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MISCONDUCT UNDER THE INDIAN SERVICE LAW

1.1 Introduction

Misconduct has not been defined either in Industrial Disputes Act, 1947 or in Industrial Employment (Standing Orders) Act 1946. Oxford Advanced Learner's Dictionary gives the meaning of misconduct as unacceptable behaviour, especially by a professional person. But the dictionary meaning is not indicative of the diverse forms of connotation that statutes and judicial pronouncements have carved out of it. Black's Law dictionary defines 'Misconduct' as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour". Further regarding employer employee relationship it says, "Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when the conduct of employee evinces wilful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standard of behaviour which employer has the right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design."

In P. Ramnatha Aiyar's Law Lexicon[1], the term 'misconduct' has been defined as under:

[1] 3rd Edition, at Page 3027

> "The term 'misconduct' implies a wrongful intention, and not involving error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

A good place to find the meaning of the term 'misconduct' f would be the decision of the Queen's Bench Decision in Pearce v. Foster[2] which decision was affirmed by the Supreme Court of India in Govinda Menon vs. Union of India[3]. It was held in by Lopes, L J in Pearce that, "If a servant conducts himself in a way inconsistent with faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in carrying of the service or the business. 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 and the master will be justified, not only if he discovered at the time, but also if he discovers it afterwards, in dismissing that servant".

[2] (1885) 15 QBD 114
[3] 1967 AIR 1274, 1967 SCR (2) 566

1.2 Misconduct defined:

Misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default are covered thereby.

'Misconduct' covers a large area of human conduct. It can be an act that prejudices the smooth functioning of the establishment where the actor is employed. Grounds for misconduct can be trivial such as neglect of work or more serious like insubordination or riotous behaviour during working hours.

Misconduct is a generic term and means a conduct amiss; to mismanage; wrong or improper conduct, bad behaviour; unlawful behaviour or conduct. It includes malfeasance, misdemeanour, delinquency and offence. The term does not necessarily imply corruption or criminal intent.[4] Thus, misconduct is a generic term while specific misconduct like disobedience of orders, insubordination, neglect of work etc. are species thereof.[5] However, "misconduct" and "negligence" are different notions. Some kinds of negligence may amount to misconduct, while some others may not amount to misconduct. However, misconduct has

[4] Bhagwat Prasad vs, Inspector General of Police, AIR 1970 Punj 81
[5] G. S. Mishra vs, Union of India (1961) 3 FLR 195 (Cal)

to be proved and cannot be inferred[6]. Lack of efficiency or attainment of highest standard in the discharge of duty attached to public office would not ipso facto constitute “misconduct”. There may be negligence in performance of a duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences thereby attributable to negligence would be such as to be irreparable or resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of negligence. Carelessness can often be production of more harm than deliberate wickedness or malevolence.[7]

The word “misconduct” though not capable of a precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude; it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of duty; the act complained of bears forbidden quality or character. Thus were a

[6] Ram Krishna Ramnath vs Union of India, AIR 1960 Bom 344; ILR (1960) Bom 507; 60 Bom LR 445
[7] Union of India vs J Ahmed, AIR 1979 SC 1022; 1979 Lab IC 792

police constable on duty intakes heavy alcohol, it constitutes gravest misconduct, warranting dismissal from service.[8]

1.3 Strict Construction of "Misconduct"

Schedule 1, Clause 14(3) of Industrial Employment (Standing Orders) Central rules 1946, framed under Industrial Employment (Standing Orders) Act 1946 provides for certain acts and omissions as misconduct. These acts or omissions include wilful insubordination, disobedience, theft, fraud, dishonesty and habitual negligence. A liberal approach was taken similarly in W M Agnani vs. Badri Das[9], where the Court ruled that Courts could not shut their eyes to the realities of the institution and it depended upon each case whether the circumstances demanded for the classification of a particular act into the fold of misconduct.

In a decision which concerns the interpretation of the standing orders of a private company, the Supreme Court in an earlier decision in Mahendra Singh Dhantwal vs Hindusthan Motors Ltd[10] had to decide a question as to whether impugned act constitutes misconduct under the standing order. The Supreme Court has held that when a supervisor was assaulted by a worker in a suburban train the worker was guilty of misconduct for assaulting a supervisor even though not in the precincts of the mill and standing order of the mill specifying the misconduct to be committed within the factory premises had been established. It was

[8] State of Punjab vs Ram Singh AIR 1992 SC 2188
[9] 1963(1) LLJ 684
[10] AIR 1976 SC 2062

held that it had a rational relation between the act and discipline of the concern and consequently misconduct, even though it may not fall under any specific provisions of the standing orders it would still be misconduct. In Mul Chandani Electrical Works vs. Workmen[11] it was held that whenever an act committed if it had the effect of subverting discipline or good behaviour within the premises or precincts of the establishment would amount to misconduct.

In Glaxo Laboratories (I) Ltd vs. Presiding Officer, Labour Court[12] the Supreme Court has, however, expressed the view that when the standing orders of an establishment prescribe that certain acts would constitute misconduct "if committed within the premises of the establishment or in the vicinity thereof", then any misconduct committed anywhere irrespective if the time-place content as to where and when it is committed cannot be comprehended to be misconduct within the meaning of the standing orders merely because it has some remote impact on the peaceful and calm atmosphere in the establishment. The Supreme Court has observed that it is obligatory upon the employer to draw up with precision those acts of omission or commission which in his industrial establishment would constitute misconduct as to be visited by penalty and it cannot be left to the vagaries of the management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the standing order is nonetheless a misconduct not

[11] AIR 1975 SC 2175

[12] AIR 1984 SC 505; 1983 Lab IC 1909; 1984 (1) SLJ 219

strictly enumerated in the relevant standing orders but yet a misconduct for imposing penalty.

Then comes the decision of the Supreme Court in the case of A. L. Kalra vs. Project and Equipment Corporation[13] wherein an employee of a public sector undertaking was charged of unbecoming conduct and not maintaining absolute integrity amounting to misconduct for not refunding the advance towards the house building loan within the specified time as permitted in the rules framed for granting the house building advances and also for not returning the cycle advance. He was charged for misconduct, enquiry was held and on being found guilty he was removed from service which was affirmed by appellate authority. In that case, Rule 4 of the Employees' (Conduct, Discipline and Appeal) Rules specifies in general a norm of behaviour but in Rule 5 which specifies the misconduct, it is nowhere stated that any violation of such rules of conduct in Rule 4 would constitute misconduct. It was therefore held that when the change is for violating general norm of behaviour mentioned in Rule 4(i) and 4(iii) which was not specifically treated as misconduct under Rule 5 it could not be subject-matter of a change for misconduct for initiating departmental enquiry against the employee.

In R. V. Patel vs. Ahmedabad Municipal Committee[14] the Supreme Court reiterated its earlier view in Glaxo Laboratories case and

[13] 1984 AIR 1361, 1984 SCR (3) 646

[14] 1985 (1) SLJ 180 (SC)

overruled the decision of Gujarat High Court in that case and observed that:

> "The High Court's view that if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulation, yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the certified standing orders or service regulations, if the employee who knows the pitfalls, he can guard against it. If after undergoing the elaborate exercise of enumerating the misconduct it is left to the unbridled discretion of the employer to attribute any conduct as misconduct, the employee will be at tenter-hooks and he will be punished by ex post facto determination by the employer. It is well settled canon of penal jurisprudence that removal or dismissal from service on account of misconduct constitutes penalty in law and the employee concerned must have adequate advance notice of what action or what conduct would constitute misconduct."

However, in Palghat BPL & PSP Thozilal Union vs. BPL India Limited[15] the Supreme Court echoed the view expressed in Mahendra

[15] (1995) 6 SCC 237; 1995 SCC (L&S) 1367

Singh Dentwal case and Mul Chandani Electric Works by holding that attacking officers of the management with stones and sticks causing grievous injuries to the officers amounted to misconduct within the meaning of 39 (h) of the standing orders of the company although such acts were committed outside the premises of the factory.

However, the misconduct or misbehaviour for which a government employee or an employee of public sector undertaking will be subjected to disciplinary proceedings is to be viewed in a different perspective. In the case of Government employees both the Central Government and the state government have framed appropriate conduct rules and whether violation of such rules would constitute misconduct or misbehaviour has to be decided in the light of such conduct rules and act or omissions committed by the government employees for which there are sufficient indications given in the series of decisions rendered by the Supreme Court and various High Courts. The statutory authority and the public sector undertakings which have also framed conduct rules to satisfy whether violation of any such conduct rule amounts to misconduct or misbehaviour.

The grammatical definition of "misconduct" for which sufficient indication is given in the above would be the guiding principles. But when any public sector or statutory authority in their conduct rules specifies "misconduct", then the decisions of Glaxo Laboratories case, A.L. Kalra's case and that of R.V. Patel's case shall be the guidelines. In

such a case, if the rules prescribe the "acts or omissions" which would constitute misconduct, then any act or omission not having any connection with the acts or omissions specified as misconduct cannot be treated as misconduct on the ex post facto determination of the disciplinary authority that such act or omission though not enumerated as misconduct would still be misconduct. So, it is necessary as advised by the Supreme Court to make the specification of misconduct as exhaustive as possible. But where the misconduct is not specified in the rules, the decision of A.L. Kalra and R.V. Patel shall not in terms apply.

In a subsequent decision the Supreme Court has expressed this proposition of law distinguishing A.L. Kalra's case in Secretary to the Government vs. A.C.J. Britto.[16] A Sub-Inspector of Police was charge sheeted for disobeying the orders of his superior Superintendent of Police by which he had directed him to appear before the District Medical Officer for medical examination to obtain a fit certificate from him to resume his duties as he was absenting for long on medical grounds. But he disobeyed such orders. On appropriate departmental enquiry, he was dismissed from service. The same was challenged before the Administrative Tribunal which took the view that the delinquency for which the concerned person was charge sheeted was not specified in the Tamil Nadu Police Service Rules and hence no departmental proceedings could be initiated for not obeying the orders of the superior

[16] AIR 1997 SC 1393; (1997) 3 SCC 387

officer. The Supreme Court while hearing the petition under special leave set aside the order of the tribunal and held that even though the T.N. Service Rules were silent on this point, Rule 2 empowered the competent authority to impose upon the members of service a penalty specified therein “for good and sufficient cause”. Thus the Supreme Court held that for such act of indiscipline and insubordination departmental enquiry proceedings could be initiated.

Similarly in B.C. Chaturvedi vs. Union of India[17] the Supreme Court again distinguished from A. L. Kalra’s case. In this case a question arose whether when possession of assets disproportionate to known source of income has not been included in the in the definition of misconduct in CCS (CCA) Rules, then whether government officer can be proceeded against in departmental enquiry for misconduct on the above charge. The Supreme Court held that even though such an act is not included in the definition of misconduct in CCS (CCA) Rules and if the delinquent fails to account for such disproportionate assets, it will be treated as misconduct since if the ingredients of Section 5 (1) (e) of the Prevention of Corruption Act, 1947 pertaining to the same charge are satisfied.

In a recently reported decision a Division Bench of the Delhi High Court[18] has explained the meaning underlying "misconduct" as quiet often used in governmental quarters and has also clarified its ambit. While reflecting that the term

[17] (1995) 6 SCC 749; 1996 SCC (L&S) 80
[18] 2010 (171) DLT 556

would have to be examined in the context of the particular service one was referring, the High Court indeed laid out the generic scheme underlying the concept. The High Court inter alia observed as under;

> *"Now, can it be said that an offence of failure to maintain devotion to duty and/or unbecoming of a government servant can never be a grave misconduct?"*

1.4 Illustrative Cases of Misconduct in Public Employment

1. Unauthorised absence from duty: When an employee was overstaying his leave without any authorization and failed to report for work duty within Ten days time allotted to him, it was held to be a case of misconduct by the Supreme Court.[19] Even in a case where the employee on deputation failed to report on duty upon the expiry of the period of deputation in the office of the High Commission in Ladak after expiry of Seven months of leave it was held to constitute misconduct.[20]
2. Consuming alcohol on duty: A police constable consuming hard drinks on duty was held to be a serious case of misconduct for which he was suspended after conducting departmental enquiry.[21]

[19] State of Punjab vs. Jeet Singh (1996) 10 SCC 162
[20] H.S .Arora vs. Union of India (1997) 11 SCC 398
[21] State of Punjab vs. Ram Singh, AIR1992 SC 2188

3. Misappropriation of Government money: When the Government employee is guilty of misappropriation of a huge sum of money and virtually admits in writing that due to carelessness and fault he could not deposit the money in Post Office Account, the charge of misappropriation was held to be proved and the concerned employee was held to be liable to be dismissed from service on account of misconduct.[22]
4. Gross Negligence: There may be negligence in performance of duty and a lapse in performance of duty or error in judgment in evaluating the developing situation or negligence in discharge of duty but they would not constitute misconduct unless the consequences are directly attributable to negligence as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.[23]
5. Acting beyond one's authority: When acting beyond one's authority is by itself a breach of discipline and breach of Regulation 3 of the Central Bank of India Officers' Regulations then it constitutes misconduct within the meaning of Regulation 24. Therefore, to prosecute the bank officer on the above charge, no further proof of loss is necessary.[24]
6. Accepting Illegal Gratification: Where the respondent was a judicial officer, it was held that integrity in judicial service is a paramount matter. Therefore when a charge of demanding illegal gratification

[22] Government of Tamil Nadu vs. Vel Raj AIR 1997 SC 1900; (1997) 2 SCC 708
[23] Laxmi Shankar vs. Union of India, AIR 1991 SC 1074; (1991) 2 SCC 488
[24] Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik (1996) 9 SCC 69

against the judicial officer was proved it was held to be a serious cases of misconduct for which the penalty of dismissal was justified.[25]

7. Cohabitation of a male government servant with a lady: It has been held by the Supreme Court that living together by a male government servant with a lady and having extra marital affair with her amounts to misconduct despite the absence of any prohibitory law.[26]
8. Wrongful claim of rent allowance: When a person was not entitled to House Rent Allowance according to the[27] rental value of his house as assessed in the municipal register but he drew HRA on the basis of a certificate issued by the municipality, it was held by the Supreme Court that the employee was guilty of misconduct.

1.5 <u>No Misconduct: Illustrative Cases</u>

1. When the accusation against the government employee is that he kept his cheque book in such a manner as to be accessible to anyone and that someone unscrupulously removed the forms of cheque and used to withdraw money from his employer's account. It was held that no misconduct could be attributed for keeping the cheque book unattended or not in safe custody.[28]
2. When an employee was charge-sheeted on the ground that he was recruited as a backward class candidate and produced an income tax certificate which was below the ceiling of his father's income to

[25] High Court of Judicature at Bombay vs. Uday Singh, AIR 1997 SC 2286
[26] Ministry of Finance vs. S.B. Ramesh, AIR 1998 SC853
[27] Director-General, Indian Council of Medical Research vs. Anil Kumar Ghosh (Dr.) AIR 1998 SC 2592
[28] Rajinder Kumar Kundra vs. Delhi Administration, AIR 1984 SC 1805; (1984) 4 SCC 1997

entitle him for selection as a backward class candidate. It was held that no charge was proved.[29]

3. When a judicial officer granted bail to the accused in a dacoity case on the ground that the evidence of the T.I. Parade of the culprits was highly suspicious, then granting of bail is a judicial order and the learned Single Judge of the High Court while setting aside the order could not have proposed any disciplinary action against the concerned judicial officer.[30]
4. Where a government servant has political links but there is no violation of rules, it does not amount to misconduct.[31]
5. A condoned act of misconduct cannot make the master liable to impose any penalty.[32]
6. Where a government servant is absent from duty due to strike it cannot be said to be misconduct.[33]
7. Termination of services on account of absence without leave but without holding enquiry and compliance of principle of natural justice, the orders of termination were held to be illegal.[34]
8. Where a meeting or demonstration by the employees is conducted without the permission of the Chariman of Trade Fair, but such

[29] State of Karnataka vs. G. M. Hayath (1996) 10 SCC 549
[30] Kashi Nath Roy vs. State of Bihar (1996) 4 SCC 539; 1996 SCC (Cri) 789
[31] AIR 1967 Madras 392
[32] Lal Audhraj Singh vs. State of M.O., 1968 SLR 88 (MP)
[33] P. Krishnaswamy vs. Union of India, 1982 (1) SLR 834 (Kerala)
[34] Roberi D'Souza vs. Executive Engineer Southern Railway, 1982 (1) SLR 864 (SC); Samad vs. Andhra Pradesh Road Transport Corporation, 1983 (3) SLR 54 (AP)

meeting is conducted without disturbing any peace or tranquillity, it was held that there was no misconduct.[35]

There is a difference between misconduct and criminal misconduct. Every act of misconduct cannot be a criminal misconduct. This difference can be well understood with the offences committed under Section 5 of the Prevention of Corruption Act, 1947 and Offences under Sections 162 and 165A of the Indian Penal Code, 1860.

1.6 Decision/Action Taken by an officer in exercise of Quasi-Judicial function

In V.D. Tewari vs. Union of India[36] the Supreme Court was deciding a case in which an officer performing quasi-judicial function has been charge-sheeted on the ground that he committed misconduct in exercise of such power. The enquiry officer found that the charge of misconduct had not been proved. In the light of the facts the Supreme Court held that the decision taken by an officer in quasi-judicial capacity should not form the basis of departmental action against him. However, in subsequent decisions the principle laid down in the above decision has been limited to the facts of that case.

In Union of India vs. R.K. Desai[37] the Supreme Court explained that it was not as though an officer belonging to the Central Service functioning as Income Tax Officer is totally immune from disciplinary proceedings

[35] S.D. Sharma vs. Trade Fair Authority of India, 1985 (1) SLR 670 (Delhi)
[36] (1993) 2 SCC 55; 1993 SCC (L&S) 324
[37] (1993) 2 SCC 49; 1993 SCC (L&S) 318

whenever he discharges quasi-judicial or judicial functions, but if in the discharge of such functions he takes an action pursuant to a corrupt motive or an improper motive to oblige someone or takes some revenge, in such a case it is not as if no disciplinary proceedings can be taken at all. The Supreme Court also explained as to what would constitute proper exercise of power by a public servant could be discerned from the tests laid down in cases relating to sanction under Section 197 Cr.PC and these principles would constitute a test for launching the disciplinary proceedings as well.

However this decision in R.K. Desai has been explained and distinguished by the Supreme Court in Union of India vs. K.K. Dhawan[38] and the V.D. Tewari's case has been explained and limited to the facts of that case.

The Supreme Court in K.K. Dhawan's case has laid down that when an officer in the exercise of judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour to a person he is not acting as a judge and that in such cases there is great justification for holding that disciplinary action can be taken and that it is one of the cardinal principles of administration of justice that it must be free of bias of any kind.

The Supreme Court in that decision considered the earlier decision in V.D. Tewari's case and held that the observation of the Supreme Court

[38] AIR 1993 SC 1478; (1993) 2 SCC 56

in that case that "the action taken by the appellant was quasi-judicial and should not have formed a basis of disciplinary action" was made to buttress the ultimate conclusion that the charge framed against the delinquent officer had not been established and therefore it could not be construed as laying down a law that in no case disciplinary action should be taken if the officer performs quasi-judicial functions. The Supreme Court in K.K. Dhawan's case has laid down the cases in which the disciplinary action can be taken in case of an officer performing judicial or quasi-judicial functions as follows:

1. Where the officer has acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
2. If there is prima facie material to show recklessness or misconduct in the discharge of his duty;
3. If he has acted in a manner which is unbecoming of a government servant;
4. If he has acted negligently or that he committed the prescribed conditions which are essential for the exercise of the statutory powers;
5. If has acted in a manner so as to confer undue advantage to a party;
6. If he had been actuated by corrupt motive however small the bribe may be.

It must be pointed out that the instances catalogued above are not exhaustive but for a mere technical violation or merely because the order

is wrong and the action does not fall under any of the enumerated instances disciplinary proceedings are not warranted.

In Union of India vs. A.N. Saxena[39] the Supreme Court has cautioned that when an officer is performing judicial or quasi-judicial functions, disciplinary proceedings regarding any of his actions in the cause of such proceedings should only be taken after great caution and a close scrutiny of action and only if circumstances so warrant.

In Union of India vs. Upendra Singh[40], the Supreme Court while relying on its earlier decisions in the case of A.N. Saxena and K.K. Dhawan, held that an officer discharging the judicial or quasi-judicial function is amenable to departmental proceedings.

In Government of Tamil Nadu vs. K.N. Ramamurthi[41] it was held that when the disciplinary authority in a disciplinary action against the Deputy Commercial Tax Officer came to the finding that the delinquent officer while exercising the quasi-judicial power acted negligently and caused loss to the government in making the assessment of levy then the Administrative Tribunal should not have interfered with such finding specially when the disciplinary committee had material to come to that finding.

In V. R. Katarki vs. State of Karnataka[42] when a civil judge while disposing of land acquisition reference acted indiscreetly and with some

[39] AIR 1992 SC 1233; (1992) 3 SCC 124
[40] (1994) 3 SCC 357
[41] AIR 1997 SC 3571
[42] AIR 1991 SC 1241

motive the disciplinary enquiry may be initiated against him on the ground of misconduct.[43]

1.7 Aggravated form of Misconduct

Having understood what misconduct is, it becomes easy to understand what a grave misconduct would be. It has to be the aggravated form of misconduct.

Acts of moral turpitude, dishonesty, bribery and corruption would obviously be an aggravated form of misconduct because of not only the morally depraving nature of the act but even the reason that they would be attracting the penal laws. There would be no problem in understanding the gravity of such kind of offences. But that would not mean that only such kind of indictments would be a grave misconduct. A ready example, to which everybody would agree with as a case of grave misconduct, but within the realm of failure to maintain devotion to duty, would be where a fireman sleeps in the fire office and does not respond to an emergency call of fire in a building which ultimately results in the death of 10 persons. There is no dishonesty. There is no acceptance of bribe. There is no corruption. There is no moral turpitude. But none would say that the act of failure to maintain devotion to duty is not of a grave kind.

[43] (1991) 16 ATC 555; AIR 1991 SC 1241

It would be difficult to put in a strait jacket formula as to what kinds of acts sans moral turpitude, dishonesty, bribery and corruption would constitute grave misconduct, but a ready touchstone would be where the "integrity to the devotion to duty" is missing and the "lack of devotion" is gross and culpable it would be a case of grave misconduct.

The issue needs a little clarification here as to what would be meant by the expression "integrity to the devotion to duty". Every concept has a core value and a fringe value. Similarly, every duty has a core and a fringe. Whatever is at the core of a duty would be the integrity of the duty and whatever is at the fringe would not be the integrity of the duty but may be integral to the duty. It is in reference to this metaphysical concept that mottos are chosen by organizations. For example in the fire department the appropriate motto would be: "Be always alert". It would be so for the reason the integrity of the duty of a fire officer i.e. the core value of his work would be to be "always alert". Similarly, for a doctor the core value of his work would be "duty to the extra vigilant". Thus, where a doctor conducts four operations one after the other and in between does not wash his hands and change the gloves resulting in the three subsequent patients contacting the disease of the first, notwithstanding there being no moral turpitude

involved or corruption or bribery, the doctor would be guilty of a grave misconduct as his act has breached the core value of his duty. The example of the fireman given by us is self explanatory with reference to the core value of the duty of a fireman to be "always alert".

1.8 Constitutional Provisions:

Under the various Articles of the Indian Constitution, the Parliament, State Legislatures, Central or State Government and other authorities are empowered to frame rules and regulations so as to regulate the conduct of government servant within the framework of the Constitution.

Article 309 of the Constitution empowers the Central and State Government to frame rules to regulate the services and conditions of their employees.

Article 98 of the Constitution empowers the Parliament to make law to regulate services of the Secretariat Staff of the Parliament.

Article 146 of the Constitution empowers the Chief Justice subject to the approval of the President to frame rules regarding service conditions of the officers and staff of the Supreme Court.

Article 148 empowers the President to make rules regulating the terms and conditions of service to the employees working in the Indian Audit Staff in consultation with the Comptroller and Auditor General of India. Similarly Articles 217, 229 and 312 deals with the framing of rules

relating to the service conditions of the Judges, Officers and other staff of Department.

Article 311 is the safeguard and protection available to the Government Servants. Clause (2) of Article 311 after amendment in 1963 and in 1976 has brought a considerable change in the matter of punishments to be imposed on a government servant. It is significant to note that the Constitutional safeguard available to a Government Servant upto 1976 was to the extent of providing delinquent officer with an opportunity of being heard in two stages i.e. i) at the stage of enquiry and ii) at the stage of punishment. The second stage of affording opportunity has undergone an amendment in the year 1976 and the relevant provision now reads as under

Article 311 Clause (2). No person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

1.9 Conclusion

Misconduct is a ground for the termination of employment of the workers in an organisation or industrial concern. Misconduct means any act of the employee that is detrimental to the property and reputation of the employer as well as the business concern. Misconduct can be any act that comes into fold in model standing orders or the standing orders of the business concern specially framed in consonance with the needs and

requirement of the organisation. Not just the loss to the employer but also the general peace and tranquillity of the organisation is a driving factor in determining whether a particular act or omission is misconduct or not. Misconduct has many subspecies and a lot of varied acts of the employees can be considered within the ambit of misconduct.

Termination, dismissal and suspension are the remedies available to the employer in case there is a proved misconduct on the part of the employee. Regarding termination, no hierarchy is visible which places certain acts of misconduct over the others in determining punishment for such an act. A point worth noting is that only proved misconduct can be said to be the ground of termination of the employment. Incompetence or failure to work efficiently is not cited as the grounds of termination of employment. Evidences are hard to adduce and in our adversarial system it becomes tough on the employer to get the termination of employee, even if there is misconduct on the part of the employee. It is important to strike a balance between the requirements of social justice and the need for industrial efficiency in our country.

Looking at the case-law, one may conclude that the concepts pertaining to the relationship between misconduct and termination do not carry a fixed meaning before the Courts. Much depends on the facts and circumstances of each case. A vague terminology results only in wastage of the Courts' time. Though there are clear cut categories of as what

qualifies as misconduct in the model standing orders like habitual late coming or theft or fraud, there are a few hazy areas like habitual negligence and gross negligence interpretation of which depends upon cases and specific circumstances. The courts and legislature need to be more specific and certain about some acts qualifying as misconduct or not. Uncertainty breeds inefficiency in the system and legal tangles sometimes break the continuity of moving wheels of commerce and economy. More consistency is needed for industrial matters.

At the same time, the courts also must remain the watchdog in case there is an encroachment on the rights of the employees. An employer may face difficulties, owing to the usage of a wide range of concepts relating to employee misconduct, when trying to prove the acts of an employee as misconduct. The application of strict standards by the Courts cannot benefit the employers, causing harm to the efficiency of the economy. It would be desirable if certain fixed standards were evolved by the Courts so as to ensure the quick disposal of cases and to dispel the darkness that surrounds employers.

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