

Case Laws
on
some crucial issues
in
Departmental Enquiry

CBI ACADEMY, GHAZIABAD

Syed Rahimuddin V/s Director General, CSIR and others

(AIR, 2001, SC 2418)

- Constitution of India, Art. 311 – Disciplinary enquiry – Natural justice – compliance – non-production of certain documents by Deptt. Despite order by enquiry officer for their production – Delinquent participating in inquiry and cross-examining departmental witnesses without raising grievance about non-production of documents – Grievance made subsequently held to be dilatory tactic by Enquiry Officer – Enquiry cannot be said to be vitiated by non-production of documents even though production of documents even though they were ordered to be produced by enquiry officer.

Syed Rahimuddin V/s Director General, CSIR and others (AIR, 2001, SC 2418) --- (Contd.)

- An order of compulsory retirement in a departmental proceeding under the provisions of CCS (CCA) Rules is the subject matter of challenges in the appeal. Against the delinquent-respondent in accordance with the procedure prescribed under the CCS Rules a set of charges have been levelled. He was called upon to answer those charges in a regular inquiry. Before the Enquiring Officer the delinquent prayed for production of certain documents and in fact, an order was passed by the Enquiring Officer directing the department authorities to give copies of those documents to the delinquent. But, notwithstanding the same the allegation of the delinquent is that some of those documents had not been produced. Ultimately, on the basis of the materials produced, the Enquiring Officer came to the conclusion that the charges against the delinquent have been proved by the departmental authorities. On the basis of the said report of the Enquiring Officer, the disciplinary authority imposed the punishment of compulsory retirement after coming to the conclusion that the charges against the delinquent must be said to have been established beyond doubt. The delinquent then preferred an appeal before the appellate authority, but the same having been dismissed, he approached the CAT, Hyderabad. The Tribunal by the impugned order came to the conclusion that there has been no invalidity in the inquiry proceeding nor can it be said that there has been an violation of principles of natural justice and, therefore, the order of punishment cannot be interfered with. The Tribunal having dismissed the application filed by the delinquent, he is in appeal before this Court.

Syed Rahimuddin V/s Director General, CSIR and others
(AIR, 2001, SC 2418) --- (Contd.)

- We have considered each of the contentions raised by the learned counsel for the appellant, but we do not find any substance in any one of them. It is, no doubt, true that the delinquent had made an application for production of certain documents and the Enquiring Officer did pass an order for production of those documents. It also transpires that some of those documents were produced and yet some of them had not been produced. When a grievance was made on the score before the E.O. by filing a representation of 3rd August, 1989, the said E.O. considered the said grievance and came to the conclusion that the very fact that though the inquiry continued from 2-7-89 to 6-7-89 and the delinquent had been cross examining the departmental witnesses, yet no grievance had been made on the score of non-production of any of those vital documents which, according to the delinquent, could have established the defence case. The E.O. came to the conclusion that the so-called representation D/ -3rd of August, 1989 making a grievance is a dilly dally tactics on the part of the charged officer and the sole intention was to stall the inquiry by any means. In view of the aforesaid conclusion of the E.O. in its order disposing of the grievance made on 3-8-89 we do not find any substance in the argument of the learned counsel that in fact the delinquent was really prejudiced by non-supply of some of the so-called vital documents though for production of the same the E.O. had ordered. The Tribunal, therefore, rightly came to the conclusion that such alleged non-production cannot be held to be a denial of reasonable opportunity to the delinquent in making his defence.

Sher Bahadur Vs. Union of India and others. (AIR 2002 SC 3030)

- Where a casual worker, a khalasi was dismissed for misconduct under R.6(vii) to (ix) of Railway Servants (Discipline and Appeal Rules) Rules (1986), the mere fact that the enquiry officer has noted in his report ‘in view of oral, documentary and circumstantial evidence as adduced in the enquiry’, would not in principle satisfy the rule of sufficiency of evidence’ postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. Hence when in the instant case though Disciplinary Authority cited one witness in support of charges, he was not examined; the documentary evidence referred to in the enquiry report was only the order of appointment of the employee which is a neutral fact, and the E.O. examined the charged officer but nothing is elicited to connect him with the charge; the present case is clearly a case of finding the employee guilty of charge without having any evidence to link the employee with the alleged misconduct.
- 2001 All LJ 2253, Reversed

Sher Bahadur Vs. Union of India and others. (AIR 2002 SC 3030)

- However, as regards relief, the Supreme Court observed that in as much as the concerned employee being casual worker (khalasi) who was in service for only two years before his dismissal and it is more than a decade that he has been out of service, in the circumstances, it is not a fit case to direct his reinstatement. Instead interests of justice would be met by directing Railway Authorities to pay him compensation equal to average salary for a period of two years within two months.

Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & anothers (AIR 1999 SC 1416)

- (A) Constitution of India, Arts. 21, 309 – Central Civil Services (Classification, Control and Appeal) Rules (1965), R.10 – Fundamental Rules, R.53 – Subsistence allowance – Non-payment of, during suspension period – Violative of fundamental right to life – Penury occasioned by non-payment of subsistence allowance – Employee unable to undertake journey to attend departmental proceeding – Departmental proceedings stand vitiated.

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- Constitution of India, Art. 311 –
Departmental proceedings and criminal case
– Based on identical set of facts – Evidence
in both proceedings common – Employee
acquitted in criminal case – Said order of
acquittal can conclude departmental
proceedings – Order of dismissal already
passed before decision of criminal case
liable to be set aside.

Sardar Prakash Singh Badal Vs. V.K. Khanna and others (AIR 2001 SC 343)

- (A) Administrative Law – Bias – Test to set aside administrative action – There must be real danger of bias and not mere apprehension.
- (B) Administrative Law – Administrative action – Judicial review – Appointment of officers of Administrative service to high posts – Assessment of suitability and efficiency – Best judge would be people's representatives – Not Court.
- © Administrative Law – Mala fide action – Definite evidence of mala fide is necessary – Action not otherwise bona fide does not by itself becomes mala fide.

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- (E) Constitution of India, Art. 311 – Disciplinary enquiry – Interference at stage of issuance of charge sheet – Permissible if element of malice or mala fide is involved in issuance of charge sheet.
- (F) Constitution of India, Art. 311 – Disciplinary enquiry – Bias of disciplinary authority – Announcement of inquiry officer even before receipt of reply of delinquent employee to charge sheet – Shows bias.

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- Soon after the issuance of the charge sheet however, the Press reported a statement of the Chief Minister on 27th April, 1997 that a Judge of the High Court would look into the charges against Shri V.K. Khanna – this statement has been ascribed to the mala fide by Mr. Subramaniam by reason of the fact that even prior to the expiry of the period pertaining to the submission of reply to the charge-sheet, this announcement was effected that a Judge of the High Court would look into the charges against the respondent No. 1 – Mr. Subramaniam contended that the statement depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time has not expired for assessment of the situation as to whether there is any misconduct involved – if any credence is to be attached to the Press report, we are afraid Mr. Subramaniam's comment might find some justification.

State of Gujarat Vs. Emedbhai M. Patel (AIR 2001 SC 1109)

- Constitution of India, Art. 311 – Compulsory retirement – Principle governing – enumerated.
- Constitution of India, Art. 311 – Compulsory retirement – Order passed against employee against whom disciplinary enquiry was initiated and who was under suspension – There were no adverse entries in employee's confidential record – Employee had successfully crossed efficiency bar at age of 50 as well as 55 – Had only less than two years to retire from service – Held order of compulsory retirement was passed for extraneous reasons – Liable to be set aside.

Deokinandan Sharma Vs. Union of India and others (AIR 2001 SC 1767)

- The short facts are that the appellant joined the service in the State Bank of India in its Khura Branch in the district of Bulandshahar U.U.P.) as money tester on 26.5.1964 and was duly confirmed on the said post. Thereafter, he was promoted as officer grade.II and transferred to Agra in the year 1975 and later on in the year 1977 he was shifted to Faridabad Branch of the bank and posted there as Officer-in-charge of the extension counter, Sewa Samiti, which counter was to handle transactions relating to deposit accounts, outward remittance and issues and encashment of rupees travellers cheques only with one man handling. On 13.10.80 one Shri K.C. Batra, Circle Auditor inspected the accounts of the said extension counter and found serious financial irregularities therein and reported the matter to Circle Vigilance Officer whereupon the appellant was suspended from the service of the bank when the departmental proceeding was under contemplation. Subsequently, on 21.1.1983, a charge sheet was issued against the appellant framing the following charges in the departmental proceedings :-

Deokinandan Sharma Vs. Union of India and others (AIR 2001 SC 1767) – contd.

- (i) That the petitioner purchased cheques from traders for substantial amounts without ascertaining genuineness of transactions in excess of Rs. 10,000/-.
- (ii) That the petitioner allowed overdrafts to various parties unauthorisedly in excess of Rs. 10,000/-.
- (iii) That the petitioner paid cheques/passed debits relating to certain accounts without positing them/striking balance in the ledger, thus concealing the overdrafts.
- (iv) That the petitioner afforded credits to parties by debit to suspense account in anticipation of realisation of cheques in clearing of SCS, in excess of Rs. 10,000.

Deokinandan Sharma Vs. Union of India and others (AIR 2001 SC 1767) – contd.

- (v) That the petitioner passed fictitious credits to parties and transferred funds from one account to another and reversed such entries subsequently with a view to conceal the overdrafts.
- (vi) That the petitioner passed debits to various accounts without authority from the account holders in excess of Rs. 10,000/-.
- (vii) A shortage of Rs. 100/- in cash balance was detected at the extension counter during a surprise verification on 13-10-1980.

Deokinandan Sharma Vs. Union of India and others (AIR 2001 SC 1767) – contd.

- Statement Bank of India Act (23 of 1955), S. 49 – State Bank of India Supervising Staff (Service) Rules (1975), R. 49(g) – Disciplinary enquiry – Evidence – Examination of witness on behalf of bank, completed – List of witnesses filed by defence – Dates fixed for their examination – On that date however, neither defence representative appeared nor single witness produced on behalf of defence – Case adjourned – On adjourned date also neither any defence representative appeared nor any defence witness produced – Report submitted by conducting officer as in spite of full opportunity was afforded to defence, no witness was examined – Held, that reasonable opportunity was afforded to the delinquent to adduce evidence during the course of enquiry.

State of U.P. Vs. Harendra Arora and another (AIR 2001 SC 2319)

- Constitution of India, Arts. 309, 311(2) – Civil Services (Classification, Control and Appeal) Rules (1930) (as amended and substituted by U.P. Amendment) R. 55-A – Dismissal of Govt. Servant – Requirement of furnishing copy of enquiry report to delinquent employee though obligatory on employer as per R. 55-A – Non-furnishing of enquiry report, does not invalidate dismissal order unless prejudice is shown to have been caused to delinquent employee.

State of U.P. Vs. Harendra Arora and another (AIR 2001 SC 2319)

- Respondent Harendra Arora who was temporarily appointed in the year 1960 as Asstt. Engineer in the Irrigation Department of the U.P. Govt., was confirmed on the said post and in the year 1963 he was remitted as Executive Engineer. On 31-3-1970 the respondent was served with a charge sheet by the Administrative Tribunal incorporating therein various irregularities committed by him with regard to the purchase of goods while he was posted as Executive Engineer at the concerned station, requiring him to submit his explanation relating thereto which was duly submitted. Upon receipt of the show cause, full-fledged enquiry was conducted whereafter the Administrative Tribunal submitted its report to the State Government recording a finding therein that the charge was substantiated and recommending dismissal of the respondent from service, upon receipt of which the State Govt. Issued a show cause to the respondent as to why he be not dismissed from Service. Pursuant to the said notice, the respondent submitted his reply to the show cause notice whereupon the

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The Statement Govt. sent the reply to the Administrative Tribunal for its comments and upon receipt of the same, order was passed on 13.3.1973 dismissing the respondent from service which order was challenged by the respondent before the High Court by filing a writ application and the same having abated in view of the coming into force of the U.P. State Public Services Tribunal Act, 1976, a claim petition was filed by the respondent before the U.P. State Public Service Tribunal challenging his aforesaid order of dismissal. The Tribunal allowed the claim petition and quashed the order of dismissal principally on the ground that copy of the enquiry report, as required under Rule 550A of CCS(CCA) Rules, 1930, as amended by the Govt. of Uttar Pradesh, was not furnished to the delinquent against which order when a writ application was filed on behalf of the State, a Division Bench of the High Court dismissed the same upholding order of the Tribunal . Hence this appeal by special leave.

- **Successive proceedings in respect of same matter**

- However, after an order passed in an enquiry against a public servant imposing penalty is quashed by a civil Court, a further proceeding can be commenced against him, if in the proceeding in which the order quashing the enquiry was passed, the merits of the charge against the public concerned were never investigated. Where the High Court decreed the suit of the public servant on the ground that the procedure for imposing penalty was irregular, such a decision cannot prevent the State from commencing another enquiry in respect of the same subject matter consistent with the provision of Article 310 and 311 of the Constitution. Where the decision of the Court is on technical grounds, re-enquiry into the same charges on the same set of facts, after following correct procedure and affording reasonable opportunity to the employee can be made.

- **Devendra Pratap Narain Rai Sharma Vs.State of U.P.
(AIR 1962, SC 1334)**

In a case there was an enquiry against the charged officer. He was found guilty on some of the charges. Consequently, he was punished with reversion to the lower rank. Against this reversion order, he filed a writ in the High Court. The High Court quashed the order on the ground that the enquiry was not proper and legal. There upon the charged officer was reinstated in his original post and then put under suspension and fresh proceedings were started on the basis of the same old charges. He was found guilty of some of the charges and was again reverted to a lower rank. He again filed a writ petition in the High Court challenging the fresh order of reversion. The High Court dismissed the petition . He then filed an appeal to the Supreme Court. The Supreme Court held that since the earlier order was quashed on technical ground, a second enquiry could be held on merits.

– **Anand Narain Shukla Vs. State of M.P. (AIR 1979, SC 1923)**

Choice between Prosecution & Departmental Action

- Mere dropping of the proceedings for prosecution for crime under the penal offence does not take away the jurisdiction of the disciplinary authority to take action for misconduct though the material is not sufficient to prove criminal offence which requires strict standard of proof beyond reasonable doubt. Therefore, in appropriate case, the prosecution may chose not to lay charge sheet but it does not take away the jurisdiction of the disciplinary authority if there is any evidence on record to the disciplinary action, but there should be misconduct attributable to the delinquent officer.
- **S. Sree Ram Murthy Vs. C.W.C. (1990(1) SLR AP 21)**

Departmental Enquiry – While Police investigation is pending

- When a Police investigation is on, consequent upon institution of a criminal case against a public servant, the truth of the same should be ascertained only in an enquiry or trial by the criminal court when a prima facie case is found by the investigation and a chargesheet is submitted. In most cases, it would be proper and reasonable for the Disciplinary Authority to wait for the result of the police investigation and where the investigation is followed by enquiry or trial, the result of such enquiry or trial before deciding to take any disciplinary action against any of its employee.

As far as the cases being investigated by the SPE/CBI is concerned, the CVC has issued instruction that once a case has been taken up by the CBI for enquiry or investigation, all the departmental enquiry including the domestic enquiry shall end.

Even though this appears to be a reasonable course, which will ordinarily be followed by the Disciplinary Authority, there is not legal bar to the Disciplinary Authority ordering a departmental enquiry even in a case, where a first information report U/s. 154 Cr.PC has been lodged.

- **B. Balaiah Vs. D.T.O. Karnataka STC (1982 (3) SL, KAR, 675)**

CBI ACADEMY, GHAZIABAD

Simultaneous Prosecution as well as Departmental Enquiry

- Though ordinarily a departmental action is not initiated in regard to sub-judice matter, yet there is not provision of law which empowers Courts to stay departmental proceedings merely because a criminal prosecution of the same person is launched in a Court of Law. The object of departmental proceeding is to ascertain if the employee is a fit person to be retained in service and the object of the Court trial is to see if the ingredients of the offence have been made out warranting Conviction. In the instant case, a Supreme Court observed that often employers stay enquiries pending decision of the criminal courts and that is fair. But it could not be said that Principles of Natural Justice require that an employer must wait for the decision atleast of the trial Court before taking action against an employee. If the case is of grave nature or involves question of facts or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court so that the defence of the employee in the criminal court may not be prejudiced.
 - **Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan**
AIR 1960 SC 806

- In the instant case, the Supreme Court observed that if the criminal trial as well as disciplinary proceedings are based upon the same set of facts, it can be very well said that imputation in the disciplinary proceedings as well as in criminal trial are similar if not identical. It was, therefore, held that the departmental proceedings are liable to be stayed.

– **Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. AIR 1988 SC 2118.**

- In the instant case, the Apex Court has made a distinction between Criminal Trial and Disciplinary Enquiry by hold that, both proceedings i.e., the Criminal Trial and Disciplinary Enquiry have different approach, objective, standard of proof, mode of enquiry and rules. In disciplinary proceedings, the question is whether the charged official is guilty of such conduct as would merit his removal from service or a lesser punishment. Whereas in criminal proceedings, the question is whether the offences alleged to have been committed by the suspect is established, and if established, what sentence should be imposed upon him staying of disciplinary proceedings, pending criminal proceeding should not be a matter of course, but a considered decision. Even if, stayed at one stage, the decision may require reconsideration if the criminal trial is unduly delayed.

– **State of Rajasthan VS. B.K. Meena, IAS and Ors. (1996)
6 SCC 417**

Criminal Prosecution after Departmental Action and vice-versa

- At times, in view of the serious nature of the allegation, it may be necessary to initiate criminal proceedings against a public servant even after his dismissal or removal from service in a departmental action. In other words, can a public servant be prosecuted on a charge of bribery or criminal misconduct after his removal from service on the same set of facts? If so, does it contravene the constitutional guarantee as contemplated by Article 20(2) of the Constitution of India?

This question was set at rest by the Supreme Court in its judgement in the instant case. It was held that Article 20(2) refers to proceedings before a Court of law for an offence, where there is prosecution and conviction. In a departmental proceeding, there is neither any prosecution nor any conviction by a Court of Law. Therefore, a public servant who has been punished for an official misconduct in a departmental proceeding may still be subjected to a criminal prosecution if the misconduct alleged is also a criminal offence. Thus prohibition as contained in Art. 20(2) of the Constitution in such a case is inoperative.

– **S.A. Venkataraman Vs. The State 1958 Cr.L.J. 254 SC**
CBI ACADEMY, GHAZIABAD

Departmental Action after Acquittal in a Criminal Case

- The question of initiating a departmental action after an acquittal by a Court of Law on the same set of facts is not quite free from difficulty. In case of acquittal with benefit of reasonable doubt, it may be quite permissible to initiate departmental proceedings even on the same set of facts, for it is still a point to be decided by the employer as to whether a person whose character or action is of doubtful nature should or should not be allowed to continue in service. But in the case of honorable acquittal by a Court of Law, it would be wrong to draw up a departmental proceedings on the same set of facts. It has been held by the Supreme Court that normally where the accused is acquitted honorably and completely exonerated of the charge, it would not be expedient to continue a departmental proceeding on the very same charges or ground or evidence.

Effect of Order of Acquittal on Departmental Proceedings

- In the event of acquittal of the delinquent in a criminal case whether the departmental enquiry pending against him on the same set of facts would continue? It has been observed by the Supreme Court that this is a matter which is to be decided by the department after considering the nature of finding given by the Criminal Court. Normally, where the accused is acquitted honorably and completely exonerated of the charges, it would not be expedient to continue a departmental enquiry on the same charges or grounds of Evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the concerned authority to continue the departmental enquiry is not taken away nor its discretion in any way fettered.
- **Corporation of City of Nagpur Vs. Ramachander 1981(2) SLR 274 SC**

Whether Investigation Report/Preliminary Report etc. should be supplied.

- Principles of Natural Justice demands that the copy of a document, if any, relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witness in his defence. If the findings are recorded against the charged employee, placing reliance on a document which might not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry, when demanded, that would contravene the Principles of Natural Justice rendering the enquiry and the consequential order of punishment illegal and void. If copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied upon in holding the charges framed against the delinquent employee, the enquiry would be vitiated for the violation of Principles of Natural Justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer, that would amount to denial of opportunity of effective cross examination. (*CONTINUED next slide*)

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- The position of the investigation report or preliminary enquiry report which formed the basis for initiation of departmental enquiry, is somewhat different. The documents of the nature is of an inter-departmental communication, primarily to the holding of enquiry and have no importance unless the enquiry officer wants to rely on them for his own conclusion. Therefore, the charge-sheeted officer is not entitled to the copies of investigation reports based on which the charges were framed, unless the enquiry officer relied upon those reports.
- **Krishna Chand Tandon Vs. Union of India, AIR 1974 SC 1589**

- In the instant case, a copy of the document as mentioned in the charge sheet, was not supplied to the appellant and he was not permitted to inspect the same. The document, in question, was the report submitted by the Special Police Establishment in respect of the criminal case of theft of coal in which final report had been submitted. After submission of final report in the criminal case, disciplinary enquiry was initiated against ChandramaTiwari. The document was, however, neither considered nor relied upon by the Enquiry Officer in recording findings against the charged official. There is no reference to the document, in question, in the report of the Enquiry Officer. The Enquiry Officer has not either referred to nor relied upon that report in recording findings on the charges framed against the delinquent. In this view, the document, in question (the investigation report of SPE) was not a material or relevant document, therefore could not and did not prejudice the delinquent and there was no violation of Principles of Natural Justice. The appellant's grievance that in absence of Report, he could not cross-examine the Dy.SP of SPE, the Investigating Officer, is not sustainable. The Dy.SP of SPE had been cross examined at length in detail. His Examination-in-chief was confined to one page while the cross examiner runs into six full scape typed pages. The appellant has failed to point out as to how he was prejudiced. The appellant was, thus, not handicapped in cross examining the Dy.SP. His grievance that he was not afforded reasonable opportunity of defence was without any merit.

- Chandrama Tiwari Vs. Union of India AIR 1988 SC 117

Assistance to Lawyer whether permissible in Departmental Enquiry

- In the instant case, while dealing on the subject “Representation of the accused officer by an advocate in departmental enquiry, the Supreme Court held that in the absence of rules, the assistance of an advocate can be refused if there is not legal complexity in the case. In this case, an Income Tax Officer, who was charged for underassessment with dishonest motive, had only to defend the correctness of the assessment record, he can be said to be the best person to give proper explanation. It was not a case where oral evidence was recorded with reference to accounting. Hence, refusal to permit a lawyer as defence assistance does not violate the Principle of Natural Justice.

– **Krishna Chandra Tandon Vs. Union of India AIR 1974 SC 1589**

- **In a case against an officer of All India Khadi and Village Commission investigated by the CBI, Departmental Proceeding for Major Penalty was initiated. An Inspector of CBI was appointed as Presenting Officer, but the request of the charged officer to engage a lawyer to defend his case was rejected. Consequent upon completion of the departmental enquiry, the said officer was punished with reduction to a lower rank. The Division Bench of the Bombay High Court held that the CBI Inspector was a legally trained man, with number of domestic enquiries to his credit, where he acted as Presenting Officer. It was further held that the legal practitioner need not be taken in their literal sense. A layman, for that matter a CBI Inspector, would though experience as Presenting Officer in Departmental Enquiries, indeed garner vast legal experience and ability without being a legal practitioner as commonly understood. The ability borne out of vast practical experience in the law and conduct of cases (including DE) is not confined to “Legal Practitioner” as the words are commonly understood. Denial of engaging a “legal practitioner” in this case was held by the High Court to be the denial of reasonable opportunity of defending himself.**

**– Ventaka Raman Sambamurthy Vs. Union of India (1986)
II LLJ Bom. 62**

- Where in a disciplinary enquiry by a domestic tribunal, the employer appointed two Presenting-cum-Prosecuting officers to present the case on behalf of the management, who were legally trained, denial of a request of the delinquent employee, seeking permission to appear and defend himself by a legal practitioner would vitiate the enquiry on the ground that the delinquent employee had not been afforded reasonable opportunity to defend himself, thereby violating one of the essential principles of natural justice.
- **Board of Trustee of the Port of Bombay Vs. Dilip Kumar Raghvendra Nath Nadkarni, AIR 1983 SC 109**

- In the instant case, the employer, Haryana Seeds Development Corporation was represented by its Personnel & Administrative Manager as Presenting Officer during the domestic enquiry. The Supreme Court held that where a delinquent, a non legal person, is pitted against the Presenting Officer, being a person of legal mind and experience, refusal of service of a lawyer to the delinquent amounts to denial of natural justice.

– **J.K. Aggarwal Vs. Haryana Seeds Development Corp. Ltd.** AIR 1991 SC 1221

Penalty to be commensurate with Misconduct Alleged

- The punishment must be commensurate with the misconduct alleged. The punishment of dismissal should be imposed only in cases of grave misconduct and continuing of which indicates the incorrigibility and complete unfitness for holding a public office. The temporary misappropriation of utensils from the mess was held to be not so grave a misconduct to award the punishment of dismissal and that the punishment of dismissal under the circumstances is too severe and not commensurate with the misconduct.

– **Sukhbir Singh Vs. Dy. Commissioner of Police, New Delhi 1984(2) SLR 149 Del.**

- A Cash Clerk of the Delhi Milk Supply Scheme Department, under the administrative control of Govt. of India was prosecuted for having committed criminal breach of trust in respect of a sum of Rs. 500/-. He repaid that amount and pleaded guilty to the charge. The trying Magistrate convicted him u/s. 409 IPC but in view of the peculiar circumstances relating to the crime and the criminal, he released him under Section 4 of the Probation of Offenders Act. As a result of the conviction, the said Clerk was dismissed from service summarily. In this case, the Supreme Court observed that Clause(a) of the 2nd Proviso to Article 311(2) of the Constitution confers on the Government, the power to dismiss a person from service “on the ground of conduct which had led to his conviction on a criminal charge”. However, the power like every other power has to be exercised fairly. But the right to impose a penalty carries with it the duty to act justly. The Supreme Court termed the penalty of dismissal from service imposed upon the delinquent clerk as whimsical.

Shankar Das Vs. Union of India and Ors. AIR 1985 SC 772

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- Two persons were working as Plant Operator on the intervening night of 5th and 6th May, 1982. They were on duty in the night shift. At about 3.30 A.M., when the plant-in-charge made a surprise visit, he found the two operators sleeping, though the machine was kept working. For the said misconduct, a domestic enquiry was held after following the due procedure. After the domestic enquiry, both the operators were dismissed from service. When the matter came up before the Supreme Court on an application filed by the employer company, the Supreme Court observed that punishment for dismissal for minor misconduct or misconduct of technical nature is shockingly disproportionate punishment and ordered for reinstatement of the two dismissed operators.

– **Colour Chem Ltd. Vs. A.L. Alaspurkar & Ors. 1998 (1)
SLR 757**

Whether delinquent is entitled to the copy of the Inquiry Officer's Report.

- It has also been held by the Supreme Court in the instant case that the delinquent officer is entitled to the Inquiry Report only when the inquiry was conducted by an Inquiry Officer. But when the inquiry is conducted by the Disciplinary Authority himself, the delinquent is not entitled to have the inquiry report, as there is no inquiry report on account of the fact that the disciplinary authority is himself the Inquiry Officer.

– **Union of India and Ors. Vs. Md. Ramzan Kah AIR 1991 SC 471**

Government Servants convicted by Trial Court – Appeal Pending in Appellate Court – Can dismissal proceedings be initiated.

- The Supreme Court has also held that to wait for the action suggested above till the appeal, revision, and other remedies are over, would not be advisable since it would mean continuing in service of a person who has been convicted of a serious offence by a Criminal Court.
 - **Dy. Director of Collegiate Education (Admn.) Vs. S. Nagoor Meera, AIR 1995 SC 1362**

- **Joint Enquiry** : A joint enquiry can be conducted in departmental proceedings.
 - **Balbir Chand Vs. Food Corp. of India (1997) SLR 756 SC**

- **Law Officer** : Officer of Law Officers is a post in connection with the affairs of the State but from that it does not follow that it is post in a State service.
 - **Andhra Pradesh BCS etc. Associate Vs. The Secretary to Govt., Law Deptt. (1988) 4 SLR 119 (AP)**

- **Presiding Officer being a witness** : If the Presiding Officer at a departmental enquiry is also a witness, and there is no other witness, natural justice is violated and the dismissal as a result of such inquiry has to be set aside.
 - **M.K. Keshava Vs. Dy. Commissioner (1984) 2 SLR 278**

- **Legal Assistance** : Bank was represented by a legally trained person though he was an officer of the bank. Denial of permission to the petitioner to engage a counsel in the enquiry was held to be violation of the principles of natural justice.
 - **N.K. Sareen Vs. PNB (1995) SLR 144 Delhi**