SOME FAQ'S AND CASE LAWS
ON
DISCIPLINARY PROCEEDINGS

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Double Jeopardy – Criminal Prosecution verses Disciplinary Proceedings:

The object of the disciplinary proceedings is to ascertain whether the officer concerned is suitable to be retained in service. On the other hand the object of the criminal prosecution is to find out whether ingredients of the offence as defined in the penal statute have been made. Article 20(3) of the Constitution of India also does not apply to a departmental inquiry because the official is not being tried to for any criminal offence.

[Bhagwan Singh v. Deputy Commissioner Sitapur, AIR 1962 All 232]

Departmental Inquiry during the Pendency of a Criminal Prosecution:

Holding of a departmental enquiry during pendency of a criminal prosecution in respect of the same subject-matter would not amount to a contempt of court. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations and such exercise of powers bonafide will not come within the mischief of the law of contempt, especially when the departmental authorities did not publish their orders nor tried to influence the court in any manner.

[Mehra Singh v. Supdt. of Post offices, Jabalpur, AIR 1962 MP 72]

Natural Justice in Disciplinary Proceedings:

The aim of Natural Justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These rules operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it.

[A. K. Kraipak v. Union of India AIR 1970 SC 150]

There must be ever present to the mind of men the fact that our laws of procedure are grounded on the principle of Natural Justice which require that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings which affect their lives and property should

not continue in their absence and that they should not be precluded from participating in such proceedings.

[Ramseth v. Collector of Dharbang, AIR 155 PAT 345]

The expression 'Natural Justice' conveys the notion that the result of the process should be just. There are two concepts underlying this doctrine, namely, the authority deciding the dispute should be impartial and the party to be affected should be given full and fair opportunity of being heard.

[C. Pitchiah v. Andhra University AIR 1961 AP 465]

The term ‘misconduct’ means an act done wilfully with a wrong intention and as applied to professional people; it includes unprofessional acts, even though such acts are not inherently wrongful. It also means a dereliction of or deviation from duty.

[In Re. Nahood Ali Khan, AIR 1958 AP 116]

Speaking Orders in Appeal Cases:

The Supreme Court and the High Courts have emphasised that the appellate authorities must give reasons and there should be some discussion of the evidence on record. An appellate authority has a legal duty to deliberate about merit and adjudge it before confirming, enhancing, reducing or setting aside the penalty.

[Nathaniel Ghosh v. Union Territory of Arunachal Pradesh, (1980) 2 SLR 733]

Personal Hearings at Appeal Stage:

It appears fairly clear that the fundamental basis on which it is thought necessary to include if the concept of ‘reasonable opportunity’ the right of personal hearing and putting forward his case at the first stage is that he must have the opportunity of leading his evidence, cross-examining the prosecution witness, pointing out the demeanor of those witnesses and personal appeal to the Enquiry Officer to appreciate that the evidence in the light in which he would like to be appreciated and urge his case or convince him of the weakness of prosecution case and strength of his own case. **At the second stage**, however, only the right to make representation has been held to be sufficient compliance with the requirement of constitutional protection of giving a reasonable opportunity and the requirement of personal hearing is not thought necessary because at that stage the authority is merely to take his decision from the record before him. The right of personal hearing is intended to be necessary requirement of the concept of reasonable opportunity to show cause only at the stage when evidence is to be led, cross-examination of the witness is to be done

and the demeanor of the witness is to be watched and not at the stage when decision is to be taken from record before the deciding Appellate Authority.

[State of Gujarat v. P. B. Ramalbhai, AIR 1969 Guj, 260]

Where an appeal is preferred by the Government Servant against the order of the disciplinary authority, it is not necessary that he should be given personal hearing at that stage.

[F. N. Roy v. Collector of Customs, Calcutta AIR 1957 SC 648]

The proceedings before an appellate authority are a continuation of the proceedings before the enquiry officer and both these proceedings taken together point to the conclusion. That the guarantee under Article 311 is satisfied and the failure to give a personal hearing to the petitioner in appeal by itself will not render proceedings illegal.

[Bindanath v. State of Assam AIR 1959 Assam 112]

Unless statutory rules so require or a specific prayer for personal hearing is made by the appellant in writing in the petition of appeal itself, it is not incumbent on the appellant authority to afford a personal hearing to a person aggrieved against an order imposing punishment on him in departmental proceedings.

[Vijay Singh Yadav v. State of Haryana and others 1971 SLR 720 (Punjab and Haryana)]

Where the rules are silent regarding personal hearing but an opportunity is demanded by the delinquent official before the Appellant Authority to represent his case, such a request should not be refused, as it violates principles of natural justice.

[Ranjit Singh v. Inspector of Police and others, 1979 AISLJ 57 (Punj)]

Provisions of Article 311 of the Constitution in Disciplinary Cases:

The implications of the provisions of Article 311 have been the subject of a close examination by the Supreme Court. The Supreme Court has given exhaustive interpretation of the various aspects involved and they provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

[Purushotham Lal Dhingra v. Union of India, AIR 1958 SC 36; Khem Chand v. Union of India, AIR 1958 SC 300; and Union of India and another v. Tlusiram Patel, 1985(2) SLR SC 576]

Articles 310 and 311 apply to Government servants, whether permanent, temporary, officiating or on probation.

[Purushotham Lal Dhingra v. Union of India, AIR 1958 SC 36]

Issue and Service of Charge-sheet:

Endorsements of Postal Authorities on letters "not found", "not traceable", "not known", "left" do not amount to service, but an endorsement "refused" does. The Supreme Court has laid down, that charge sheet is issued when it is framed and despatched to the employee irrespective of its actual service on the employee.

[Delhi Development Authority v. H. C. Khurana, 1993(2) SLR SC 509 and Union of India v. Kewal Kumar, 1993(2) SLR SC 554]

Disagreement of Disciplinary Authority with the Findings of the Inquiring Authority:

On the question of the disciplinary authority disagreeing with the findings of the inquiring authority, the Supreme Court held, that the reasoning of the High Court that when the Disciplinary Committee differed from the finding of the inquiry officer it is imperative to discuss the materials in detail and contest the conclusion of the inquiry officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer's report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the views expressed by the inquiry officer thereon. The findings of the inquiry officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision-making authority is the punishing authority and therefore that authority can come to its own conclusion of course bearing in mind the views expressed by the inquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the inquiry officer". Otherwise the position of the disciplinary authority would get relegated to a subordinate level.

[High Court of Judicature at Bombay v. Shashikanth S. Patil 2000(1) SLJ SC 98]

Standard of Proof in the Departmental Inquiry:

The standard of proof required in a departmental oral inquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court has given clear rulings to that effect that a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial.

[Union of India v. Sardar Bahadur, 1972 SLR SC 355; State of Andhra Pradesh v. Sree Rama Rao AIR 1963 SC 1723 and Nand Kishore Prasad v. State of Bihar, 1978(2) SLR SC 46]

The departmental authorities, if the inquiry is properly held, are the sole judge of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the constitution.

[State of Andhra Pradesh v. S. Sreerama Rao AIR 1963 SC 1723]

If two views are possible, court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power, in judicial review.

[Union of India v. Harjeet Singh Sandhu, 2002(1) SLJ SC 1]

The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The disciplinary authority is the sole judge of facts. The Court/Tribunal in its power of review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

[B.C. Chaturvedi v. Union of India, 1995(6) SCC 749]

Fresh Inquiry, in Case Proceedings are Quashed by Court on Technical Grounds:

Where departmental proceedings are quashed by civil court on technical grounds of irregularity in procedure and where merits of the charge were never investigated, fresh departmental inquiry can be held on same facts.

[Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh, AIR 1962 SC 1334]

Action against Disciplinary Authority for Lapses in Conducting Proceedings:

In the case of that if a superior officer holds the inquiry in a very slipshod manner or dishonestly, the State can certainly take action against the superior officer and in an extreme case even dismiss him for his dishonesty.

[Dwarakachand v. State of Rajasthan, AIR 1958 RAJ 38]

The Central Administrative Tribunal, Madras held that disciplinary authority can be proceeded against in disciplinary action for misconduct of imposing a lenient penalty.

[S. Venkatesan v. Union of India, 1999(2) SLJ CAT MAD 492]

Cross-Examination of a Witness:

The examination of a witness by the adverse party shall be called his cross-examination. The purpose of the cross-examination is to test the veracity of the witness. No evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination.

[Maganlal v. King Emperor AIR 1946 Nagpur 126]

Suspension of a Government Servant:

While suspension is not a punishment, utmost caution to be exercised while ordering suspension.

[Subramanian v. State of Kerala, (1973) SLR 521]

Supreme Court decisions setting out that the power is meant to be exercised primarily in the interest of justice.

Court must be satisfied on the materials placed before it that granting permission would serve administration of justice.

[Bansilal v. Chandilal, AIR 1976 S.C. 370]

Duty of the court to see that the permission sought for is not on grounds extraneous to the interest of justice. Ultimate guiding principle must be interest of administration of justice.

[Balwant v. Bihau, AIR 1977 S.C.2265]

Court has to see that executive function of prosecution is not improperly exercised.

[Paswn v. Bihan, AIR 1987 S.C.877]

Duty of the prosecution is to inform the Court, that Court must exercise itself of the reasons which prompted itself to withdraw from prosecution.

[Jain v. State, AIR 1980 S.C.1510]

Broad ends of social justice may well include appropriate social economic and political purposes.

[State of Punjab v. Union, AIR 1992 S.C. 248]

Sanction under the Prevention of Corruption Act, 1988 necessary for Prosecution:

The question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

[Anil Kumar & Ors v. M. K. Aiyappa & Anr, 2013-Tiol-50-Sc-Service]

Charge and Punishment for Passing Wrong Order in Adjudication Proceedings:

An error in interpretation of law cannot be a ground for misconduct unless it is deliberate and actuated by mala fides. If an error of law would constitute misconduct, it would be difficult to independently function for a quasi judicial officer. Such an action could always be corrected in appeal.

[Zunjarrao Bhikaji Nagarkar v. Union of India and others - 2002-TIOL-130-SC-CX]

Disciplinary proceedings could be initiated against a government servant concerned with regard to exercise of quasi judicial powers, if the act or omission is such as to reflect on the reputation of the government servant for his integrity or good faith or devotion to duty; there is a prima facie material manifesting recklessness or misconduct in discharge of the official duty; the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power.

[Union of India and others v. Shri K. K. Dhawan - 2002-TIOL-441-SC-MISC-LB]

While performing judicial or quasi judicial functions, if the authority acted negligently or omitted essential conditions prescribed for exercise of such power, disciplinary proceedings could be initiated.

[Union of India and others v. Duli Chand - 2006-TIOL-78-SC-MISC-LB]

Ignoring the views of appellate authority amounts to harassment to the assesse by failure of the officers to give effect to the orders of the authorities higher to them in appellate hierarchy. In quasi-judicial proceedings, the Revenue officers were held bound by the decisions of the appellate authorities and the principles of judicial discipline require the same to be maintained.

[Union of India and others v. Kamlakshi Finance Corporation Limited - 2002-TIOL-484-SC-CX-LB]

Passing of an order by the department and keeping it in the file is not sufficient as it has to be issued to the employees:

The Hon'ble Supreme court in its Six Bench judgment in the case of State of Punjab v. Amar Singh Harika [1996 AIR (SC) 1313]. It was held as under:-

"We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published."

The competent authority has to approve the initiation of charge and the charge itself:

The competent authority has not only to approve the initiation of charge but also the charge itself. The charge sheet/charge memo having not been approved by the disciplinary authority is *non est* in the eye of law.

[Union of India v. B.V. Gopinath JT 2013 (12) SC 392]

Effect of documents filed by department as Exhibits:

Mere tendering of documents is not sufficient to prove the charges. The documents have to be proved by the prosecution witnesses who are liable to be subjected to be examined by the Presenting Officer and cross-examined by the delinquent official. The Apex Court has considered the question "whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits." The findings of the Apex Court were that mere admission of document in evidence does not amount to its proof. On the other hand, documentary evidence is required to be proved. Further, the witnesses who are examined in the departmental enquiry shall be made available for cross-examination. Even though the provisions of the Civil

Procedure Code and the Evidence Act are not strictly applicable in disciplinary proceedings, the principles behind those provisions cannot be altogether ignored.

[L.I.C of India & Anr. v. Ram Pal Singh Bisen 2011(1) SLJ 201]

Courts are justified in Interfering at the earliest stage so as to avoid the harassment and humiliation:

The Apex Court has held as, "law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation". It was held further that "it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion".

[State of Punjab v. V.K. Khanna and Others JT 2000 (Supp.3) SC 349]