

DISCIPLINARY ACTION

VIS-À-VIS GOVERNMENT SERVANTS

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INTRODUCTION

Disciplinary Proceedings, perhaps the most colossal and most litigated branches in India is often characterised as complex and full of intricacies. This branch of Service Matters has the maximum number of commentaries, statutes, rules and regulations governing it. What interested me prima-facie about this topic, is that the procedure of Disciplinary proceedings is conducted through various channels where the delinquent Government servant tries to assert that the allegations against him/her are baseless and the treatment meted to him is unjustified, unwarranted, malicious and arbitrary. The legal battle, i.e. the filing of a case in the Public Services Tribunal only takes place after an adverse order has been passed against the Government Servant. The article will deal as to how the Disciplinary proceedings are conducted in the Public service Tribunal, the procedure through which a case is filed and how it is conducted through proper channels. The article will also deal with some of the procedures which are followed in the courts and Tribunals and the legal terms used for them.

The writer has made his sincere efforts to illuminate the complex legal concepts of Disciplinary Proceedings and also the various procedures related to it. It is for the same reason that a brief introduction about the Public Services Tribunal and the procedure through which a case moves in the Tribunal is also being mentioned, to acquaint the readers

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about the procedures followed in the Public Services Tribunal. The following article is being written to illuminate even a lay man about the Public Services Tribunal and to acquaint him with the basic and legal concepts of the Disciplinary Proceedings of the Service matters. The procedures and the various legal formalities observed in the Tribunals which have been cited in the article are based on the legal documents like the Petition, Counter-Affidavits, Charge sheets etc. through which the author came across during the course of the research.

PUBLIC SERVICE TRIBUNAL

Till 1970, adjudicating service matters fell under the jurisdiction of Civil Courts. With the passage of time, this branch of Law grew more complex and complicated, hence need was felt for specialised courts and Advocates to deal with the same. The post 1970 era witnessed the setting up of specialised courts or Public Services Tribunals (hereinafter referred to as the Tribunal) which took up cases concerning only service matters. A Tribunal is basically a specialised court, concerning a specific or particular branch of Law. A Tribunal is empowered by the State to decide disputes, concerning a specific matter. Special and specific Tribunals like Debt Recovery Tribunal, Income Tax Appellate Tribunal and Public Services Tribunal etc. are located in different parts of the State. The Public Services Tribunal, its jurisdiction and functioning are governed by Article 323-A of the Constitution of India which runs as follows:

Parliament may, by Law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to Public services and posts in connection with the affairs of the Union or of any

*State or of the Government Of India or of any corporation owned or controlled by the Government.*¹

The article further provides for the establishment of Administrative Tribunal for the Union and the States, specifies the jurisdiction and powers of such Tribunals, procedure to be followed by the Tribunals, excludes the jurisdiction of all courts except that of the Supreme Court under article 136² of the Constitution of India , etc.

A question arises by what virtue the State can regulate recruitment and conditions of service of its employees. In service matters, the rule making power is essentially derived from the Constitution of India by virtue of Article 309 which reads as *Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.*³

The article further provides that the President in case of Union and the Governor in the case of State may direct such persons to make rules and regulations of services and posts in connection with the affairs of the State, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

It is essential to point out that only Government Servants throughout a State can file their respective cases in the Tribunal, to get their grievances redressed. In other words the Tribunal only hears the cases of servants working in the employment of the State. Employees working

¹ *Administrative Tribunals* PART XIV-A, Article 323-A of the Constitution of India.

² Special leave to appeal by the Supreme Court.

³ *Recruitment and conditions of service of persons serving the Union or a State* PART XIV, Chapter I, Article 309 of the Constitution of India.

for Private companies or organisations which are not owned by the State cannot file a case in the Tribunal. Such employees are governed by the Industrial Disputes Act and their cases are dealt with by Labour Courts and Industrial Tribunals.

It is interesting to note that majority of cases which are filed in the Tribunal are against the State, i.e. the State is the Litigator in maximum number of cases. The State is dragged into the Tribunal through its various organs or corporations. This further gives rise to the requirement of Advocates which can represent the State in its cases. The Lawyers which plead the case on behalf of the State are known as the '*Standing Counsel*'. Further the judges who preside over the proceedings of the Tribunal are known as the '*Presiding Officers*'.

DISCIPLINARY PROCEEDINGS

Perhaps the most litigated branch of service matters; Disciplinary Proceedings are often characterized as complicated and full of intricacies. Disciplinary Proceedings are initiated against a Government servant who is alleged to have committed a misconduct which is detrimental to the prospects of the concerned department and the same may have also caused a pecuniary loss, etc. The amplitude of Disciplinary Proceedings mainly derives its sanction from the Constitution of India by virtue of Article 311 which reads:

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State: (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a state or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

(2) No person as aforesaid mentioned shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges⁴.

It is to be borne in mind that passing of the order of removal by an Authority, higher than the Competent Authority will not be discriminatory in nature.⁵ In different States, the Disciplinary Proceedings are governed by different rules and regulations laid down by the State, for ex. in U.P. they are governed by 'U.P. Government Servants (Discipline and Appeals) Rules, 1999. It is also open to the Appointing Authority to lay down such prerequisite conditions of service as would be conducive to proper discipline amongst Government Servants.⁶ It is to be noted that the Appointing Authority of a Government Servant shall be his Disciplinary Authority who may impose major or minor penalties on him, subject to the provisions of the rules laid down.

TYPES OF PENALTIES

- After the completion of inquiry, the Disciplinary Authority considering the facts and charges in the charge-sheet, findings of the Inquiry Officer, submissions made by the Government servant in response to the charge-sheet, may impose for good and sufficient reason upon the Government servant any of the Major or Minor Penalties.

MINOR PENALTIES⁷

- **CENSURE:** It is a minor or small adverse entry which is made in the character role of the Government servant. In case of awarding a censure entry as

⁴ *Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State* PART XIV, CHAPTER I, Article 311 of the Constitution of India

⁵ *Balbir Chand v. Food Corporation of India, Ltd.* (1997) 3 SCC 371 (para 3.)

⁶ *Banarsidas v. State of U.P.*, 1956 SCR 357 (361-62): AIR 1956 SC 520.

⁷ U.P. Government Servants (Discipline and Appeals) Rules, 1999

punishment, the rule laid down is that the entry must be made in the character role of the year in which the departmental inquiry concluded and not in the year in which the alleged incident against the Government servant occurred.

- Withholding of increments for a specified period;
- Stoppage at an efficiency bar;
- Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

MAJOR PENALTIES⁸

- Withholding of increments with cumulative effect;
- Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- Removal from service which does not disqualify from future employment,
- Dismissal from service which disqualifies from future employment.

PRELIMINARY INQUIRY: Sometimes, the Disciplinary Authority may appoint a Preliminary Inquiry Officer to look into the alleged charges against the Government servant. Such an inquiry which is conducted by a Preliminary Inquiry Officer cannot be termed as a full-fledged inquiry. Further if the Preliminary Inquiry Officer finds the Government Servant prima-facie guilty of the alleged misconduct, he may prepare a charge-sheet of the same and produce it before the Disciplinary Authority. The Government servant may not be aware of such preliminary inquiry. The Disciplinary Authority may on the basis of such charge-sheet, as submitted by the Preliminary Inquiry Officer proceed to initiate a full-fledged departmental inquiry. However, the departmental inquiry must not proceed from the point

⁸ U.P. Government Servants (Discipline and Appeals) Rules, 1999

where the preliminary inquiry was left, but it should start afresh. It is also an established rule, that the Preliminary Inquiry Officer cannot be appointed as an Inquiry Officer in the full-fledged inquiry, as he may be prejudiced towards the Government servant, because he has already framed a charge-sheet against him in the preliminary inquiry.

PROCEDURE FOR CONDUCTING THE INQUIRY IN CASE OF IMPOSING A MAJOR PENALTY

The Appointing Authority or the Disciplinary Authority has to issue an order, allowing the initiation of Disciplinary Proceedings against the Government servant. Sometimes the Governor of the State has to do the same, as he is the Appointing Authority of specified Government servants. The Disciplinary Authority may himself inquire into the charges or appoint an officer subordinate to him as Inquiry Officer to inquire into the charges.⁹ The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called the charge-sheet. The charge-sheet shall be approved by the Disciplinary Authority. The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet. The charged Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and state whether he desires to cross-examine any witnesses mentioned in the charge-sheet and whether he desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written

⁹ U.P. Government Servants (Discipline and Appeals) Rules, 1999

statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry ex-parte.

It has been laid down in *Radhey Kant Khare v. U.P. Co-Operative Sugar Factories Federation Ltd.*¹⁰

That after a charge-sheet is given to the employee, an oral enquiry is must and notice should be given to the employee intimating him date, time and place of inquiry. It has also been laid down in this case that if an opportunity to the employee concerned to produce witnesses, lead evidence in defence, and cross-examine the witnesses or to rebut the evidence against him is not given then the whole inquiry is liable to be declared invalid inquiry and the punishment on the basis of such inquiry report is not sustainable.

It is settled Law that the documents relied in support of the charge, have to be proved in the departmental inquiry by the Inquiry Officer in the presence of the delinquent employee. The delinquent employee is also at liberty to ask for documents in case they are mentioned in the charge-sheet, but the same have not been annexed with the charge-sheet. Also, if the documents on which the charges are to be proved are not annexed with the charge-sheet or they cannot be supplied, then opportunity of inspection of such documents has to be provided. Where the charged Government servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission. Where the charged Government servant denies the charges, the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross-examine such

¹⁰ 2003 [21] L.C.D. 610

witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence.

The Inquiry Officer may ask any question he pleases, at any time from any witness or from the person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges. The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or a legal practitioner, to be known as '*Presenting Officer*' to present on its behalf the case in support of the charges. The charged Government servant may take the assistance of any other Government servant to present the case on his behalf but *not engage a legal practitioner* for the purpose, unless the Inquiry Officer appointed by the Disciplinary Authority, having regard to the circumstances of the case, so permits.

PROCEDURE FOR IMPOSING MINOR PENALTIES: The Government servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government servant.¹¹

SUBMISSION OF INQUIRY REPORT: When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority along with all the records of the inquiry. The Inquiry Report shall contain a sufficient record of brief facts, the evidence

¹¹ U.P. Government Servants (Discipline and Appeals) Rules, 1999

and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.¹²

INITIATION OF A CASE IN THE TRIBUNAL

The cause of action in cases arising out of Disciplinary Proceedings accrues on the date when the impugned punishment order against the delinquent official is passed.

It is only after the passing of an adverse order against the delinquent official, that he/she initiates a legal battle against the Disciplinary or Appointing Authority by filing a petition in the Tribunal. It is only then that the lawyers come to play an active role and represent the petitioner. Before bringing a case of Disciplinary Proceedings in the Tribunal, the delinquent employee against whom an adverse order has been passed has to make representation to the concerned authorities against the order. It is only after the representations remain unanswered by the authorities and the delinquent employee is not satisfied, that he can bring his case in the Tribunal. The Government servant or the Petitioner challenges the adverse order as 'bad order' in the Tribunal.

There are certain intricacies which are involved in Disciplinary Proceedings. The role of a Lawyer is to plug the loopholes or the grounds ignored by his client during the course of departmental inquiry, which subsequently led to the passing of the adverse order. Also there are certain grounds on which the adverse order against the Government Servant is challenged and alleged to be a bad order.

Ex: A departmental inquiry is initiated against a Government employee, and accordingly a charge-sheet is framed. In the charge-sheet, it is mentioned that Mr. X was an eye-witness to the alleged misconduct which was committed by such employee. During the course of Disciplinary proceedings the Inquiry Officer not only

¹² U.P. Government Servants (Discipline and Appeals) Rules, 1999

produced Mr. X as an eye-witness, but also produced Mr. Y, who claimed himself to be another eye-witness to the alleged misconduct committed by the delinquent employee. The testimonies given by Mr. X and Mr. Y as eye-witnesses formed the basis of the order passed by the Disciplinary Authority. The loophole in the instant case is that by producing Mr. Y as an eye-witness in the inquiry, the inquiry officer violated the Law, as his name did not appear in the charge-sheet as a witness to be produced in the inquiry.

In a case arising out of Disciplinary Proceedings, the petition filed by the aggrieved Government servant aims to show that the proceedings conducted against him were unjust, unwarranted, malicious and/or arbitrary and also that the charges levelled against him and the punishment awarded is unjustified and against the principles of Natural Justice and Law. In such a case of Disciplinary Proceedings, the petitioner usually prays to quash the impugned punishment order against him, as if it had never been passed, so that he may be entitled to all consequential service benefits to which he is entitled for. Also as the time for which the Petition may remain pending in the Tribunal is uncertain, the petitioner may pray for interim relief to stay the implementation of the impugned punishment order and also the non-consideration of the same by the opposite parties in matters of promotion to next higher posts. If the petitioner prays for interim relief, it is to be shown by him that the interim relief and the final relief sought are different in nature. It is also to be shown that the interim relief is being prayed for, because if the impugned punishment order is allowed to stand, it would be detrimental to the prospects of the petitioner.

FILING A CASE AND THE PROCEDURE OBSERVED IN THE TRIBUNAL

PETITION: The first step in initiating a cause of action is the filing of a petition by the aggrieved Government Servant in the Tribunal. This Petition is generally in the form of an affidavit duly verified by the Petitioner. It is essential that the case must only be brought before the Tribunal after passing through all the proper channels. **Ex:** A Government Servant who has been superseded in promotion by his juniors cannot straightaway file a case in the Tribunal, against the appointing authority. The proper channel in this case is that the concerned Government Servant should first make a representation before the appointing authority to make them aware of his grievance. It is only after such representations, which remain unanswered by the authorities, that the Government servant can file a case in the Tribunal. If a case is brought before the Tribunal without following the proper channel of representation to the concerned authority, it is likely to be rejected on this technical ground by the Tribunal.

The person who files a Petition before the Tribunal is known as the 'Petitioner' whereas the opposite parties are known as the 'Respondents'. In several cases, the number of opposite parties are usually more than one. The Petition is filed in the Tribunal by the counsel for the petitioner along with all the relevant annexures. The annexures may comprise of the relevant documents such as Government Orders and official letters to the Petitioner by the Authorities, representations made by the Petitioner to the concerned authorities, extracts of relevant rulings of the higher courts in India. The statements are mentioned in the Petition para wise as it is convenient for the Tribunal and the Advocates to point out a specific point of the petition.

The Petition consists of the facts of the case in chronological order disclosing the cause of action and the reliefs sought by the Petitioner. The format of the Petition will be dealt with at the end of this topic.

COUNTER AFFIDAVIT/ WRITTEN STATEMENT: This document abbreviated as the CA/WS is filed by the Standing Counsel on behalf of the State Government in response to the Petition filed by the Petitioner. In this document, the Standing Counsel rebuts and challenges the validity of the arguments mentioned in the Petition. The CA/WS also comprises of several annexures in support of the arguments. After the Petition is filed, the Tribunal gives a specific period of time to the Standing Counsel to file the CA/WS. But if the CA/WS is not filed within the said period, the Tribunal may be obliged to extend the period on the request of the Standing Counsel or proceed to hear the case Ex-parte. In such a case, considering the facts and circumstances of the case and the concerned legal principles, the Tribunal accordingly allows or dismisses the petition.

REJOINDER: After the Standing Counsel has submitted the CA/WS, the counsel for the Petitioner submits a Rejoinder. In this document, the petitioner rebuts and challenges the statements made in the CA/WS and reaffirms the specific statements and arguments made in the Petition. The Rejoinder also answers the queries and explanations which are called for in the CA/WS. Sometimes, due to the multiplicity of opposite parties, the counsel for the petitioner may have to file more than one Rejoinder. The Rejoinder is also called the Rejoinder Affidavit, abbreviated as the RA.

SUPPLEMENTARY AFFIDAVIT: In some cases, although rare, the Standing Counsel files a Supplementary Affidavit in response to the Rejoinder Affidavit. Usually the Supplementary Affidavit is filed when the State Government wants to clarify a point or rebut an assertion mentioned in the RA.

The abovementioned pleadings are exchanged between the parties and are submitted in the Tribunal. On the basis of the arguments advanced by the respective counsel for the parties, the Tribunal accordingly allows or dismisses the Petition.

CONCLUSION

A general conception among the youth and other individuals is that a Government job in contrast to a private job ensures continuous and uninterrupted pay, perks and other service benefits which are rare to find in the latter category of jobs. Although the statement is true to a considerable extent, the gloomy side of a Government job is that if an individual commits or tends to commit an act which is detrimental to the interests of the concerned Government department, he is likely to be proceeded against by the State. The State i.e. the employer is of utmost importance as it has supreme authority and is empowered to take action against a delinquent official. Being proceeded against by the State not only diminishes the future employment prospects of an individual but also taints his/her reputation causing ridicule among the right thinking members of the society. Another point that merits serious consideration is that in case a Government official is aggrieved due to some act of the employer i.e. the State, the concerned official has to seek representation before the concerned authorities or knock the doors of court if his complaints are not redressed by the former.

Sometimes due to pending and continuous litigation a Disciplinary Action case may remain undecided in the court of Law. In case the official is really innocent, his future prospects are diminished as the court takes a long time to prove the same. During this period, when the case is languishing in the court, the official may be deprived of the service benefits and promotions. It is a general conception that in India the courts consume a lot of time while dispensing justice. What the courts and the Tribunals need to consider in cases of Disciplinary action is the prestige and the career of the concerned official which is at stake.

Although 'justice delayed is justice denied', it is also said that 'justice hurried is justice buried', hence it is for the courts to strike a harmonious balance, that without compromising with the prospects of the charged official it promptly discharges the innocent and penalises the delinquent official.