

Procedure for Conducting Departmental Enquiry

- Initial Processing
 - Legal and Practical Aspects
- Importance of Article of Charges
 - Degree of Proof
- Important Supreme Court Rulings

• *By N.M. Singh, Addl. SP(Trg.), CBI*

CBI ACADEMY, JHAZIABAD

Key Points

- Introduction.
- Public Servants : Terms & Conditions of Service.
- Conduct Rules/Conduct, Discipline & Appeal Rules.
- *Bona fide* commercial decision vs. *mala fide* criminal intention.
- Misconduct, Gross Misconduct – Omissions & Commissions.
- Double Jeopardy
- Vigilance Angle vis-à-vis Criminal Misconduct.
- Misconduct & Departmental Proceedings – Purpose and Procedure, crucial issues.
- Supreme Court Judgements and Govt. of India's Guidelines.

Conduct Rules

- A Code of Conduct to ensure all Government Servants to observe certain rules and discipline in the discharge of duties, either written or unwritten and binding to all Govt. servants.
- Every Govt. servant is expected to maintain absolute integrity,
- maintain devotion to duty, and
- do nothing which is unbecoming of a Govt. servant.
- To ensure purity, integrity and efficiency.
- Principle of Hire & Fire – Of course with natural justice and reasonable opportunity.

Other important Conduct Rules

2. Every supervisory officer to ensure the integrity and devotion to duty of all subordinates,
 - not to act otherwise than in his best judgment except under the direction of his superior,
 - all directions to be in writing,
 - to seek the order in writing to confirm oral direction.

Laxmi Narain vs. D.M., AIR, 1960

- Code of Conduct for all Govt. servants
 - Every Govt. servant is bound to observe rules of conduct and discipline in discharge of duties.
 - Code is both written and unwritten.
 - Is expected to maintain absolute integrity, devotion to duty and in all times, conduct himself in accordance with specific or implied orders of Govt.

Hari Prasad Singh Vs.
I.T.Commissioner, West Bengal
AIR, 1972

- Conduct Rules is not void on the ground of vagueness.

I.A.C. of Income Tax. Vs. Somendra Kumar
Gupta,
80 CWN, 74

- Unbecoming of a Govt. servant means a conduct to keep within the bounds of administrative decency.
- Unbecoming can be ascertained having regard to the entirety of the conduct.

- **Mahendra Kumar Vs. Union of India**
1984
 - Unbecoming of a Govt. servant is not vague.
- **Govind Menon Vs. UOI, AIR, 1967**
 - Devotion to duty means faithful service.
 - Mere presence within the office not enough.
 - Absent for a specific time, coming late, leaving early, sleeping on duty, unauthorised absence, etc. all amount to non-devotion.
- **Bhagwat Prasad Vs. Inspr. Genl. Of Police, AIR, 1970**
 - Misconduct and a conduct unbecoming of a Govt. servant.
 - Distinction between conduct and a grave misconduct.
 - To gauge gravity of misconduct, what matter is not frequency, but enormity of misconduct.

- **R. Srinivasan Vs. Union of India – AIR, 1982**
 - Indecent or abominable conduct involving moral though not legal lapses is conduct unbecoming of a Govt. servant.
- **State of U.P. Vs. Om Prakash Gupta, AIR, 1970**
 - A Magistrate ordered on three occasions that the women produced on each such occasion should be taken to his residence and the woman was kept for periods varying from two hours to the whole night.
 - No positive evidence of immoral act.
 - But the Magistrate found guilty of the charge of unbecoming conduct of a Govt. servant.

- **Madho Singh Vs. State of Bombay, AIR, 1960**
 - Code of conduct of Govt. servant is both written and unwritten. Written code is not exhaustive.
- **Eldee Valvet and Silk Mills Vs. Mill Mazdoor Sabha (1955)**
 - General Rule is obedience.
 - Wilful disobedience is a sufficient ground for dismissal from service.
 - The employer is to be the judge of circumstances under which the servant's services are required subject to this, that he is to give only lawful commands.
- **Krishna Tosh Raj Gupta Vs. UOI, WP No. 456 of 1978 CAL..**
 - An act of refusal of failure on the part of the employee to carry on their work by holding mass demonstration during working hours instead of engaging themselves in their work is misconduct.

- **APSK Sangh (Railway) Vs. UOI, AIR, 1981 SC 98**
 - Govt. servant entitle to form an association and even if the said association is not recognized by the Govt., such association has the right to file writ petition in respect of any common grievances of the members of the association, no misconduct.
- **Nawal Singh Vs. Union of India, AIR, 1988**
 - Failure to vacate Govt. quarter does not constitute misconduct.
- **S. Govind Menon Vs. UOI, AIR, 1967**
 - Govt. can demand a certain standard of conduct from Govt. servants in their private life as well.

- Removal of public servant on account of his conviction long before service – Invalid.
- RPF Constable before joining service in 1981 was convicted in 1966.
- Department took action after a long gap of 15 years.
- Ground is a person with criminal propensities will be a security risk as a Rukshak.
 - *M. Pandian Vs. The Asstt. Security Officer, Madurai, 1986(1), SLJ (CAT) (Madras)*
- Govt. servant vis-à-vis politics an election.
- Mere attendance at rally
 - *Ajit Singh Vs. Kirpal Singh, 1973,*
- Passive attendance at political meeting
- Taking interest in political activities of the communist party when the party is recognized by the E.C., not banned.
 - *V.S. Menon Vs. Union of India, AIR, 1963.*

MISCONDUCT

- Improper behaviour. Violation of definite procedure/rules.
- Gross negligence.
- Perverse conduct or absence of good conduct.
- Violation of the accepted standards of morality, decency, decorum and propriety (Calcutta HC in AC of IT Vs. K.S. Gupta)
- **Conduct unbecoming is left to the discretion of the Government, past misconduct is punishable (Dr. Boolchand Vs. Chancellor, Kurukshetra University)**
- Contravention of the ideal master-servant relationship (ARR Deshpande Vs. UOI & another)

Acts, Conducts & Commissions which amount to Misconduct

Act or conduct

1. Act or conduct prejudicial/likely to be prejudicial to the interest/reputation of the master.
2. Act/conduct inconsistent/incompatible with the due/peaceful discharge of duty of the master.
3. Act/conduct of the Government servant makes it unsafe for the employer to retain him in service.
4. Act or conduct so grossly immoral that the public servant cannot be trusted by any reasonable man.
5. The act or conduct is such that the master cannot rely on the faithfulness of his employee.

MISCONDUCT – Defined under CDA Rules of PSUs

1. Infidelity, unfaithfulness, dishonesty, untrustworthiness, theft, fraud or dishonesty in connection with the business or property of the employer/*Corporation or of property of another person within the premises of the Corporation.*
2. Taking or giving bribes or any illegal gratification, or demanding or offering bribes or any illegal gratification.

MISCONDUCT

3. 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 employee cannot satisfactory account for.
4. Furnishing false information regarding name, age, father's name, qualification, ability or previous service or any other matter germane to the employment, at the time of employment or during the course of employment.

Sl. No.	Case	Matter	Grounds on which Challenged	Verdict
1	R.A. Pathan vs. The Director of Technical Education, 1981	Bigamous marriage	Permissible by Muslim Personal Law	Misconduct
2	K.Govinda vs. Union of India (AIR 1966)	Defective Charge Sheet	Insufficient evidence.	Jurisdiction to punish not to taken away by the defects in procedure
3	Virendra Prasad vs. Union of India (AIR 1988)	Error of Judgment while exercising quasi-judicial function.		No mis conduct

4	Inspecting Assistant Commissioner of IT vs. K.S.Gupta	In subordination Rowdism, obstructing public servants.	No violation of any provision of conduct rules.	Unbecoming of the Govt. Servant.
5	A.R R.Des Pandey vs. Union of India	Acquisition of Disproportional Asset		misconduct
6	Union of India vs. J.Ahmed (AIR 1979)	Inefficiency, lack of quality leadership, in aptitude, lack of firmness, indecisiveness.	Lack of efficiency, failed to attend higher standard of proficiency or administrative ability is a criteria than officer with average grading will be misconduct.	Personal in character/or personal ability, no misconduct.

7	Orissa vs. Vidhyabhushan (AIR 1963), Bhagat Prasad vs. IGO Police	Constable found drunk on duty, dismissed.	Too harsh.	Sentence imposed, if justified by rules, having regard to the gravity of the misconduct, enquiry conducted consistent with the prescribed rules, these are not judiciable nor the penalty opened to review by the court.
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8	Bhagawat Swaroop vs. State of Rajasthan	Magistrate Ist Class issued S/W to produce a lady on 13.7.1967, on 8.7.1967 when the lady was produced, he pass order to free her on the same day - acted in undue haste without caution and care..	He only exercise his judicial discretion under the law.	Misconduct.
9	Prof. Bhadada vs. University of Jodhpur	Misused students, denied survey camp of BE Mining Class, dismissed.	Charges does not amounting to rough misconduct and for the negligence of duties. Enquiry can not be proceeded.	Misconduct.

10	Secretary, Bishop Cotton School vs. Deputy Director Education, Vidarbha	One teacher actively supervising the managing other schools.	Not avoiding classes/duties of the present school.	His action affects the clause of the contract that he will not do anything which might injured trade, business
11	Govind Menon Vs. Union of India	Commissioner was charged with recklessly sanctioning leases of extensive forest lands to his relations, neighbours and friends.	In impugned actions were taken in his capacity as Commissioner under relevant Act	He acted recklessly and failed to act honestly or in good faith, is misconduct or gross negligence.

12	Natrajan Vs. Divl. Supdt. Southern Railway.	Asstt. Station Master misappropriated funds of S.R. Employees Consumer Cooperation Store - Removed from Service	Misconduct denote related to his functioning in an official capacity and hence not committed official misconduct.	Misconduct
13	Dr. Bool Chand Vs. Chancellor of Kurukshetra University	Retired from IAS by way of punishment on 28.2.1963. Appointed Professor in Punjab University in June, 1965 and Vice Chancellor subsequently. The new Chancellor terminated his services on the basis of past misconduct.	Appeal	Supreme Court refused to interfere on behalf of the appellant. Normally, a misconduct should be such which has a rational connection with his function and renders him unfit to continue in service.

14	K. Thinmappa Vs. Chief Mechanical Engineer, 1989 CAT	Secured appointment by producing forged and fabricated documents- Removal from service and refund of Rs. 24,651 being training expenses.	Not a defined misconduct under Railway Servants Discipline and Appeal Rules, 1968.	Suppression of facts amounts to misconduct and removal upheld. However, order for refund Rs. 24,651/- was quashed as the applicant had already lost his job.
15	S.J. Jagannathan Vs. Telecom Board & Others - 1989 CAT	Two telecom employees participated in Dharna after applying for leave on medical ground along with medical certificates - penalty withholding increment of three years without C.E.	Their illness did not prevent them from participating in the dharna which was peaceful. Absence from work without permission with a view to render the functioning of the office work to a standstill cannot be considered as conduct unbecoming of a Govt. servant.	The attack against the impugned order was devoid of merit and a speaking order was

16	M.K. Sarkar Vs. UOI, 1989 CAT	Non-reporting of transactions in immovable property beyond prescribed limit is a misconduct	Penalty of dismissal is too harsh	Penalty should be reduced to Censure. Applicant reinstated.
17	Ram Asrey & Others Vs. Labour Court Kanpur, Allahabad High Court, SLJ-1990(2)	Petition assaulted one junior officer in front of the factory gate. - guilty and dismissed from service.	It was a industrial dispute	The misconduct has some remote impact on the peaceful atmosphere in the establishment where there was no justification for using the words of limitation such as committed within the premises or in the vicinity. Man handling a colleague is a misconduct.

18	AL Nakra Vs. Project & Equipment Corpn. AIR, 1984	Employee not refunding the advance from HBA within the stipulated time. He was also charge for not returning motorcycle advance. Removed from service.	Too harsh	Rules granting advance themselves provides the consequences of breach of condition, thus, no ground for initiating proceedings. Upheld. He should be paid 50% back wages
19	State of Punjab Vs. Bakshi Singh, 1999	No misconduct subsists when unauthorised absence from duty has been treated as leave without pay		

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Robert D'Suza Vs. Ex.
Engr. Railway, AIR, 1982

Absence without
leave
constitutes
misconduct and
hence enquiry is
necessary.

Vigilance Angle – RDA Major Penalty

- Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g. -
 - possession of disproportionate assets;
 - obtaining or attempting to obtain illegal gratification;
 - misappropriation of Government property, money or stores;
 - obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

Contd..

2. Falsification of Government records.
3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.
4. Misuse of official position or power for personal gain.
5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.
6. False claims on the Government - like T.A. claims, reimbursement claims etc.

CVC Instructions

Vigilance Angle – Misconduct with a “Corruption Angle”

- Commission of criminal offence like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other persons; or
- Irregularities reflecting adversely on the integrity of the public servant; or

•Contd..

- Lapses involving any of the following
 - Gross negligence
 - Recklessness
 - Failure to report to competent authorities, exercise of discretion/power without or in excess of powers/jurisdiction.
 - Cause of undue loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
 - Flagrant violation of systems and procedure.

When to Start RDA Proceedings

▪ Initiation of RDA after enquiry when

f inadequate evidence for prosecution but good evidence for RDA.

f charges established are breaches of dept. rules or misconduct not amounting to cr. offences.

f departmental action is preferable.

▪ PRACTICAL ASPECTS

- A. The Genesis of departmental enquiries (RDA for Major and Minor Penalties)

- ƒ I. Matters of Vigilance Angle

- ƒ II. Cases originated from CBI.

- SIR / COMPLAINT/ STATE REFERENCE/ SUPREME COURT/HIGH COURTS

PRACTICAL ASPECTS

- Degree of proof is by preponderance of probability.
- Indian Evidence Act is not applicable.
- Hearsay evidence if has logically probative value, is admissible.
- Discipline Authority is the sole judge of the facts - Adequacy & reliability of evidence cannot be questioned before Court.
- Court interfere only when violation of rules of procedures, natural justice, arbitrariness, no evidence etc. not on the merits of evidence.

PRACTICAL ASPECTS

(continued)

- Can be conducted on holidays.
- It conducted in camera except those under P.S. (Inquiry) Act, 1880.
- No need to examine all the witnesses.
- Witnesses not cited in C.S. can be examined, at the request of the P.O. or at the instructions of Inquiry Officer.
- Tape recorded evidence admissible.
- Evidence of accomplice can be relied upon.

PRACTICAL ASPECTS

- When a charge different from charge framed established, the E.O. can give findings of the charge if C.O. admits/given reasonable opportunity.
- In D.E. initiated for major penalty, minor penalty can be imposed.
- Past bad record cannot be taken into consideration for arriving at a findings on the charge but can be considered for imposing an enhanced penalty.

Types of cases for imposing major penalties

- Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g. -
 - possession of disproportionate assets;
 - obtaining or attempting to obtain illegal gratification;
 - misappropriation of Government property, money or stores;
 - obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

Contd..

2. Falsification of Government records.
3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.
4. Misuse of official position or power for personal gain.
5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.
6. False claims on the Government - like T.A. claims, reimbursement claims etc.

Enquiry Preceeds RDA

- As soon as decision has been taken by the competent authority to start departmental proceedings, the authority will draw up charges on the basis of
 - f* Material gathered during the preliminary investigation
 - f* Enquiry report submitted by Vigilance/Police/ other agencies.
 - f* Article of Charges, Statement of imputation etc. to be prepared in the prescribed format.
 - f* The memorandum should be signed by the disciplinary authority or authorized legally delegated authority.

Legal Aspects

- D.E. is conducted to maintain discipline in the service and efficiency of the public servant.
- Principle of Natural Justice and equal opportunity (Art. 311 of Indian Constitution) are strictly followed up i.e.
 - f* No person should be condemned unheard.
 - f* No one should be a judge in his own case.
 - f* Justice is not only be done but it should appear that it has been done.
 - f* He should be given fair and reasonable opportunity to defend.
 - f* The person holding enquiry should be without bias and vindictiveness.

Legal Aspects (*continued*)

- The conclusion must rest on the evidence adduced during the enquiry and not on the evidence taken in the back of the charged officer or on matters outside the records.
- Successive Proceeding in respect of Same Matter State Vs. Man Singh Rao AIR 1958
- Anand Narain Shukla Vs. State of MP AIR 1979
- Choice Between Prosecution & Departmental Action S. Sree Ram Murthy Vs. C.W.C. 1990(I) SLR AP 21

Legal Aspects (*continued*)

- Departmental Enquiry while police case is pending - No bar (B. Balaiah Vs. D.T.O. Karnatka STC 1982, SL, KAR, 675.
- Simultaneous prosecution as well as departmental enquiry (Kushal Bhan case, AIR 1960)(K. Dubey Vs. BCCL, AIR 1988)
- B.K. Meena, IAS & Others (1996).
- Criminal Prosecution after Departmental Action and vice-versa (S.A. Venkataraman Vs. The State)
- Departmental Action after Acquittal in Criminal Case.

Legal Aspects (*continued*)

- Whether Investigation Report, Preliminary Report etc. should be supplied - No (Krishna Chand Tandon AIR 1974) & Chadrama Tiwari Vs. Union of India AIR 1988.
- Assistance of Lawyer whether permissible in Departmental Enquiry (K.C. Tandon Vs. Union of India 1974) - No violation of natural justice.
- V.R. Sambamurthy Vs. Union of India 1986 - Yes.
- J.K. Agarwal Vs. Haryana State Development Corporation AIR 1991 - yes

Legal Aspects (*continued*)

- Penalty to be Commensurate with Misconduct alleged (Sukhbir Singh Vs. DCP Delhi 1984(2) SLR, Shankar Das Vs. Union of India AIR 1985
- Whether Delinquent is entitled to the copy of enquiry officer's report - Yes. Mohd. Ramjan Khan's case

Preparation of Article of Charge

▪ Article of Charge

- i) In third person,
- ii) designation & the period of time involved,
- iii) not under provisions of PC Act/IPC,
- iv) only violation of service and departmental rules/conduct rules, irregularities
- v) misconduct, negligence,
- vi) failure to maintain absolute integrity and devotion to duty,
- vii) acts of commission & omission,,
- viii) disobedience of orders and instructions,
- **sl iv to viii to be brought under one or more of above heads,**

Check List

- i) in case of specific breach of specific rule of the Conduct Rules/Service Rules, the specific rule violated to be mentioned,
- ii) to be precise, distinct, clear and unambiguous language,
- iii) should communicate the delinquent officer the grounds on which he is being charged and particular irregularities which he has committed,
- iv) should not contain discussion of evidence or give opinions or conclusions.

Contd...

- A separate charge in respect of each separate transaction/event or a series of related transaction/events amounting to misconduct/misbehaviour.
- If the transactions/events amounts to more than one type of misconduct, all the misconduct should be mentioned.
- The Articles of Charge should first give plain facts and then mention the nature of misconduct and misbehaviour.

Contd...

- The wording of the Charge should not appear to be an expression of opinion as to the guilt of the accused.
- The Charge should not relate to a matter which had already been the subject matter of an enquiry resulting in conviction/punishment or acquittal on merit by a Court of Law.
- A Charge should not refer to the report on preliminary investigation.

(continued)

- There is no bar to include all charges of violation of departmental rules as well as criminal offences which can be taken up departmentally i.e. criminal misconduct, vigilance angle. But clauses of IPC to be avoided.
- The proceeding should be based on failure to observe departmental rules and regulations.
- All the data, figure, date etc. should be carefully checked before issue of the chargesheet.

▪ Statement of Imputation

- Contains the grounds on which the charges are based and the circumstances under which it is proposed to take action against the charged officer.
- Should be sent alongwith the draft Articles of Charge.
- Should be prepared in the third person so as to be in line with the draft Articles of Charge.

■ Check List

- Should indicate clearly and in sufficient detail all the acts of omission or commission on which each charge is based.
- All instances of irregularities etc. which are relied upon in support of the charges and which are to be proved in the course of the proceedings should be specifically mentioned.
- Superfluous matters or comments and opinions of the Investigating or Prosecuting Officers or a discussion of the material available should be avoided.
- Should be confined to the narration of facts which constitute and support the charge.

▪ Procedure for RDA Major Penalty

f Receipt of enquiry report from CBI / Department.

– Competent Authority

– SP's Report with enclosures.

▪ b) Chargesheet (Memorandum)

f Proper format

f show cause notice

f Acceptance/not acceptance/Oral Hearing

f Enquiry to start when pleaded not guilty

▪ c) Appointment of Enquiry Officer & Presenting Officer.

f Disp. Authority as Enquiry Officer

f Enquiry officer sufficiently senior.

▪d) Preliminary hearing

f PO, CO to be present

f No Witness Summon

f In exceptional Cases, only occasion when PO may be represented by nominee of controlling office.

▪e) Daily Order Sheet.

▪i) Appointment of Defence Assistant.

▪ii) Inspection of documents.

▪iii) Supply of documents.

▪iv) Additional documents.

f Giving relevancy by CO

f Privileged documents.

f I.Os may allow inspection of additional documents

f Additional documents by PO/DA allowed by IO for which copy to be supplied / extract given to CO

▪v) Issue of summons for witnesses.

(continued)

■ C. Regular hearing :-

f Listing of Documents and PWs /DWs

–Prosecution Case

f Examination-in-chief,

f Cross Examination,

f Re-examination of prosecution witnesses.

f Daily order sheets and deposition statements

f Next date to be fixed.

- Defence witnesses for the Charged Officer.
- Self examination of Charged Officer.
 - f* CO as DW
- Mandatory question by the Enquiry Officer.
 - f* Closing of hearing / Arguments
 - f* Oral Arguments to be reduced in writing
- Submission of written brief by the Presenting Officer with copy to CO.
- Submission of defence brief by the Charge officer.
- Submission of Enquiry Report
 - f* Within Six Months of Appointments

Administrative Action

- D. Action on the enquiry report by the Disciplinary Authority.
 - f* Revision / Further Enquiry
 - f* De-novo Enquiry
 - f* Disp. Authority not bound to agree.
- Advice of CVC (*2nd Stage in case of Senior GOs/Board Level Appointees*) .
- E. Appellate Authority
- Administrative Action
- Review
- Implement Order

■ *E. IMPORTANT ISSUES IN DEPARTMENTAL PROCEEDINGS.*

f Contradiction between CVO, CMD/Chairman and CBI.

f Short coming on the part of disciplinary authority.

–Lack of knowledge,

–Appointment of raw -hands as EO/PO

f Simultaneous prosecution case.

–Difficulty in getting documents.

f Lapse s on the part of Enquiry Officer.

–Mala -fide intention.

–Does not know the procedure.

–Indecision.

–Engagements.

- Hostile witnesses.

- f* Trap Case.

- f* Leading Questions/Cross Examination/Gain-over

- f* Private persons.

- Delay in inspection of documents/copy supply.

- f* Bulky documents.

- f* Not kept ready.

- f* Irrelevant documents.

- f* Late submission of lists.

- Lapses on the part of Presenting Officer.

- f* Lack of knowledge.

- f* Attitude

- f* Not serving summons to witnesses.

■ Adjournalment

f By E.O.

f By P.O.

f By charged officer.

■ Dilatory tactics by the Charged Officer.

f Avoiding received of notice/summons

f Long list of documents.

f Delay in inspection.

f Medical Certificates.

f Written Representations.

f Request for change of E.O./P.O.

f Advocate as defence assistant

- Delay in getting appointment of Defence Assistant.
 - f* Parent department not releasing him.
 - f* Engagements.
- Difficulty in getting attendance of witnesses.
 - f* Far away.
 - f* Transferred.
 - f* Retired.
 - f* Present address not known.
- CAT cases, stay order of courts.
- Simultaneous Police cases/CBI cases.
- Adequacy report

STANDARD OF PROOF

1. THE STANDARD OF PROOF
REQUIRED IN A
DEPARTMENTAL INQUIRY IS
LIGHTER THAN IN CRIMINAL
CASE.

STATE OF ANDHRA PRADESH
V/S S. SHRI RAMA RAO , AIR
1963(SC)- 1723

2.THE DEGREE OF PROOF WHICH IS NECESSARY TO RECORD AN ORDER OF CONVICTION IS DIFFERENT FROM THE DEGREE OF PROOF WHICH IS NECESSARY TO RECORD THE COMMISSION OF DELINQUENCY.

**(M.C.VAGHELA V/S S.D. MEHTA
AIR 1966, GUJRAT :233)**

3. IN A DISCIPLINARY PROCEEDING THE TECHNICALITIES OF CRIMINAL LAW CAN NOT BE INVOKED AND STRICT MODE OF PROOF PRESCRIBED BY THE EVIDENCE ACT MAY NOT BE APPLIED WITH EQUAL VIGOUR, BUT EVEN IN DISCIPLINARY PROCEEDINGS, THE CHARGE FRAMED AGAINST THE PUBLIC SERVANT MUST BE HELD TO BE PROVED BEFORE ANY PUNISHMENT CAN BE IMPOSED.

**STATE OF MADRAS V/S A. R.
SHRINIVASAN AIR 1966 S.C 1827)**

**4. IN A DEPARTMENTAL ENQUIRY
THE RULES OF NATURAL JUSTICE ARE
COMPLIED WITH IF PREVIOUS
STATEMENTS OF WITNESSES ARE
READ OVER TO THEM AND MARKED
DURING THE DEPARTMENTAL
ENQUIRY.**

**(STATE OF MYSORE V/S S.
MAKAPUR AIR 1963 (SC) 375)**

5. IN A DEPARTMENTAL ENQUIRY THE STRICT AND SOPHISTICATED RULES UNDER THE EVIDENCE ACT MAY NOT APPLY. ALL MATERIALS WHICH ARE LOGICALLY PROBATIVE FOR A PRUDENT MIND ARE PERMISSIBLE. THERE IS NO ALLERGY TO HEARSAY EVIDENCE PROVIDED IT HAS REASONABLE NEXUS AND CREDIBILITY

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STATE OF HARYANA V/S RATAN SINGH
1977 (2) SCE 490

6. IN A DISCIPLINARY PROCEEDING THE STANDARD OF PROOF REQUIRED IS THAT OF PREPONDERANCE OF PROBABILITY AND NOT PROOF BEYOND REASONABLE DOUBT.

**(UNION OF INDIA V/S SARDAR BAHADUR
1972 SLR 355-SC)**

7. MERE SUSPICION SHOULD NOT BE ALLOWED TO TAKE THE PLACE OF PROOF EVEN IN DOMESTIC ENQUIRY.

-UNION OF INDIA V/S H.C.GOEL, AIR 1964 (SC) 364.

8. CHARGE CAN NOT BE SUSTAINED ON MERE CONJECTURES IN THE ABSENCE OF EVIDENCE

-STATE OF ASSAM V/S M.C.KALITA A.I.R. 1962 S.C.)

9. THERE CAN NOT BE NORMALLY A DIRECT EVIDENCE AS REGARDS THE RECEIPT OF ILLEGAL GRATIFICATION- IT SHOULD ONLY INFERENTIAL FACT DEDUCED FROM THE PROVED FACTS AND OTHER CIRCUMSTANCES.

(S. SREE RAMA MURTHY V/S C.W.C.)

REASONABLE DOUBT

(I) THE TERM IS VERY EASY TO UNDERSTAND BUT VERY DIFFICULT TO DEFINE

(II) IT IS THE DOUBT WHICH MAKES YOU HESITATE AS TO THE CORRECTNESS OF THE CONCLUSION YOU REACH.

PREPONDERANCE

IN FAVOUR OF THE PARTY IN WHOSE FAVOUR THERE IS PREPONDERANCE OF PROOF, ALTHOUGH EVIDENCE MAY NOT BE ENTIRELY FREE FROM DOUBT.

Case Laws on some crucial issues in Departmental Enquiry

- **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 ie., 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

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.

CBI ACADEMY, GHAZIABAD

Q.W. Ali Vs. State of Madhya Pradesh AIR 1959 MP 46

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.**

CBI ACADEMY, GHAZIABAD

- **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

CBI ACADEMY, GHAZIABAD

- 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**

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 J.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 Badar 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 become 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.

Contd.

- 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 appelland 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 appelland 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 appelland 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/stiking 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.

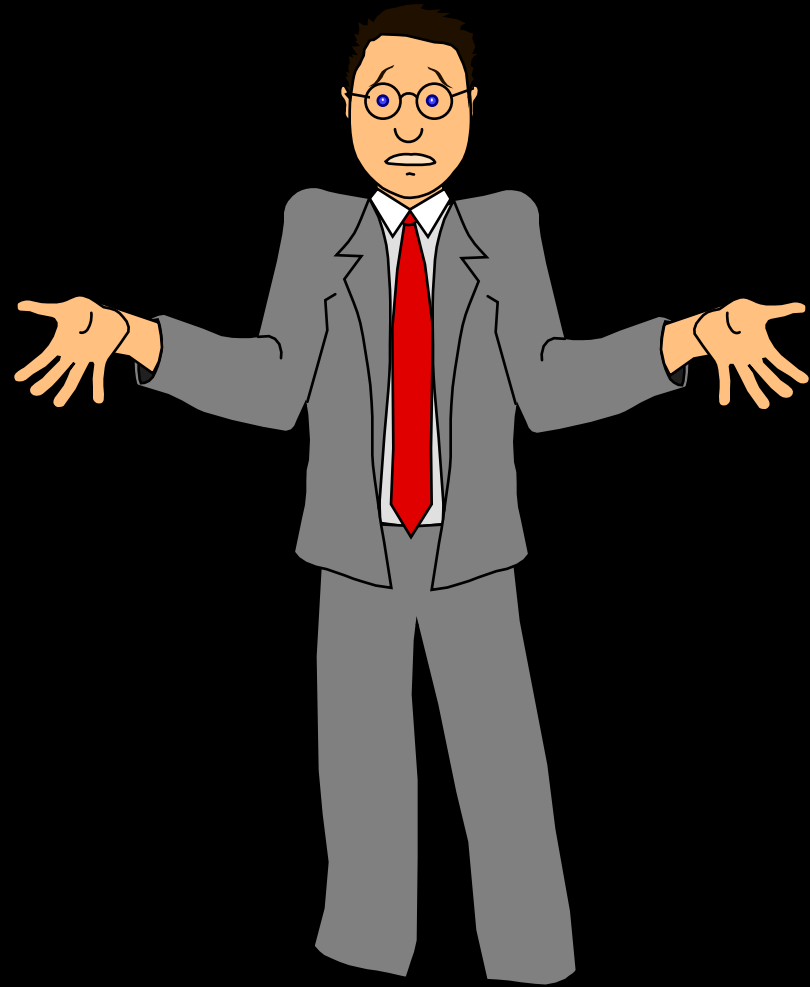
State of U.P. Vs. Harendra Arora and another (AIR 2001 SC 2319)

- 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.

ANY QUESTION?



THANKS

