

DISCIPLINARY PROCEEDINGS

SOME IMPORTANT JUDGEMENTS

Compiled by:

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SN	Topic	Names of the Parties	Citation	Law laid down/Point settled
1	Principles of Natural Justice	State Bank of Patiala v. S. K. Sharma	AIR 1996 SC1669	Procedural violations causing prejudice to employee vitiate the inquiry. Employee should get the protection of the principles of natural justice.
2	Reasonable Opportunity	Khemchand v. Union of India	AIR 1958 SC 300	Reasonable opportunity means: 1) Opportunity to deny the guilt and prove innocence. 2) To defend by cross examining the witnesses of the disciplinary authority & examine the witnesses on his behalf and produce evidence.
3	Criminal Proceedings and Disciplinary Proceedings	State of Rajasthan v. B. K. Meena Cap. M. Paul Anthony v. Bharat Gold Mines Ltd.	AIR 1997 SC 13 AIR 1999 SCW 1098	No legal bar to conduct criminal proceedings and disciplinary proceedings simultaneously. No legal bar to conduct the CP & DP simultaneously. However if the charges are grave and question of law and facts was involved, the DP be stayed. However if the CP gets delayed the DP be revived and completed. If the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable.

4	Judicial Review of Disciplinary Proceedings	B. C. Chaturvedi v. Union of India Apparel Export Promotion Council v. A. K. Chopra	AIR 1996 SC 484	Judicial review is not a review of decision but review of manner in which decision is made. 1) Disciplinary authority is the sole judge of facts. 2) Appellate authority can only re-appreciate the evidence.
5	Sexual Harassment at Workplace	Vishakha v. State of Rajasthan	AIR 1997 SC 3011	1) Sexual harassment at workplace is violative of Articles, 14, 19 and 21 of the Constitution. 2) Departmental inquiry through Internal Complaints Committee should be initiated.
6	Imposing punishment not provided in Rules	Vijay Singh v. State of U. P.	Supreme Court SLP(C) No. 27600 of 2011	The Disciplinary Authority cannot impose the punishment not provided in rules as a result of departmental inquiry.
7	Opportunity to delinquent employee in case the disciplinary authority differs with findings of Inquiry Officer	Yoginath Bagde v. State of Maharashtra	AIR 1999 SC 3734	In case the Disciplinary Authority differs with the findings of Inquiry Officer, which are favourable to employee, the Authority will have to communicate tentative findings with the reasons to the employee and give him an opportunity to give his say and then only appropriate order can be passed. Denial of such opportunity amounts to violation of principles of natural justice.
8	Claiming Promotion (denied in service) after Retirement	Joseph John v. State of Kerala	Kerala High Court WP(C).No. 8121 of 2010 (M)	Employee can claim denied promotion even after retirement with monetary benefits and compensation.
9	Suspension of an Employee	State of Orissa v. Bimal Kumar Mohanty	AIR 1994 SC 2296	1) Suspension is not a punishment 2) Suspension should be ordered considering the gravity of the alleged misconduct, prima facie evidence and on application of mind. It should not be administrative routine to suspend an employee in every case.

10	Ordering a fresh/ <i>denovo</i> Inquiry	K. R. Deb v. Collector of Central Exercise	AIR 1974 SC 1447	Ordering a fresh/ <i>denovo</i> inquiry just because the Disciplinary Authority is not satisfied with the findings of Inquiry Officer is illegal.
11	Attachment or seizure of Pension of Employee	Union of India v. Wing Commander R. R. Hingorani	(1987) 1 SCC 551	No pension granted to an employee will be liable to attachment, seizure by process of any court or quasi-judicial proceeding at the instance of a creditor.
12	Promotion is a Fundamental Right	Maj. Gen. H. M. Singh v. Union of India	(2014) 3 SCC 670	The non-consideration of the claim of the employee eligible and found fit for promotion would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. Subject to the condition, that the employers are desirous of filling the vacancy of the promotional post.
13	Promotion during pending Departmental or Criminal Proceedings	Union of India v. K. V. Jankiraman	AIR 1991 SC 2010	Sealed cover procedure to be adopted when charge sheet is issued, not earlier. Employee in such a case has no right of promotion but may be considered for promotion.
14	Continuance of Disciplinary Proceedings against a Dismissed Employee	State of Maharashtra v. Vijay Kumar Agarwal	Supreme Court Civil Appeal No.1020-1021/2014	The disciplinary proceedings cannot be continued against a dismissed employee and therefore be kept in abeyance. If the order of dismissal is set aside, the relationship of employer-employee gets restored and the disciplinary proceedings can be revived and settled as per law.
15	Pensioner and Departmental Proceedings	State of Bihar v. Mohd. Idris Ansari	AIR1995 SC1853	After retirement of employee, the departmental proceedings can be instituted against him for (1) Grave misconduct and (2) for recovery of financial loss caused to the Government. However, such proceedings can be instituted for the cause of action arose or in respect of event which took place not more than four years before institution of the said proceedings.
		U. P. State	Supreme	The disciplinary proceedings are

		<p>Sugar Corporation Ltd . v. Kamal Swarup Tondon</p> <p>State of Punjab v. Kailash Nath</p>	<p>Court Civil Appeal No. 513 of 2008</p> <p>AIR 1989 SC 558</p>	<p>treated to have commenced on the date on which the regular charge sheet is issued though the same is received after office hours on the date of retirement (or even thereafter).</p> <p>The criminal proceedings can be instituted any time after retirement, in respect of an act of employee (which amounts to an offence under criminal law) or incident taken place while the employee was in service. However, the pension whole or in part, permanently or for specific period can be withdrawn or withheld, only if the judicial proceedings are instituted after his retirement in respect of a cause of action which arose or in respect of an event which took place not more than four years before institution of such proceedings.</p>
16	Definition of Misconduct	Baldev Singh Gandhi v. State of Punjab	AIR 2002 SC 1124	The word “Misconduct” is antithesis of the word “conduct”. Ordinarily the expression “misconduct” means a wrong or improper conduct, unlawful misbehaviour, misfeasance, wrong conduct, misdemeanour etc. There being different meaning of the expression “Misconduct”, Disciplinary Authority therefore have to construe the expression of “Misconduct” with reference to the subject and the context wherein the said expression occurs.
17	Definition of Misconduct	M. M. Malhotra v. State of Maharastra	AIR 2005 SCW 5497	The word misconduct is not capable of a precise definition. The word misconduct has to be understood from the point of view of its connotation with the context, the delinquency in performance and its effect on the discipline and nature of duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs.

18	Definition of Misconduct	J. J. Mody v. State of Bombay	AIR1962 Guj 197	<p>The following acts can be listed as serious misconduct:</p> <ol style="list-style-type: none"> 1. Where the act or conduct of the servant is prejudicial to the interests of the employer or reputation of the employer; 2. Where the act or conduct of the servant is inconsistent or incompatible with the due or peaceful discharge of his duty to this employer; 3. Where the act or conduct of a servant makes it unsafe for the employer to retain him in; 4. Where the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted. 5. Where the act or conduct of the employee is such that the employer cannot rely on the faithfulness of his employee; 6. Where the servant is abusive or if he disturbs peace at the place of his employment; 7. Where the servant is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of employer and employee; 8. Where the servant is habitually negligent in respect of the duties for which he is engaged; and 9. Where the neglect of the servant, though isolated, tends to cause serious consequences.
19	Sanction for Prosecution	Manzoor Ali Khan v. Union of India	Supreme Court WP(C) 305 Of 2007	<ol style="list-style-type: none"> 1) The requirement of sanction for prosecution of some category serving public servant is constitutionally valid. 2) Sanctioning authority must decide question of granting sanction within a period of three months from receipt of proposal. Extension of one month when Advocate or Attorney General is to be consulted. 3) A private citizen has a right to file a complaint for prosecution against a public servant for the offences allegedly committed under the Prevention of Corruption Act, 1988 4) No opportunity is required to be

				<p>given to the public servant by the sanctioning authority.</p> <p>5) The sanctioning authority cannot hold a further inquiry to find out the truth on the basis of the representation of the accused.</p> <p>6) The sanctioning authority has only to see whether the facts brought before him constitute the offence.</p> <p>7) If the sanctioning authority has any doubt about the facts, it may refer back to the agency seeking sanction of prosecution.</p>
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