 426 (Goa), *Union of India v .J. Ahmed*, AIR 1979 SC 1022.

In *Kundan Singh Jhala v. State of Rajasthan*, 1979 WLN (U.C.) 175, it has been observed that an erroneous view of law or exercise of judicial discretion upon insufficient material would not amount to misconduct, unless the officer was actuated by malice or the order was the result of mala fide conduct.

Serious misconduct is a justiciable issue and it will always be open to the Civil Court to come to its own conclusion whether on the proved facts serious misconduct was established ; *Union of India v. Pauhari Saran Misra*, 1973 SLJ 586.

In the instant case it was contended that because the plaintiff went to the scene of occurrence without any uniform the question of commission of a criminal offence by a public officer in connection with his official relations with the public did not arise. Held, since the plaintiff was purporting to exercise authority of a police officer and even if he was in plain clothes it

does not mean that he was not purporting to act as a police officer ; *Union of India v. Ram Kisan*, 1972 SLR 11 (SC).

In another case the petitioner – constable along with another constable conducted an unauthorized checking on road by posing themselves to be Traffic Police officials. However, the petitioner was on leave and in plain clothes, while the companion constable was in uniform. As a matter of fact during the course of that checking they illegally extorted money from certain truck drivers. Thus, departmental enquiry was held and the petitioner was dismissed from service ; *Bhoja Ram v. State of Haryana*, 1979 (2) SLR 459.

In the instant case the petitioner was given a bill for being cashed from treasury. The said bill was cashed and thereafter said to have been lost. The petitioner was charged for misappropriating the public money and for absenting himself from duty. Later on enquiry, he was dismissed from service ; *Jogendra Chandra Talukdar v. Deputy Commissioner*, AIR 1962 Assam 28.

## **TYPES OF MISCONDUCT<sup>1</sup>**

### **MINOR MISCONDUCT**

Any of the following acts or omission shall amount to a minor misconduct

1. late attendance;
2. absence from duty without leave or without sufficient cause, which is not a major misconduct;
3. refusal to work on a job of a similar nature without giving adequate reasons for the same;
4. sleeping during working hours;
5. failure to observe safety instructions, or unauthorized removal in reference to machinery, guard, fencing or other safety device installed in the premises of the establishment.
6. Any act or omission for which deductions from the wages of an employed person are authorized by or under the payment of wages Act;
7. Entering or leaving the premises of the undertaking except by the gate or gates appointed for the purpose.
8. Committing a nuisance in the premises of the undertaking, indiscipline, breach of any standing order or instructions for the maintenance and running of any department and maintaining its cleanliness

---

<sup>1</sup> Service Laws By PK. Manjumdar



## MAJOR MISCONDUCT

The following acts or omission on the part of an employee shall be amount to the Major misconduct.

1. Conviction by a court of law for an offence involving moral turpitude.
2. Theft, fraud or dishonesty in connection with the business or property of the undertaking.
3. Taking or giving bribe or any illegal gratification.
4. Willful disobedience of any law or reasonable order of the superior involving safety of any person or property or other matter having an adverse effect upon the work or wages of other employees
5. Gambling within the premises of the undertaking.
6. Drunkenness riotous or disorderly behavior, during working hours at the undertaking or conduct endangering the life or safety of any person.
7. Collection of any moneys within the premises of the undertaking for the purpose & by persons not authorized by law or if no such authority is required by the law without the sanction of Manager.
8. Engaging in trade or business, with in the premises of the undertaking including collection of the pay tickets given to the employees or the sale or canvassing of tickets, Coupons or other tokens of any commodity or article without the previous sanction of the Manager.
9. Canvassing for trade union membership & collection of union's dues within the premises except as permission under law.
10. holding meeting, shouting slogans, organizing processions inside the premises of the undertaking without the previous permission of the manager or except as permitted by the law.
11. Commencing, going or joining the strike in the provision of any law for the time being in force.
12. inciting ,instigating others to take part or otherwise acting in furtherance of the strike in contravention of the provisions of any law for the time being in force.
13. willful damage to the work in process to any other property of the undertaking.
14. disclosing to any unauthorized person any information in regard to the processes of the undertaking which may come in to his possession in the course of his work.
15. Unauthorized absent from the duty for more that 10 consecutive days.
16. Obtaining financial assistance from the ESIC on the basis of tax of forged document.
17. A minor misconduct of which a workman is found habitually guilty, i.e. for not less than 3 occasion with in a space of one year or less.

## **PENALTIES**

**Relevant rule and Government instructions.**--Rule 11 of the Central Civil Servants (Classification, Control and Appeals) Rules prescribe the penalties in departmental proceedings. The following penalties may for good and sufficient reasons and as herein-after provided, be imposed on a Government servant, namely--

### **Minor Penalties--**

- (i) Censure ;
- (ii) Withholding of promotion. ;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders ;
- (iii-a) reduction to a lower stage in the time scale of the pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.
- (iv) Withholding of increments of pay.

**Minor Penalties.**--Now we shall discuss the minor penalties in details in successive order ;

**Censure.**--An order of “censure” is formal and public act intended to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment, and nothing can amount to a “censure” unless it is intended to be such a formal punishment and imposed for “good and sufficient reason” after following the prescribed procedure. A record of the punishment so imposed is kept on the officer’s confidential roll and the fact that he has been “censured” will have its bearing on the assessment of his merit or suitability for promotion to higher posts.

There may be occasions, on the other hand, when a superior officer may find it necessary to criticize adversely the work of an officer working under him (e.g. point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all circumstances into consideration, it may be felt that, while the matter is not serious enough to justify the imposition of the formal punishment of “censure”, it calls for some informal action such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning etc., in the officer’s confidential roll. However, the mere fact that it is so mentioned in the

character roll does not convert the warning etc. into “censure”. Although such comments, remarks, warning etc. also would have the effect of making it apparent or known to the person concerned that he has done something blameworthy and, to some extent, may also affect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of “censure” because it was not intended that any formal punishment should be inflicted.

**Withholding of promotion.**--In *J.P. Sethi v. Union of India*, (CATCH), 1986 (3) Serv. LR 398 (402, 403), where it is, seen that when the Local Promotion Committee met in April, 1973 as required by the Office Manual, Part I, Rule 97, it made a clear recommendation about the applicant’s fitness for promotion to the grade of Section Officer (Accounts).

The Central Administrative Tribunal, Chandigarh, held that-

When the CGDA decided on 1-5-1973 to refer consideration of the applicant’s promotion, the reason given was only “contemplated disciplinary case” against him and there was not actual charge-sheet issued to the applicant by the date. It is seen that the directive issued by the Ministry of Home Affairs on 31-8-1960 to all Departments regarding cases of promotion of officers against whom Departmental Proceedings are initiated, stipulates that the officer’s suitability for promotion should be assessed at the relevant time by the Departmental Promotion Committee and a finding reached whether, if the officer’s conduct had not been under investigation, he would have been recommended/selected for promotion. The findings as to the suitability and the place in the select list of the officer in question should be recorded separately and attached to the D.P.C.’s proceedings in a ‘sealed cover”, which is not to be opened till after the termination of the Departmental Proceedings against the officer. It is further stipulated by the Home Ministry that the ‘sealed cover” procedure should be followed in those cases in which, after the investigation the evidence collected indicates a *prima facie* case against the officer concerned. The mere fact that the P.E. O.R.C. has been registered by the Central Bureau of Investigation against an Officer, or complaints are being looked into in a preliminary Departmental Enquiry, but no conclusion has reached upon *prima facie* guilt of the officer, should not be ground for treating the said official as one whose conduct is under investigation. It is further clarified by the Home Ministry that the ‘sealed cover” procedure should be followed only after the conclusion of the investigation and when the competent authority has formed the opinion that a charge-sheet may be issued to the officer on specific imputations, where Departmental action is contemplated. In the present case the actual charge-sheet was issued as late as on 13-12-1973. It cannot, therefore, be held that in

April/May, 1973, when his case for promotion was considered, the Departmental had processed this case as a ‘sealed cover case’ under the prescribed procedure at all, but had just “deferred the promotion” without issuing any charge-sheet to the applicant. This was illegal. In this connection it is relevant to refer to the ruling given by the Madhya Pradesh High Court, in the case of *B.P. Sharma v. Union of India*, vide SLJ 1984, Vol. I, page 277, which states that a Departmental Inquiry usually starts with the issuance of the charge-sheet and unless a charge-sheet has been issued, it cannot be accepted that a Departmental Inquiry is pending against an employee. This view is also supported by the Andhra Pradesh High Court quoted at SLJ 1976, page 295, according to which the withholding of promotion due to pendency of “contemplated initiation of disciplinary proceedings” is illegal and the Individual is entitled to be considered for promotion irrespective of the pendency of the contemplated inquiry.

**Withholding of increments.--**The penalty of withholding an increment takes effect from the date of increment accruing to the officer after the issue of the punishment orders. It cannot affect the increment which was due prior to the issue of the punishment orders even though it may not have actually been drawn due to the officer being on leave or other administrative reasons.

When the penalty of withholding of increment is awarded to an employee, it is obligatory on the part of the disciplinary authority to specify the period for which the penalty should remain current. A doubt has been raised whether in such a case, all the increments falling due during the currency of the penalty or only one increment should remain withheld during the specified period. It is clarified that an order of withholding of increment for a specified period implies withholding of all the increments admissible during that specified period and not the first increment only.

### **Major Penalties.—**

**1. Reduction in rank.--**Every order passed by a Competent Authority under sub-rule (2) of Fundamental Rule 29 imposing on a Government servant the penalty of reduction to a lower service, grade or post or to a lower time-scale should indicate :-

- (i) The date from which it will take effect and in case where the reduction is proposed to be imposed for a specified period, the period (in terms of years and months) for which the penalty shall be operative. It should be noted that the reduction may be for an unspecified

or an indefinite period and in cases where no period has been specified in the order of penalty, the conclusion is that the penalty is for an unspecified period.

(ii) The extent (in terms of years and months), if any, to which the period referred to at (i) above shall operate to postpone future increments on restoration after the specified period.

Reduction in Rank to A Lower Stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of such period the reduction will or will not have the effect of postponing the future increments of his pay ;

2. **Reduction in Pay scale** to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service ; Every order passed by a competent authority under sub-rule (1) of Fundamental Rule 29 imposing on a Government servant the penalty of reduction to a lower stage in a time-scale should indicate :

(i) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative ;

(ii) the stage in the time-scale (in terms of rupees) to which the Government servant is reduced ; and

(iii) the extent (in terms of years and months), if any, to which the period referred to at item (i) above should operate to postpone future increments.

It should be noted that reduction to a lower stage in a time-scale is not permissible under the rules for an unspecified period or as a permanent measure. Also when a Government servant is reduced to a particular stage, his pay will remain constant at the stage for the entire period of reduction. The period to be specified under (iii) should in no case exceed the period specified under (i).

3. **Compulsory retirement** ; The Supreme Court has laid down in *H.C. Gargi v. State of Haryana*, 1 (1987) ATLT 81 that the power of compulsory retirement under Rule 3.25 (d)

of the Rules cannot be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest as laid down by this Court in *Union of India v. Col. J.N. Singh and Another*, 1971 (1) SCR 791.

In *S.C. Vaish Bhopal v. Union of India and another*, 1986 (2) Serv. LR 794, the Madhya Pradesh High Court laid down :

The stand taken by the respondent State Government is somewhat contrary to the stand taken by the respondent Union of India, it is their case that the entire service recorded of the petitioner from the date of his appointment in 1955 was taken into consideration to make recommendations about his compulsory retirement. They alleged that, “the petitioner was generally graded as “average” or “ordinary” I.A.S. Officer. According to them, the petitioner has earned as many as 14 adverse remarks in the past years which were communicated to him. Their case, therefore, is that the entire service record of the petitioner was taken into consideration before recommending his compulsory retirement. The respondent State also submitted that since the petitioner has a right of submitting a memorial to the President under Rule 25(1) of the All India Services (Discipline and Appeal) Rules, 1969 which is an alternative efficacious remedy, the present petition under Article 226 is not maintainable.

4. **Discharge:** removal from service which shall not be a disqualification for future employment under the Government ;
5. **Termination:** dismissal from service which shall ordinarily be a disqualification for future employment under the Government :

Explanation.--The following shall not amount to a penalty within the meaning of this rule, namely :--

- (i) withholding of increment of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment ;
- (ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar ;

- (iii) non-promotion of a Government servant, whether in a substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible ;
- (iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct ;
- (v) reversion of a Government servant, appointed on probation to any other Service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation ;
- (vi) replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority under the control of a State Government, at the disposal of the State Government or the authority from which the services of such Government had been borrowed ;
- (vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement ;
- (viii) termination of the service--
  - a) of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and order governing such probation, or
  - b) of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or
  - c) of a Government servant, employed under an agreement, in accordance with the terms of such agreement.<sup>2</sup>

---

<sup>2</sup> Services under the State – Justice M Rama Jois

## **PUNISHMENT**

The order of punishment shall take effect from the original order and period of punishment must be reckoned from that date.--*Hari Charan Shaw v. Union of India*, 2001 (88) FLR 280 (Cal.).

**Reduction of rank on charge of creating nuisance after consuming alcohol.**--The petitioner head constable was charged of creating nuisance after consuming alcohol was reduced in rank as punishment. Held that being in disciplinary force he committed gross misconduct and there being no equity in his favour no interference was required hence petition dismissed.-- *Ishwar Singh v. State of Haryana*, 1999 (7) SLR 670 (P & H) (DB).

**Issuance of warning as punishment is no penalty and illegal.**-- The petitioner an employee in Coal India Limited was refused promotion on ground that punishment of warning was awarded to him after holding disciplinary proceeding. Held that warning was not within the purview of each minor penalty and sealed cover procedure could have been adopted during pendency of the disciplinary proceeding. Refusal on this ground for considering promotion is illegal. Order was passed that he be considered afresh, if found fit in the year 1992 and may be granted national seniority.--*Ranajit Kumar Das v. Coal India Ltd.*, 1999 (1) SLR 58 (Cal.).

**Major punishment---Held not sustainable.**--The petitioner was imposed penalty by stopping four increments without issuing him enquiry report and show-cause notice which was enjoined upon punishing authority before passing order inflicting major punishment. It was held that before passing order inflicting major punishment, petitioner is to be served with a show-cause notice alongwith enquiry report and affording opportunity for petitioner's hearing. Order of punishment held not sustainable.--*Surinder Kumar Mittal v. State of Haryana*, 2000 (1) SLR 439 (P & H, DB).

**Penalty imposed for lack of integrity and devotion towards duty.**--After due enquiry petitioner was charged with lack of integrity and devotion towards his duty for which penalty was imposed and recovered from his pay. Later he was terminated under Rule 5(1). Held that termination amounted to double jeopardy hence set aside and order was given for his reinstatement without back wages, though the period would be counted for pensionary benefits. Inter se seniority will be determined by competent authority.--*Zohmingliana v. State of Mizoram*, 2000 (2) SLR 555 (Gauhati).



## **VALIDITY OF RULE 11 OF C.C.S. CONDUCT RULES.**

In *Bank of India Officers Association v. Bank of India*, 1979 (2) SLR 326, it was held that clause (2) of Regulation 7 of Bank of India Officers Employees (Conduct) Regulations in so far as it prohibits making public or publish or cause to be published or pass on to others any documents, paper or information which may come into possession of the employee in his official capacity is valid. Thus, Rule 11 of C.C.S. (Conduct) Rules is valid.

**Evidence before committee or any other authority.**--Rule 11 of the C.C.S. (Conduct) Rules, 1964 lays down that—

- (1) Save as provided in sub-rule (3), no government servant shall, except with previous sanction of the government give evidence in connection with any enquiry conducted by any person, committee or authority.
- (2) Where any sanction has been accorded under sub-rule (1), no government servant giving such evidence shall criticize the police or any action of the Central Government or of a State Government.
- (3) Nothing in this rule shall apply to—
  - (a) evidence given at an enquiry before an authority appointed by the Government, Parliament or a State Legislature, or
  - (b) evidence given in any judicial enquiry, or
  - (c) evidence given at any departmental enquiry ordered by authorities subordinate to the government.”<sup>3</sup>

---

<sup>3</sup> www. Google.com

## **DISCIPLINARY ACTION PROCEDURE:**

1. The manager or other officer authorized by him in this behalf shall give to the employee a charge sheet clearly setting forth the misconduct charged & the circumstances appearing against him & requiring his explanation.
2. The employee shall be given for submitting his explanation a period of atleast 24 hrs if he is charged with the minor misconduct & at least 72 hrs if he is charged with a major misconduct.
3. An employee shall be allowed to defend by himself for the representative of the employee , if he so desires.
4. Except in case where he admits the charge leveled against him the employee shall be permitted to produce witness in the defence & cross examination any witness on whose evidence the charge rests.
5. An order of punishment shall be in writing & shall be issued over the signature of the manager or other officer authorized under standing order.
6. A copy of the order passed awarding the punishment shall be given to the employee.
7. In case of an employee other than the one belonging to the clerical, technical or supervisor staff the manager can suspend him pending enquiry in to an alleged major misconduct for the period not exceeding 4 days.
8. The manager may suspend clerical , Technical or supervisory employee for the period of 3 months pending enquiry into the major misconduct alleged against him.
9. The order of suspension shall be in writing & may take effect immediately on communication thereof to the employee. If the action is taken within a period of 6 months then the amount of wages for the period of suspension shall be payable in full.

Note : No punishment shall be imposed on the employee unless proved guilty of misconduct in an enquiry :

10. If on enquiry , the order is confirmed or the period of suspension reduced the employee shall be deemed to be absent from the duty for the period of suspension & shall not be entitled to any wage for such period. If however ,the order is rescinded the employee shall be deemed to be on duty during the full period of suspension & shall be entitled to the same wages as he would have received if he had not been suspended.
11. Provided that if the enquiry is not complete within 4 days from the date of submission of explanation, the employee shall be entitled to the full wages until the completion of the enquiry from the date of submission of his explanation.

## **DETERMINE PROBABLE LEVEL OF MISCONDUCT**

Once the likely level of misconduct has been determined, the employer will be able to determine what action to take next.

The nature of the misconduct will be obvious in some occasions, but as the disciplinary policy will only include the type of conduct that could fall into each category, it will be necessary for an employer to make a reasonable judgement in many cases of suspected misconduct.

These will be determined according to the nature of the company, as some matters may be more important in some workplaces, and a failure to follow these requirements could be more of a disciplinary offence in these circumstances.

Typical examples of misconduct could include:<sup>4</sup>

- Minor (breaches of the rules or required standards, but not of a nature serious enough to warrant dismissal or more formal action initially)
  - Poor Time-keeping
  - Personal use of telephones, etc
  - Regular or unauthorised absences
  - Failure to act on a reasonable instruction
  - Poor performance
  
- Serious (breaches of the rules or required standards of a nature serious enough to warrant dismissal in some instances)
  - Insubordination
  - Continued poor performance after appropriate support & training
  - Incapability due to drugs or alcohol
  - Serious misuse of computers or other equipment
  - Repeated incidents of minor misconduct

---

<sup>4</sup> www.google.com

- Gross (breaches of the rules or required standards of a nature serious enough to warrant dismissal in all instances)
  - Serious insubordination
  - Theft or Fraud
  - Violence or bullying
  - Serious breach of confidence
  - Serious neglect of health & safety procedures

Repeated offences of minor misconduct may also be treated as serious misconduct. However, it's important to remember, this is misconduct for which there have been charges brought against the employee – informal action (when formal disciplinary charges are not applied) does not count, and it is only repeated minor misconduct for which charges has been brought when repeated minor misconduct should be treated as serious misconduct.

### **Address with Informal Discussion**

In most cases of minor misconduct, the employee may have had no intention of misconduct, and may not even have realised their actions were misconduct.

Once the area of concern has been identified, it will often be possible to deal with this through appropriate support – for performance or attendance issues, either providing more training or making reasonable adjustments in the workplace that could help improve attendance.

### **Arrange appropriate support**

Whatever the outcome of the disciplinary process – whether summary dismissal (dismissal on the spot), dismissal with notice (serve out the notice period before the dismissal takes effect), a lesser disciplinary penalty, or no disciplinary penalty – the employer has a responsibility to their employee, and should ensure appropriate support is provided.

If you have decided to summarily dismiss, you should ensure the employee is able to gather any personal belongings in a manner that causes the least difficulties. This may involve a supportive approach as they return to their workplace, but as this will often be in full view of colleagues, it would often be better to arrange a quieter time to arrange this if practical.

## **Advise Employee of Potential Misconduct**

As you have determined that there is possible or probable misconduct, it is only appropriate you alert the employee to this. Natural justice & good employment relations require you to give the employee notice of the issues you suspect they are guilty of; any concerns that this notice will allow an employee to prepare an excuse or otherwise hide the facts, or adjust their conduct should not deter this.

## **Consider Suspension**

During the disciplinary process, employers will need to actively consider whether suspension is appropriate. This decision does not need to be taken at the start of the process, it can be reached at any stage that it seems appropriate, if information comes to light that justifies the same.

Suspension during a disciplinary process is not a disciplinary penalty in itself. It is an option available, normally applied only for gross misconduct, that temporarily removes the employee while disciplinary matters are investigated & the facts determined. As this is not a penalty, employers should normally continue to pay the employee for the time suspended – which should be as brief as possible, and certainly no longer than a week.

## **Formal Investigation**

A charge of minor misconduct will not require an investigation as intense as a charge of gross misconduct, although the employer should still be satisfied they have investigated sufficiently to hold a reasonable view of what happened. A charge of gross misconduct will often require the most intense investigation – this could justify dismissal, even as a first offence, so it's important the employer has reasonable grounds to support this action – although even then, in some instances this could be brief if the evidence available is strong & the employee does not offer a convincing explanation for their conduct. It is normally preferable wherever possible to have the investigation conducted independently – the manager that will make any decision based on the findings of the investigation should, wherever possible, arrange for another manager or someone external to gather the facts impartially, and present these in a balanced manner: remember, the investigation is intended to gather facts, not make or influence the final decisions.

Once an investigation has been concluded, the employer should decide what action to take against the employee. This will either be to treat the matter as minor misconduct that can be dealt with by an informal discussion; to proceed with disciplinary charges against the employee (in these cases, employers should again consider whether suspension is appropriate); or to conclude that there is insufficient evidence to proceed.

### **Disciplinary Charges Issued**

If an employer holds a reasonably based view that there is a disciplinary charge to answer, the full details of this should be set-out in writing to the employee. The letter should also invite the employee to a disciplinary meeting, and fully explain their rights in regard to this.

### **Disciplinary Meeting**

A disciplinary meeting should be arranged, wherever possible at a time mutually convenient to all parties. In a small number of cases, the employee will claim all dates/times offered are inconvenient to them, or any companion. In these instances, the employee should suggest a suitable time within a reasonable time-scale (five days is typically fine although this may vary for different circumstances), but where agreement cannot be reached, the employer should set a final date, and advise the employee that the meeting will proceed without them if necessary.

It will be important, even if cases for which the employee does not attend, to proceed with a disciplinary hearing. This will typically involve a minuted record that the managers were present, and considered the investigation & any other information available to them, and also decided whether to proceed on the basis of that, or give the employee a further opportunity to attend a meeting (providing the manager has been flexible & given the employee a reasonable opportunity to attend a meeting, giving a further opportunity will not normally be necessary).

### **Decision**

The employer should reach their decision only on the facts of the case, as far as reasonably established. It is important not to allow prejudices or other suspicions to influence the decision-making. Employers should remember always to act consistently: there will be unique elements to any case, but in cases with predominantly the same issues, any actions or penalty should be similar.

The employer should consider the current record of the employee in making any decision: a disciplinary warning will normally be exhausted after a period of time, so unless current these should not be considered in any decision.

## **Appeal**

Disciplinary procedures should always include an opportunity for an appeal, wherever possible to a more senior person than that who took the initial decision; in the smallest companies, this may not be possible, in which case a suitably qualified independent person may be brought in to hear this. Where the same manager needs to hear the appeal, they should act as impartially as possible from their earlier decision.

The appeals process is not an opportunity for the employee to present new evidence, but for the employer to consider whether the original process was fair & reasonable in all the circumstances. The appeal should be set out in writing, and should give clear details of what is being appealed – the findings, the disciplinary penalty, or both.

## **Final Outcome**

The employee will have no further appeal internally at this stage, so before this final decision is reached, the employer should satisfy themselves that all procedures have been properly & fully followed; the disciplinary penalty is appropriate in the circumstances; and they would be confident in defending this at an employment tribunal in case the employee elect to take a claim.

The final outcome should never be pre-determined, but will be a decision reached when all the facts have been considered in a balanced manner. After the appeal, it could be the case that the original decision is upheld, the decision is set aside, or the decision is substituted with an alternative decision.<sup>5</sup>

---

<sup>5</sup> Services under the State – Justice M Rama Jois

## **DISCIPLINARY RULES AND PROCEDURES FOR MISCONDUCT**

### **Objective**

The objective of this procedure is to give employees the opportunity to improve their conduct or performance. It identifies who has authority to take disciplinary action and aims to ensure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

### **Informal Action**

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

### **General Principles for the Formal Disciplinary Procedures**

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident.
2. The employee has the right to receive, prior to disciplinary hearings:
  - A written statement of the alleged misconduct; and
  - Particulars on the basis for the allegation.
3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses to the information provided on the allegation.
4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his or her union as having experience of, or as having received training in, acting as a worker's companion).
5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.



6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.
7. The employer will ensure that:-
  - All steps under the procedure are taken without unreasonable delay;
  - The timing and location of all hearings are reasonable;
  - Hearings are conducted in a manner which enables employees to explain their cases;
  - Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed. This does not apply where the most senior manager attended the disciplinary hearing at which the decision was taken to take the disciplinary action being appealed.
8. Once warnings have expired they will be erased from the employee's personal record.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.
- 12. Precautionary Suspension:** In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to the employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension with full pay whilst unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension.

## FORMAL PROCEDURE

When taking formal disciplinary action, the employer will comply with the Statutory Procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

Step 1 Statement of grounds for action and invitation to meeting : The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will invite the employee to a hearing to discuss the issue.

Step 2 Meeting: Prior to the hearing the employer will supply the basis of the allegation. After the meeting the employer will inform the employee of the decision and offer the right to appeal.

Step 3 Appeal : If the employee wishes to appeal he or she will inform the employer within 5 working days. The employer will invite the employee to a further hearing to discuss the appeal. The final decision will be communicated to the employee.

## STEPS FOR MINOR MISCONDUCT

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

Stage 1 You will be given a **verbal warning**. It will be recorded and retained on file for a period of 6 months.

Stage 2 If the same or similar offence is repeated within 6 months you will be given a **first written warning**. It will be recorded and retained on file for a period of 12 months.

Stage 3 If the same or similar offence is repeated within 12 months you will be given a **final written warning**. This will contain a clear notice that a repeat of the offence within 12 months will result in dismissal.

Stage 4 If the same or similar offence is repeated within 12 months you will be **dismissed**.

## **STEPS FOR MAJOR MISCONDUCT**

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred you will receive a **final written warning** which will contain clear notice that a repeat of the offence within 12 months will result in dismissal.

### **Gross Misconduct**

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined earlier. If the employer is satisfied that an offence has occurred the employee will be **dismissed** summarily: i.e. without notice and without wages-in-lieu of notice.

### **Appeals**

Where an employee feels that action taken **at an earlier stage** under this procedure is unjustified or unfair, there shall be the right of appeal. All appeals must be made in writing to within 5 working days of being informed of the disciplinary sanction. Appeal hearings will be held within 5 working days of receiving the notification of appeal. The employee has the right to be accompanied at the appeal hearing. The result of the appeal hearing will be notified to the employee within 5 working days in writing.<sup>6</sup>

---

<sup>6</sup> [www.Yahoo.com](http://www.Yahoo.com)

## **CONSTITUTION OF INDIA WITH REFERENCE TO DISCIPLINARY PROCEEDING FOR MISCONDUCT**

**Constitution of India, Article 226--Disciplinary proceedings for misconduct.** Where the appellant, a driver was acquitted by the criminal court because he was not found guilty of the charge of causing death. There was no other misconduct in the discharge of his duties. Held that disciplinary proceedings cannot be initiated against the appellant for the same offence.- *S.K. Ramju v. Regional Manager, APSRTC (AP)*, 2002(1) SLR 462 (AP) (DB).

**Constitution of India, Articles 311, 226 and 227--Validity of removal for misconduct.--** Where the services of petitioner was terminated on account of his committing serious acts of misconduct such as abusing and beating superior officers, threatening them of dire consequences, making inflammatory speeches, preaching violence, use of force against management executives, man –handling his superiors with the help of his colleagues, instigating co-workmen to resort to strike and violating the terms of settlement. The Management after holding a domestic enquiry gave cogent reasons for reaching at the conclusions that the workman deserves to be dismissed with immediate effect. All the charges have been proved before the Tribunal by oral as well as documentary evidence. Held that the award of Tribunal upholding action of management and holding that the dismissal order was justified cannot be termed as suffering from error of law apparent on face of record. The question of victimization on account of union activities did not arise. The petitioner had been rightly dismissed on account of proven acts of misconduct.--*Anil Kumar v. Industrial Tribunal-cum-Labour Court, Gurgaon & others*, 2002(1) SLR 760 (P & H).

**Misconduct--During probation period.**—Where the employee was retired compulsorily on being found guilty of misconduct as he had assaulted his superior officer in his office in drunken state during probation period. He was found guilty and convicted by Criminal Court. Held that merely because he was given benefit of probation does not mean that such a serious misconduct committed by petitioner can be ignored by the authority and such person cannot be continued in service. [*Babulal v. State of Rajasthan*, 2002(1) SLR 599 (Raj) (DB)].

**Promotion—Adverse ACRs—Rejection of representation after time limit cannot be faulted.**—Where the petitioner had sought expunction of entries regarding promotion and the authority had duly considered his representation and expunged some parts. The rules provide for statutory complaint in case one is not satisfied. No such complaint was filed within the

prescribed period, therefore no relief was given by the respondents. Held that no injustice was done to the appellant by the action of the respondent after time limit can not be faulted.—*Major Aroon Kumar Sinha v. Union of India and Ors.*, 2002(1) SLJ 57 (SC).

**Honorary Commission—Denial of Promotion.**—Where last chance the demands were to be considered for Honorary Commission was 15<sup>th</sup> August, 2001. The respondent pleaded that he had already been considered 4 times and was found unfit. It was found that he was earlier pushed twice to Court for wrongful denial of promotion. The Rules required to consider in last 2 years of service. Earlier considerations cannot take away this right. Therefore respondents were directed to consider the case of petitioner for grant of honorary commission. [*Subedar Major R.C. Patial v. Union of India & Ors.*, 2002(1) SLJ 52 (Delhi)].

**Rejection of pension not justified—Constitution of India, Article 300-A—Army Pension Regulations (Part II), 1940, Rule 213.**—Where the claim for pension was rejected and the respondent had put in 21 years of service and he was independently entitled for pension for the above period since none of the alleged breaks in service were due to any fault of the respondent. Total service rendered by the respondent including service after re-employment was 34 years. Held that the appellants were not justified in denying pensionary benefits to the respondent.—*Union of India v. Naurang Ram Bugalia*, 2002(1) SLR 487 (Raj) (DB).

**Constitution of India—Articles 235, 311—Misconduct by Judicial Officer.**—The Incharge District Judge granted stay to order of disconnection of telephone passed in consumer dispute. The order was passed bonafide and on assumption that the District Judge being the ex-officio Chairman of District Consumer Forum could grant such an order when one of the members of the Forum had placed the papers before him seeking for orders. Held that at the best it was a case of bonafide and erroneous exercise of judicial power and that matter cannot be treated as misconduct at all.—*P.C. Joshi v. State of U.P.*, AIR 2001 SC 2788 : 2001 (6) SCC 491 : 2001 (5) Scale 119 : 2001 (3) SLR 726 : 2002 (1) SLJ 73.

**Withholding of pension due to grave misconduct.**—Where an employee was charged for absence and disobedience of transfer, the Enquiry Officer proved the guilt on the admission of the employee and recommended a lenient view. The D.A. in Appellate Authority or the E.O. did not record any finding that it was a grave misconduct or a negligence. Held that the President had acted without the authority of law and pension cannot be withheld in absence of recording gravity of offence and negligence.—*Amar N. Sharma v. Union of India and Anr.*, 2002(1) SLJ 338 (CAT- Principal Bench, New Delhi).

**Constitution of India, Article 311—West Bengal State Electricity Board Service Regulations, Regulation 63(b)—Charge sheet issued before retirement—Denial of inspection of documents—Natural justice.**

A charge-sheet was issued just 11 days before the date of his retirement. The petitioner requested Disciplinary Authority to allow inspection of certain documents and also requested that he be granted 30 days time for preparation and submission of written statement of defence after inspection of documents but he was denied inspection of relevant documents. Held that the Disciplinary Authority had not only acted in violation of Regulation 63(b) of Regulations but also disclosed its biased attitude towards the petitioner by appointing Enquiry Officer and Presenting Officer even before receipt of petitioner's reply to the charge-sheet. The Disciplinary Authority was totally biased against the petitioner and in order to harass the petitioner refused to accept the findings of enquiry officer as said findings were in favour of the petitioner, hence the petition was allowed and impugned order quashed.—*Adya Nath De v. West Bengal State Electricity Board*, 2002(1) SLR 633 (Calcutta).

**Constitution of India, 1950, Article 146(2)—Supreme Court Officers and Servant (Conditions of Service and Conduct) Rules Rule 9 F.R. 56(J)—Compulsory retirement—Challenge to.**

Where compulsory retirement was challenged his services was reviewed of at 55, 56 and 57 and was advised to improve each time. As he was adjudged average, he was retired under Rule 56(j) held that there was no illegality in retiring him compulsorily.—*K.C. Sethi v. The Registrar General, Supreme Court of India*, 2002(1) SLJ 132 (Delhi).

**Mistake in retirement.**—Where the petitioner had joined boy service during 1948 and regular service in 1950. By mistake boy service was treated as regular and he was discharged in 1963. No pension was paid as service was less than 15 years. Normally he could have worked upto 40 years of age. Held he cannot be made to suffer for the mistake of authorities. He was allowed pension w.e.f. 1996 e.g. 3 years prior to filling the petition.—*Ajit Singh v. Union of India*, 2002(1) SLJ 188 (Delhi).

**Termination—Regularisation.-** The Supreme Court had directed in 1990 to adjust the Researchers against available projects and not to engage further project-wise. In the instant case the respondent still went on engaging project-wise, therefore AIIMS sought to terminate their services. The petitioners were willing to work on any project as the project was an on going activity in AIIMS. Under these circumstances the AIIMS was directed not to terminate their services. But it was however for AIIMS to decide which project was useful.—*Om Parkash v. The Director, AIIMS (Delhi)*, 2002(1) SLJ 46 (Delhi).

**Seniority—Zoning Scheme—Action held arbitrary. -** Where the appellant was transferred to another ministry under zoning scheme when she became fully eligible for it. In 1989 seniority list who had joined after her were shown junior but list revised in 1991 showing her as junior. No reasons was given as to why revision was necessitated or why same treatment as to Mr. Sota was not given to her. Such action was held arbitrary. As the seniority list could not be revised without showing reasons for it and not giving equal treatment to similarly placed persons is an arbitrary action.—*Sushma Mutreja v. Union OF India*, 2002(1) SLJ 60 : AIR 2001 (SC) 2452 :2001 (6) SCC 428 : 2001 (3) SLR 682 : 2001 (4) Scale 659 (SC).

**Constitution of India, Article 226—Transfer—Reduction in pay—Denial of natural justice.** The employee while working as Accounts Clerk at Gujarat showed his willingness for being appointed as Store Keeper-cum-Accountant at Hyderabad, the place of his choice. The Management transferred him to Hyderabad on the aforesaid post and paid higher scale of that post and also granted one increment. He was also confirmed on the said post. But after sometimes, he requested for his repatriation to Gujarat due to mental sickness of his wife. He was transferred back on lower post with lesser pay which he was holding at Gujarat. Held that it was improper and unjust on the part of the Management to downgrade him and reduce his pay. It was violation of principles of natural justice.—*Khara Shamji Hirabhai v. Gujarat State Handicrafts and Handloom Development Corporation Ltd.*, 2002(1) SLR 591 (Guj) (DB).<sup>7</sup>

---

<sup>7</sup> Service Laws By P.K.Majumdar

## CONFIDENTIAL REPORT

1. **Confidential Report—Applicability of.**—Normally confidential reports is to be written for all categories of Groups ‘A’, ‘B’ and ‘C’ employees. Apart from this, it should also be written for posts of sensitive nature of Group ‘D’ i.e. that is to be decided by Ministry/Department concerned. However, such reports are not to be written for other Group ‘D’ posts, honorary and part-time officers and those who had worked for less than three months during the year.
2. **Confidential Report –Forum of.**—The Confidential report shall be written by the reporting authority in such form as may be specified by the Central Government, and the officer reported upon as well as the reporting, reviewing and accepting authorities shall ensure that the portions of the forms which are to be filled in by them are completed by them within the time limit as specified in this behalf by the Central Government, provided that the Government may make such additions in the form so specified as may be considered necessary or desirable by it to suit local conditions or requirements (Vide Rule 4, the All India Services (Confidential Rolls) Rules, 1970)
3. **Confidential Reports—Desirability of.**—Rule 5 of the All India Services (Confidential Rolls) Rules, 1970, lays down as under:

“5(1) A Confidential Report assessing the performances, character, conduct, and qualities, of every member of the service shall be written for each financial year, a calendar year, as may be specified by the Government ordinarily, within two months of the close of the said year.

Provided that where a member of the Service is on deputation to an international organization, confidential reports in respect of such member may be written—

- (i) For the entire period of his tenure with the said organization even in a case where the period of such tenure exceeds one year; or
- (ii) For such shorter period as may be considered convenient or necessary by the reporting authority having regard to the circumstances of each case, ordinarily within three months of the close of the said period.

Provided further that a confidential report may not be written in such cases as may be specified by the Central Government, by general or special order.

1. A confidential report shall also be written when either the reporting authority or the member of the service reported upon relinquishes charge of the post, and, in such case, it



shall be written at the time of relinquishment of his charge or ordinarily within one month thereafter :

2. Provided that a confidential report may not be written in such cases as, may be specified by the Central Government, by general or special order.
3. Where more than one confidential reports are written on a member of the service during the course of a financial year or a calendar year, as the case may be, each such report shall indicate the period to which it pertains.
4. Where the reporting authority has not seen, and the reviewing authority has seen, the performance of a member of the service for at least three months during the period for which the Confidential report is to be written, the Confidential report of any such period shall be written by the reviewing authority, and where, both the reporting authority and the reviewing authority have not seen, and not the accepting authority, has seen, the performance as aforesaid of any such member during any such period Confidential Report shall be written by the accepting authority.
5. Where the authority writing then Confidential report under sub-rule (2) or sub-rule (4) is a Government servant, such report shall be written before he retires from the service.
6. Where the reporting authority, the reviewing authority and the accepting authority, have not seen the performance of a member of the service for at least three months during the period for which the report is to be written, an entry to that effect shall be made in the confidential report for any such period by the Government.
7. Notwithstanding, anything contained in sub-rules (1), (2) and (4), it shall not be competent for the reporting authority, the reviewing authority, or the accepting authority as the case may be, where the authority writing the confidential Report is not a Government servant, to write a confidential report after he demits office.

Explanation.—For the purpose of this rule, a Minister shall not be treated as having demitted office if he continues to be a Minister in the Council of Ministers with a different portfolio, or in the Council of Ministers immediately reconstituted after the previous Council of Minister of which he was a Minister with the same or a different portfolio.

## CONCLUSION AND SUGGESTIONS

The maintenance of harmonious industrial relations within an industry depends on the extent of promotion and maintenance of discipline in the organizations. No organizations can grow and prosper without effective disciplinary system. Discipline on account of employees means complying with the predefined rules and regulations of the organization. It is a form of training that enforces organizational rules. Conduct problems arise from the employees who fail to follow the code of conduct of the organization. These employees are most often affected by the disciplinary system of the organization. Such employees are often called problem employees. The problem employees comprise a small number of employees, but they are the ones who cause the most disciplinary situations.

If employers fail to deal with problem employees, negative effects on other employees and work groups may result. Some common disciplinary issues caused by problem employees include absenteeism, tardiness, productivity deficiencies, pilfering, alcoholism, insubordination, misuse of equipments and other company resources, and negligence. The goal of discipline is behavior modification, that is, to modify unacceptable behavior and misconduct.

In the event of a breach of the employer's rules disciplinary hearings and appeals should be conducted by the appropriate disciplinary authority as follows: -

**Employee Minor/ Major Misconduct** Misconduct generally refers to any breach of discipline. The way a company handles misconduct can impact employees' performance and morale. To ensure discipline is correctly meted (administered), the following best practices are suggested

**a. Written Discipline Policy** - Clearly written rules that address aspects of the job such as dress codes, working hours, breaks, personal phone calls and use of emails and other common disciplinary situations, along with expected disciplinary actions for disregarding company rules or policies to ensure the employees responsibility for good behaviour

**b. Training on the Discipline Policy**

(i) Every employee is briefed to ensure that the employee is aware and understands the discipline policy during a orientation programme. Some companies would ensure that the

employee acknowledges that he has read and understood the discipline policy. An employee who knows of what is expected of him, on the job, will perform better.

- (ii) Every Supervisor/Line Leader/ Manager should also be trained in the discipline policy, process, procedures and the required documentation in handling misconducts, when they are promoted or when they join the company. They should also have a good understanding on the minor and major misconducts in the environment which they are in and the respective disciplinary measures.
- 

**c. Progressive Discipline** - Discipline works best if it is progressive and the employee can see this progression. Instead of doing nothing until a situation is bad and then coming up with harsh discipline action, supervisors should counsel and fill an incident report form about the misconduct when it is still minor. Where an employee repeats the minor misconduct, companies will take progressive disciplinary action starting with verbal warning and/or counselling, issuance of a warning letter right up to dismissal. In this approach, discipline serves first to teach and correct problems, before it becomes a means of punishment.

However if it is major misconduct, companies will give an employee "**a right to be heard**" at a Domestic Inquiry before dismissing an employee proven to have committed major misconduct.

**d. Standardised Procedures and Forms, and Objectivity** - To keep discipline from lowering morale, employees need to see that disciplinary measures are fairly, equally but firmly enforced or implemented. A Supervisor should not ignore misconduct from a favoured employee and punish more harshly a less-favoured employee. Disciplinary measures without favouritism, keeps an employee's morale high and it protects the company from charges of discrimination. Written rules and punishments will ensure treatment of all employees in the company to the same standards.

## **BIBLIOGRAPGY**

1. Service Law – By P.K. Mazumdar
2. Service Law – By S.K.P. Shrinivas
3. Services under the State – Justice M Rama Jois
4. Service Law - Mallick
5. [www. Google .com](http://www.Google.com)
6. [www. Yahoo.com](http://www.Yahoo.com)