WORKSHOP ON

DISCIPLINARY PROCEEDINGS

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H.Q. HYDERABAD

DISCIPLINARY ACTION & DOMESTIC ENQUIRY

—PRINCIPLES AND PROCEDURES

1. GUIDING PRINCIPLES

The purpose of disciplinary or departmental action is to bring the defaulter to book. But ordinarily no employee should be punished without complying with the principles of natural justice and the procedure prescribed in this regard. The expression 'natural justice' implies justice according to conscience meaning that while deciding an issue, one should be guided by his own conscience with reference to the facts before him. In the absence of any statutory provision or specific stipulation for departmental action in the service rules or standing orders, the principles of natural justice will be the guiding factor. These principles are neither fixed nor prescribed in any code. These are based on the natural sense of what is right and wrong. These principles relate to a few universally accepted rules which have been enunciated over the years. These are considered as a safeguard for the minimum protection of the rights of the individual against arbitary procedures that may be adopted while making an order affecting his rights. These principles are not statutory rules but they are more fundamental.

Natural justice is an important concept in administrative law having almost universal acceptance. It holds good in every field unless its application has been excluded by statute either express or by necessary implications. The principles of natural justice have developed around the twin pillars of common law namely, 'hear the other side' and 'no man shall be judge in his own cause'. The third principle which is also equally important, is that the decision must be made in good faith. Although the precise extent of these principles has not been clearly defined, their endorsement by the various High Courts and the Supreme Court of India, has given them a character of positive law in our country. Accordingly, these principles are enforceable in all courts of law, statutory or otherwise, and on all persons, discharging judicial or quasi-judicial functions. These principles also apply in case of enquiries conducted by the domestic tribunal into the conduct of an employee. From an analysis of the various case laws and judicial pronouncements on the subject, the requirements of natural justice so far as they relate to departmental action, appear to be five-fold. These are:

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i) No man should be condemned unheard;

ii) Everybody should be given reasonable opportunity for defence;

iii). There should be a fair and impartial enquiry;

iv) There should be an opportunity to the delinquent to rebut an evidence adduced against him; and

v) The punishment should be proportionate or commensurate with the nature of the lapse.

The aforesaid principles of natural justice broadly constitute the foundation on which administrative action on disciplinary matters should proceed. These principles have, in fact, become an implied term in every contract of employment and should be complied with. It must, however, be noted that the rules of natural justice are only handmaids of justice and are means and not ends; unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case can be exasperating. If the totality of the circumstances satisfies the court that the party visited with an adverse order has not suffered from denial of reasonable opportunity, the court should decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures (Instrumentation Ltd. Vs. Presiding Officer, Labour Court and another : 1988 II LLJ 222). Further, the principles of natural justice can be waived if they are specifically excluded, negatived or varied by any law, award or standing orders or statutory service regulations. If the affected party gets reasonable opportunity for presenting his case then the requirements of natural justice are substantially fulfilled and no grievance can be made of infringement of the rules of natural justice by reference to definition of natural justice or citations of natural justice given in different cases from time to time (Suresh Koshy George Vs. University of Kerala : AIR 1969 SC 198)

I. DOMESTIC ENQUIRY

The term 'domestic' refers to the home life, household matters or family affairs and the term 'enquiry' means asking question, investigation, or searching the truth. The two terms taken together have, however, acquired a definite and different meaning in industrial jurisprudence. The expression domestic enquiry has come to be restricted to an enquiry into the charges of indiscipline and misconduct against an employee. It is used in a technical sense as the principles of natural justice have to be complied with to make such enquiries legally valid. It is called 'domestic enquiry' because it is concerned with purely an internal matter between an employer and his employees. But even though internal matter, in conducting the enquiry scrupulous regard should be revealed to the requirements of natural justice.

Accordingly, the position of the person against whom the enquiry is being conducted should be safeguarded so that he may be able to meet effectively the charges leveled against him. He must have a fair chance of being heard and there should be an orderly course of procedure. A mere opportunity to explain the conduct before an unbiased authority is not sufficient; the employee should have reasonable opportunity to produce his defence during the enquiry.

It is usually necessary to conduct a formal enquiry where a chargesheet has been issued to an employee. However, if the employee confesses his guilt in reply to the chargesheet and seeks pardon, and if the disciplinary authority is satisfied that the admission is voluntary and unconditional, then elaborate enquiry may be dispenses with. When a charge-sheet was served upon the employee and he was asked to give his explanation and his explanation amounts to admission of the charges, there is no obligation on the management to lead evidence in support of the charge (Instrumentation Ltd. Vs. Presiding Officer, Labour Court and another : 1988 II LLJ 222). If the employee admits his guilt, to insist upon the management to let in evidence about the allegation, will only be an empty formality. In such a case, it will be open to the management to examine the employee himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence (Central Bank of India Ltd. Vs. Karunamay Banerjee,: 1987 II LLJ 739). In other cases, however, a formal domestic enquiry should be conducted to find out the truth. In conducting this enquiry, the procedures laid down in the relevant service rules have to be followed. If the standing orders or service rules do not contain any specific stipulation, the principles of natural justice will apply.

III. RULES REGARDING ENQUIRY

Evidence Act, 1872 does not apply to enquiries conducted by the domestic tribunals. The law requires that these tribunals should observe the rules of natural justice in conducting the enquiries and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law (Union of India Vs. T.R. Varma and others : AIR 1957 SC 882). Although the Evidence Act does not operate in the field of domestic enquiry, it is advisable to observe certain procedure similar to that followed in a court.

Accordingly, a proper notice should be issued to the delinquent about the date and time of the commencement of enquiry. The employee should be given adequate time. For subsequent sittings no separate notice is necessary if the proposed date and time are recorded in the body of the proceedings and the same is noted by all concerned.

The venue of the enquiry normally should be the place where the employee is employed. It can be fixed elsewhere also for any valid reason depending on circumstances of the case. It can even be arranged outside the work-place as long as it is reasonably possible for the employee to attend the place. In doing so it has, however, to be ensured that the interest of the delinquent is not adversely affected. The deciding factor in such cases is the balance of convenience. If for any administrative or other special reasons it becomes necessary to conduct the enquiry at a place away from the place of work, the only point that has to be seen is that the employee is not put to undue hardship.

Besides the Enquiry Officer, the charge-sheeted employee and his representative, if any, and the Presenting Officer should be present throughout the enquiry. The witnesses of both the parties should be present as and when they are called and they should leave immediately after the deposition is over. The Enquiry Officer may record the proceedings in his own hand but since this is time consuming, the usual practice is to use the service of a typist. It can even be recorded in short-hand and transcribed later on (Pure Drinks Private Ltd. Vs. Kirat Singh Maungatt and another : 1981 II LIJ 99).

The management side is usually represented at the enquiry by the Presenting Officer and the charge-sheeted employee, by the Defence Representative. There is no hard and fast rule that the management should appoint somebody to present the case and lead the evidence nor is it necessary for the delinquent to engage a representative. However, the Enquiry Officer, subject to the relevant rules, should allow the parties to represent them through authorised representatives. The authorisation letters obtained from the parties should be annexed as part of the proceedings.

The rules of natural justice provide for reasonable opportunity for defence as well as opportunity to rebut an evidence. As far as possible, the parties, therefore, should disclose the list of witnesses beforehand and provide copies of documents to be relied upon by them. The names of witnesses and the list of documents on which the management proposes to rely at the enquiry should be given to the accused employee before or at the commencement of the enquiry, in case he asks for it (Syed Hasan Ali Vs. State of Mysore : 1965 II LLJ 583). The names of witnesses could also be disclosed and copies of documents furnished at an appropriate stage during the enquiry. The only difficulty in such cases is that the parties may ask for time to inspect or study the documents and this may delay completion of enquiry.

The parties before the Enquiry Officer should make their own arrangements for producing the respective witnesses. The employers have no legal liabilities for producing witnesses on behalf of the delinquent. Where such witnesses are in their employment and within their power and control, they should only make an honest effort to assist the delinquent by extending all

possible help for the production of witnesses. It does not, however, mean that an unwilling employee can be compelled by the employer to depose. An Enquiry Officer holding the domestic enquiry can take no valid or effective steps to compel the attendance of any witness; just as management produces its witnesses before him for giving evidence, it is the duty of the employee to take steps to produce his witnesses before the officer holding a domestic enquiry (State Bank of India Vs. R.K. Jain and others : 1971 II LLJ 588.).

The statement made by a witness before the Enquiry Officer in relation to matters of enquiry is oral evidence whereas all documents produced for inspection by the Enquiry Officer as evidence, are documentary evidence. Both are allowed in domestic enquiry. Further, hearsay evidence has a place in domestic enquiry, although Evidence Act excludes it. Direct evidence is the evidence of the person who personally witnessed the evidence while hearsay evidence is the evidence of a person who heard it from another. However, an employee cannot be punished on the basis of hearsay evidence without having any direct or substantive evidence in support of the point (Central Bank of India Vs. Prakash Chand Jain : 1969 II LIJ 377).

IV. ENQUIRY PROCEDURE

Since departmental enquiries, both in public and private employments, are quasijudicial in nature, the Enquiry Officer is required to exercise his powers in a judicial spirit and follow an orderly course of procedure. There are no rules prescribing the order in which the witnesses should be examined in domestic enquiries. It is open to the Enquiry Officer to examine the witnesses in the order he considers necessary4y in the interest of justice. The proper rule of order of witnesses is that the management should lead the evidence first to substantiate the charges before the employee is called upon to defend. The witnesses on behalf of the management should be examined in the presence of the employee, and he should then be given an opportunity to cross-examine each witness. Thereafter the employee should be called upon to defend himself and produce such oral and documentary evidence as he might consider necessary. It is open to the management to test the evidence tendered by the employee by cross-examination.

In admitting the evidence the procedure to be followed is that first there should be examination-in-chief, then cross-examination and thereafter, if necessary, re-examination but only with the permission of the Enquiry Officer. The examination of a witness by the party who produces him is called his examination-in-chief and the examination of a witness by the adverse party is called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, is called re-examination. Witnesses shall therefore, be first examined-in-chief, then (if the adverse party so desires) cross-examined and

then (if the party calling him so desires) re-examined. T examination and cross-examination must relate to relevant fac although the cross-examination need not be confined to the fac to which the witness testified in his examination-in-chief. Th re-examination shall be directed to the explanation of matte referred to in cross-examination; and if any new matter i introduced with the permission of the Enquiry Officer in the re examination; the adverse party may further cross-examine upo that matter.

In an enquiry, it may not be necessary for the Enquir Officer to call in evidence all the witnesses who the part concerned may desire to be called. He would be perfectl justified in declining to call any witness whose evidence in hi view was bound to be merely repetitive or irrelevant and not o any assistance. It might be open to the Enquiry Officer to limit the right of cross-examination where he feels that it is not required for compliance with the principles of natural justice. (The State of Andhra Pradesh and others Vs.Nagam Chandrashekara Lingam and others : 1988 LAB I.C. 249). Further, the question asked at the domestic enquiry should be relevant. The Enquiry Officer can disallow a question if bonafide he thinks it is irrelevant. Unless it is shown that he was acting mala fide in disallowing some questions which were relevant, such a circumstance would not vitiate the enquiry (Ananda Bazar Patrika (P) Ltd., Vs. Their Employee : 1963 II LLJ 429). In short, the Enquiry Officer cannot only limit the number of witnesses but also disallow questions in examination, cross-examination and re-examination. But in all such cases he should record this fact in the proceedings together with reasons for his decision.

The enquiry may be adjourned from time to time for sufficient and valid reasons. In doing so the importance or the genuineness of the cause for which adjournment is sought, should be carefully weighed against the need to avoid unnecessary delay in completing the enquiry. The Enquiry Officer has the right to disallow the adjournment if it is asked for on frivolous grounds. A party cannot also always insist upon an adjournment of the case on the ground that the date fixed for hearing is not convenient to his counsel. Convenience of the counsel must subserve to the larger interest of administration of justice (R.Viswanathan and others Vs.Syed Abdul Wajid and others: AIR 1963 SC 1).

If the charge-sheeted employee does not avail of the opportunity to appear before the Enquiry Officer without valid reasons despite issue of proper notice, the enquiry may be conducted ex-parte. But this should not be done at the first instance. If the employee remains absent despite due notice, one or two adjournments may be given as a very special case and this fact should be recorded in the proceedings of the enquiry as well as in the subsequent notice issued to him. In ex-parte enquiry it is necessary for the Enquiry Officer to record the evidence on behalf of the management in support of the charge sheet. The recording of such evidence will be in absence of the employee concerned. If this is not done the enquiry will not be

valid (Imperial Tobacco Co.of India Vs. Their Workmen : 1981 I LLJ 414). It is the duty of the Enquiry Officer to protect the delinquent employee's interest so that the management just does not get a walk-over. In fact, in case of ex-parte enquiry there is a greater responsibility on the Enquiry Officer to see that all the formalities are properly observed and noted and that all necessary evidence is produced and recorded.

After the evidence on both sides is closed, the Presenting Officer should be allowed to make his submission explaining how in his view the charge has been established by referring to the relevant evidences of the witnesses and other documents (exhibit) placed before the Enquiry Officer. When the Presenting Officer closes his sum-up statement, the charge-sheeted employee and the defence representative should be given similar opportunity to present and sum-up the submission of their side of the case. The Enquiry Officer may, if so requested, grant a short adjournment to each side for preparing their respective sum-up statements for presentation before the Enquiry Officer in sequence. Normally, raising of new points during sum-up is not allowed. The Presenting Officer as well as the defence representative may, in addition to or in lieu of oral statement as above, make sum-up statements in writing. This will have to be taken into account by the Enquiry Officer as record of enquiry.

The proceedings of the enquiry should be recorded correctly verbatim. Each page of the proceedings so recorded, should be signed by the Enquiry Officer, the Presenting Officer, the charge-sheeted employee and his representative, if any. The part of the proceedings which record the evidence given by a particular witness, should also contain his initial or signature. The signatures or initials of the persons involved in the enquiry including the witnesses, are in authentication of the statement made by or before them. If anybody refuses to sign, the Enquiry Officer should record the fact in the proceedings itself. It has been held that as far as possible, the statement in the enquiry should be signed by the parties and the Enquiry Officer, though failure to do so is a mere irregularity. (Provincial Transport Services Vs. State Industrial Court and another : AIR 1963 SC 114).

A departmental enquiry is not a mere formality and, therefore, it should be conducted with all the seriousness. While every trivial breach of the rule will not have the effect of invalidating the enquiry, a non-compliance of the rule which results in the denial of reasonable opportunity to the delinquent and violation of the principles of natural justice, will vitiate the enquiry. The Enquiry Officer should also endeavour to conclude the proceedings as expeditiously as possible. This however, does not mean that he should rush through the procedure. He must ensure that he is doing justice to the case and affording adequate and reasonable opportunities to the parties to make their submissions. The domestic enquiries are quasi-judicial in nature and it is, therefor, of utmost importance that these should be conducted in a manner which will inspire confidence in

the impartiality of the Enquiry Officer.

V. ENQUIRY REPORT

One of the requirements of a proper departmental enquiry is that the Enquiry Officer must record his findings with reasons for the same in this report (Sur Enamel and Stamping Works Ltd. Vs. Their Workmen : 1963 II LLJ 367). All domestic enquiries should, therefore, be followed by a report containing the conclusions of the enquiring authority. Indeed, the Enquiry Officer is duty-bound to record his findings. If the exercise is not completed with an objective statement of conclusion then it will be exposed to the criticism that it was undertaken as an empty formality.

The enquiry report need not be very long and elaborate but it must reveal that the authority has applied his mind to the evidence. Since his findings may lead to imposition of punishment on the delinquent, it is his duty to record clearly and precisely the conclusion along with the reasons. The failure to record any findings after holding the enquiry will certainly constitute a serious infirmity in the enquiry itself (Khardah Co.Ltd.Vs. Its Workmen : AIR 1964 SC 719).

The whole object of holding a domestic enquiry against a delinquent employee is to enable the Enquiry Officer to decide upon the merits of the case before him. Accordingly, the Enquiry Officer is required to record his findings, with reasons, on each of the charges. The report should contain (i) a short recital of the case recapitulating briefly the charges and the statements of allegations constituting the charges, (ii) the defence of the charge-sheeted employee in respect of each charge, (iii) an analysis of evidence which would reveal appraisal of the evidence presented in support of each charge, and (iv) the findings on each charge with reasons therefor. The concluding portion of the report should indicate briefly the decision on each charge and whether in the overall view the employee is guilty or not guilty of the charges. As the job of the Enquiry Officer is to find out the truth, he has to be just and fair with utmost objectivity. He exercises a quasi-judicial function and, therefore, his order must show on the face of it the justification for his conclusion on each and every charge. The purpose of departmental enquiries is to find out the maintainability of the charges. The finding should as such strictly confine itself to the charges stated in the charge-sheet.

Basically it is necessary for the Enquiry Officer to see if there is any direct evidence to establish the charge. In the absence of any direct evidence, it will be in order for him to proceed on the basis of 'preponderance of probabilities.' In evaluating evidence in the domestic enquiry the probabilities of a case must also be considered. If there is a reliable evidence of probative value the Enquiry Officer can base his findings on such an evidence. In a criminal case such inference is not permissible as the required standars is 'proof beyond doubt'.

However, in a departmental enquiry guilt need not be established beyond reasonable doubt; proof of misconduct may be sufficient (J.D.Jain Vs. The management of State Bank of India and another : 1982 I LLJ 54). Even then a mere suspicion should not be allowed to take the place of proof in domestic enquiry. The principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. (Nand Kishore Prasad Vs. State of Bihar and others : 1978 II LLJ 84.)

The Enquiry Officer should not suggest penalty in his report unless the rules specifically require him to do so. He should only record his findings as to whether the charge stands established on the basis of the evidence laid at the enquiry or, it cannot be taken as proved. He cannot, and should not, make any recommendation or suggestion regarding the nature and quantum of punishment to be imposed. This right is restricted to the disciplinary authority. Unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so requires, the Enquiry Officer need not make any recommendations as to punishment which may be imposed on the delinquent employee in case the charges frames against him are held as proved at the enquiry. (Union of India Vs. H.C. Goel : AIR 1964 SC 364). However, if the enquiring authority is also designated as disciplinary authority, then he should indicate the penalty. Only in such cases it will be necessary for him to lay down the punishment taking into consideration the employee's past record and any submission that the latter may like to make in this regard.

Hitherto it was not considered necessary to furnish a copy of the report of Enquiry Officer to the charge-sheeted employee prior to recording of the findings by the disciplinary authority. Unless the conclusions of the enquiring authority are accepted by the disciplinary authority, the report has no significant value; the former acts as a mere delegate of the latter and his findings are not binding on the disciplinary authority. Further, in a case where the findings of the Enquiry Officer are in favour of the employee, but the disciplinary authority comes to a different conclusion on the evidence on record, it cannot be said that the principles of natural justice are violated because the employee was not informed by the disciplinary authority that he would differ from the findings of the Enquiry Officer. Therefore, it was held that non-supply of the Enquiry Officer's report to the charge-sheeted employee before it is considered by the disciplinary authority, is not in violation of the principles of natural justice (S.Kannan Vs. State Bank of India : 1990 II LLJ 487).

However, in view of a few later decisions of the Supreme Court, it is advisable to forward a copy of the report of the Enquiry Officer to charge-sheeted employee before the disciplinary authority proceeds to take action on the report. While forwarding the report, the employee may be advised that the

disciplinary authority will take a suitable decision after examining it but meanwhile if he so desires he may make any representation or submission. Even though the standing orders or service rules may not provide for the second stage of the enquiry which is usually conducted after the proposed punishment is communicated, it has been held that the delinquent is entitled to represent before-hand against the conclusion of the Enquiry Officer holding that the charges or some of the charges have been established. Wherever there has been an enquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with the proposal of any particular punishment or not, the delinquent is entitled to a copy of such report. He is also entitled to make a representation against it if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and would make the final order illegal liable to challenge (Union of India and others Vs. Mohd. Ramzan Khan : 1991 I LLJ 29). A five Judge Bench of the Supreme Court subsequently reiterated this view and held that the delinquent employee is entitled to a copy of the report of Enquiry Officer even when the statutory rules laying down the procedures for holding the disciplinary enquiry are silent on the subject or are against it. Further, this will apply to employees in all establishments, whether Government or non-Government, public or private sector undertakings and whether the employee asks for the report or not, the employer is under obligation to furnish the report to him (Managing Directors, ECIL, Hyderabad Vs. B Karunakar : 1994 I LLJ 162).

Reference : - Guide to DISCIPLINARY ACTION

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DOMESTIC ENQUIRY

Some jurisprudents are of the opinion that there are four important principles of natural justice :

1. Rule against bias;
2. Rule for a fair hearing;
3. Reasons should be given; and
4. A copy of a report or other similar evidence shall be made available to the effected person.

The committee on Ministers' Powers classified the rules into three important principles :.

1. No one shall be judge in his own cause;
2. No one shall be condemned unheard; and
3. A party is entitled to know the reasons for the decisions.

Some English jurisprudents classified the principles of natural justice into two important categories/maxims, they are :

1. Nemo debet esse judex in propria causa- No man shall be a judge in his own cause; and
2. Audi alteram partem- Hear the other side.

IMPORTANT POINTS :

A. *Who can be appointed as an Enquiry Officer?*
A person who is employed in the same establishment can conduct a Domestic Enquiry. It is general procedure adopted and still continuing. The industrial jurisprudence suggests that if an independent person (not belonging to employee and employer) is appointed it shall be more genuine and good. But it is accepted by all the jurisprudents, justices that the complainant should not act as an Enquiry Officer.

B. *Notice* : Notice of enquiry must be given to the workman with sufficient time. The object of this principle is to give sufficient time to the workman to prepare the answer and arrange evidence if any.

C. *Presence of workman* : It is proper to conduct Domestic Enquiry in the presence of workman, who is to be affected by that enquiry. If the workman intentionally, negligently or recklessly avoids enquiry, even after the notice and sufficient time, the enquiry may be conducted ex parte. But it is always genuine and proper to conduct an enquiry in his presence only.

D. *Audi alteram partem (Hear the other side)* : It is the most important principle of natural justice. The workman should be given an opportunity to explain his innocence, produce evidences if any.

E. *Cross examination* : The workman shall have the right to cross examine the witnesses.

F. *Documents etc.* : It is the duty of the company to submit all the copies of necessary documents concerning to the allegations. Before reliance can be placed on any document, it must be placed before the person charged for his information, comments, criticism and also rebuttal by him, if at all.

G. *Attendance of witnesses* : It is the duty of the parties to arrange the attendance of witnesses on their behalf. The Enquiry Officer can take no valid or effective steps to compel the attendance of any witness. In a Domestic Enquiry, the Enquiry Officer cannot rely upon his own evidence. No person should act as a judge and a witness.

H. *Criminal proceedings* : If the criminal proceedings and Domestic Enquiry are initiated at the same time, first preference shall be given to criminal proceedings. The employer has to wait until the result of criminal proceedings come out. There after he may start Domestic Enquiry. But, theoretically in Legal position, there is no bar on parallel proceedings before a criminal court and before a Domestic Enquiry officer, unless there is rule in contrary.

I. *Representation:* Right of representation in Domestic Enquiry is not recognised as a legal Right. However if the employer allows any

Trade Union leaders or lawers on behalf of the workman, it is not against the rule. Practically, in certain curcumstances, the Standing Orders of the company may allow the representation. The industrial jurisprudents are of the opinion that the right of representation should be recognised as a legal right in Domestic Enquiry.

J. *Conduct of Enquiry Officer* : The genuineness of domestic Enquiry depends upon the conduct of the Enquiry Officer. He should be an impartial person. He should not draw upon his own knowledge of the incidents or to cross-examine the persons charged.

K. *Enquiry Report* : Enquiry Report should not be lengthy and elaborate. The Enquiry Officer should record clearly and precisely his conclusions and to indicate briefly his reasons for reaching those conclusions.

CONCLUSION :

The application of the principles of natural justice has no straightjacket. The application of these principles in a Domestic Enquiry depends upon the facts and the circumstances of each case. The basic concept of natural justice is that no man should be condemned unheard, he should be informed of all the allegations on the basis of which action detrimental to him is proposed to be taken and he is given an opportunity of making his representation or presenting his view point to those allegations and consideration of that representation or view point before action detrimental to him is taken.

GRIEVANCE HANDLING

It is said that "when two vessels come together, the sound is ought to be".

When two persons come together, due to lack of understanding, non-coordination, difference of opinion develops. This results in dissatisfaction, discomfort and gives rise to complaints. Thus the grievances develop.

As such, legitimate and genuine complaints in the work place are called grievances. Many a times such grievances imply violation of the individual's rights under the Law of the Land or Union-Management Agreements.

Due to negligence, purposeful acts of an individual, complaints develop against him due to his brhaviour, views, actions. Accumulation of such grievances disturb the peace in industry / establishment. As such they need to be promptly redressed. The employee may be partly responsible for giving rise to some of these grievances while some of them may be due to domestic problems, indecent behaviour or adamant nature of an individual.

Why Grievance Procedure ? In an establishment increase in productivity / services is possible when the employees-employer relation is healthy, sound and cordial. Both the parties are expected to eliminate the causes of dissatisfaction in day to day working like delayed action, negligence, etc. Both should set rules to demolish the differences. Much depends upon goodwill, cooperation and mutual trust.

Government has enacted Factory Act, 1948; Employees Standing Orders Act, 1946. In the Banking industry separate establishment rules exist to settle the grievances. Whatever may be the legal provisions, bipartite consultation for redressal of grievances may lead to prompt results. It is the responsibility of a Union / Association to seek orderly and peaceful means of settling the grievances. It is, therefore, the joint venture of management and trade union to make the grievance procedure successful at plant level / Bank level to attune a peaceful atmosphere in mutual working to satisfy the customer by giving efficient services as the rules of the establishment.

The Code of Discipline and Grievance procedure :

The Code of Discipline adopted by the Indian Labour Conference at its 16th session held in Nainital during May 1958 has highlighted the need for a

grievance procedure on an agreed basis. The code provides, among other things, to ensure better discipline in establishments.

Managements and Union agree :

"that they will establish upon a mutually agreed basis, a Grievance Procedure which will ensure a speedy and full investigation leading to settlements"

" that they will abide by various stages in the Grievance Procedure and take no arbitrary action which would bypass this procedure"

A model grievance procedure was also evolved by tripartite machinery (including management representatives, workers / union representatives and government representatives) for adoption by the establishments, actions. Accumulation

This procedure may either form part of an agreement reached between the management and the recognized union covering various aspects of employee-management relations or it may be confined to grievance settlement only.

Both the parties (union and management) have to adopt the Grievance Procedure as a matter of compliance with the provisions of code.

Model Grievance Procedure and How it works

The Management and Unions have a very important role to play for its implementation in its real sense.

ROLE OF MANAGEMENT	ROLE OF WORKERS
1) Management commitment to observe the fundamentals of the Grievance Procedure. 2) Management should classify the grievance as : (i) personal relationship – instructions may be issued by management to take up the issue by the officer incharge of the persons against whom the complaint has been made (ii) other than those of personal relationship – should be taken up by the workers with the	1) Trade unions should adopt the code in letter and spirit, more so they should ensure that there is no harm to the code proceedings. 2) A union spokeman is necessary to represent the grievance. Workers representatives are mostly selected / elected to defend. 3) Recognised union representative is a must. 4) Workers Representative must see the following : (i) The Grievance must be in writing and presented in proper form (ii) The facts concerning the

authority designated by the management.

3) The designated officer who will hear and settle the complaint in the first instance. If not settled at that level, department heads, regional managers are to be designated for settling the second stage

4) If not settled at this stage a Grievance Committee constituted by the management at the establishment numbering 4 to 6 persons duly nominated by employer-employees/union and personnel department head can also be deputed as an Advisor of this Redressal Committee.

5) Unanimous recommendations of this committee may be put up to top management. It should be invariably implemented. If there is any difference of views in the committee members, the relevant papers have to be placed before the Top Management for its decision. (Here Top Management or a person nominated by Top Management). However, the Personnel Head will communicate the decision within 3 days from the Report of Grievance Committee's recommendations. Appeal procedure provision is there if he is not satisfied with the decision.

6) When it is in process, management should not pass the orders (during pendency of the case nothing should be worked out).

7) Management should provide all the clerical and other assistance for the smooth working of the Committee.

grievance must be ascertained and properly argued.

5) The written grievance must contain
   i. Protest against some unfair action of the management.
   ii. A request to correct the condition
   iii. A request for payment of loss of pay involved, if any

6) While putting down the grievance cause must be narrated

7) The case must be so presented that the conciliator or higher up will know correctly
   i. What you want to emphasise
   ii. The reason why you want it
   iii. How it all came about and
   iv. When it occurred

8) Union representative must present the facts as effectively as possible

9) If it reaches for final decision for higher level, lot depends upon marshalling the facts

10) Investigation is a union activity.

11) Representative who pleads the case should know the service conditions and he should argue the case properly without bias. He should be fully conversant with the precedents, past settlements, conventions, agreements, relevant provisions in Labour Law.

12) Schedule to grievance handling
   i. Try to meet problems of the department before they turn into complaints.
   ii. Be a good listener, with interest, so that the aggrieved will develop confidence.
   iii. Use a positive friendly approach, avoid either aggressiveness or a defensive attitude.

8) The Workers' Representatives should have access to all the relevant documents. However, the management has the right to withhold any document or information which may be considered to be of a confidential nature. The union leader should not stress too much.	iv. Have patience, pounding the table or shouting does not settle any thing. v. Avoid personalities, what counts is not who is right but what is right. vi. Remember dignity for future reputation. vii. Do not get upset or resort to threats, keep the morale high. viii. Keep the aggrieved worker / employee constantly informed as to what is being done in his case. ix. Present the fact and give the chance to opposite party to consider your arguments. x. After a decision has been reached, see that it is carried out.

Stages of Grievance Handling :

1st Stage : If an employee has a grievance, he should take it to his immediate officer and he should get the reply within 48 hours.

2nd Stage : If he is not satisfied with the department representative, he should go to Manager. The Manager should settle the grievance within 3 days. Delay may be recorded.

3rd Stage : If the employee is not satisfied he should go for departmental grievance committee.

4th Stage : They should consider within 7 days. Delay may be recorded. The Committee has every right of access to any papers connected with the enquiry. This right has, of course, to be exercised with good care and discretion. Whether there is unanimous decision by the Committee or not, the employee is entitled to know through Personnel Head of the establishment.

5th Stage : If the employee is not satisfied, he has a right of Appeal to the higher tier of management for revision. He can take his union officials, General Secretary / President, etc. with him for discussion. Management has to inform the decision within one week.

In every stage if the employee is not satisfied he should appeal within 72 hours of the receipt of the decision, or if no decision is reached, the appeal should be made on expiry of the stipulated time. Finally he can go for Arbitrator. Arbitrators decision is final and named as an Award.

Constitution of Grievance Committee : In case of recognized union – 2 representatives of management plus a union representative and a department representative where the employee works.

In the end we see what Grievance means and its definitions.

1) A written complaint filed by an employee claiming unfair treatment – Dale Joder

2) Any real or imagined feeling of personal injustice which an employee has concerning his employment relationship – Keith Davis

3) Grievance is any discontent or dissatisfaction, whether expressed or not, whether valid or not, arising out of any thing connected with the establishment which an employee thinks, believes and even feels to be unfair, unjust or inequitable – Jucius

4) Any complaint of any one or more employees have in respect of wages, allowances, conditions of work and interpretation of service stipulations, covering such areas as overtime, leave, transfers, promotions, seniority, work assignment and discharge constitute grievances – International Labour Organisation (ILO)

Grievance should be solved at earliest to develop better Human Relations at work place

Communication Skills

Communication is a word derived from the Latin work "communis" which means common.

Communication is undoubtedly one of the most central elements in an organization. It is a very dynamic aspect, whenever any adjustment of parts or coordination of activities has to be done, it must be done through communication, whether oral, written or otherwise schematic (with signs).

Communication is the element which sets the organization in motion which informs the otherwise dead structure with life and metamorphises it towards richer and more satisfying existence.

Definition : (1) It is an effective transmission of a message from one person or body of persons (sender) to another (receiver). The means through which the message is conveyed is called medium. (2) Danial Katz & Robert Kahn have defined communication as the transfer of information from sender to the receiver with the information being understood by the receiver. (3) Communication is essentially a social process by which contact is established between mind and minds.

4 steps of Communication

Sender – Receiver – mode of communication (medium) – message

Listening with understanding and then doing. The communication cycle is complete.

Mode of Communication Sender's message is to be received vide : (i) Verbal : oral talk across the table, telephone (ii) Written : Circulars, Letters, Pamphlets, Boards, Hoardings, Pictures, by seeing witnessing, reading.

(i) Radio, TV, Tape – listening and viewing.

(ii) By toungue, touch – tasting.

(iii) Doing the thing – physical.

A good communicator, a good listener, a correct message is a success of communication.

Why communicate ?

To transfer the message, ideas, views, passing orders, getting things. 2 parties minimum is required for effective communication with proper understanding, language should not be a barrier but one should communicate in such a manner that the receiver understands it very thoroughly is a key of successful communication.

Effective listening :

The 10 guides proposed by Keith Davies to improve effective listening are :

(i) stop talking (ii) put the talker at ease (iii) show the talker you want to listen (iv) remove distractions (v) empathise with the talker (vi) be patient (vii) hold your temper (viii) go easy on arguments and criticism (ix) ask questions (x) stop talking.

The first and the last guides are the most important because one has to stop talking before one can listen.

Case Study

"Well Sharad, why are you lake to your duties ?", said Varijakshan Nair a Branch Manager of a reputed commercial Bank situated in Western suburb of Mumbai.

Sharad, a messenger boy, less educated replies, "Sir, cows husban maring singda to my tangada, me became langda, jhaalo me late".

Mr. Nair could not follow the very first time and got annoyed. He issued a charge sheet thinking that he was being misled from the real reason and the employee was submitting a false medical certificate from a registered medial practitioner.

A Union Representative of his section intervened and convinced the officer about the genuineness of the employee's reasons for not coming in time and cleared the misunderstanding.

Points

(i) What mistake did Sharad make ?

(ii) As an officer what should have been the role of Mr. Nair ?

(iii) What skill the Union Representative played to patch up the difference ?

Conclusion : Communication is one of the most frequently discussed dynamics in the entire field of an organization but it is seldom clearly understood in practice. Effective communication is a basic prerequisite for the attainment of organizational goals. It has been observed by some management writers that the heart of the world's problems - at least of men with each other - is man's ability to communicate as well as he thinks he is communicating.

CHAPTER VI

DOMESTIC ENQUIRY

- CASE LAWS

Domestic Enquiry and Disciplinary Proceedings Selected Case Laws

In the case of Associated Cement Co. Ltd V Workmen, (1963 IILLJ 396 SC) the Supreme Court laid down the following rules of evidence directing that violation of the said rules shall render the enquiry unfair and vitiated.

(a) When the defence taken by the workman and his witnesses is inconsistent with some circumstance or documentary evidence on record, they should be asked to explain the apparent incosistency and their defence should not be rejected on the ground of incossistency.

(b) Any evidence given by the witnesses in some other proceeding is inadmissible. If that evidence is to be used, the workman must be given an opportunity to cross examine them.

In the case of **State of Haryana and another v Rattan Singh** (1982 ILLJ 46 SC), the bench of three judges of the Supreme Court held that "it is well settled that in a domestic enquiry, strict and sophisticated rules of evidence 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. It is true that departmental authorities and administrative tribunals must be careful in evaluating such materials and should not glibly rely on what is strictly speaking not relevant under the Indian Evidence Act. The essentials of judicial approach is objectivity, exclusion of extraneous matters or considerations and observance of rules of natural justice."

Of course fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgement, vitiate the conclusions reached, such finding even though of a domestic tribunal cannot be held good. There is a clear violation of the canons of fair play and natural justice if the enquiry officer takes on the role of a witness in addition to his own and gives evidence as a witness and then takes over again as the enquiry officer. Such an illegality vitiates the enquiry and renders the order of dismissal bad in law - **Andhra Scientific Co. Ltd. V. Seshagiri Rao** (1951 IILLJ 117 SC)

In **Ramlal Vs. Union of India**, (AIR 1962 Raj 57), the watchman Ramlal, in reply to the charge-sheet craved mercy on the ground that this was the first occurence during his service for eleven years, pointing out at the same time the difficulties of a watchman escorting the train at night in detecting a preplanned theft of goods carried by rail on the track. He was dismissed from service without formal enquiry on the ground that it was admission of guilt with a conditional apology. Their Lordships set aside the order of dismissal observing that when it was "Not a clear and unambiguous admission of guilt, the employer should have held a formal enquiry, before dismissing the watchman".

It is true that neither a permanent employee nor a probationer can be punished without a formal charge and enquiry. But in case of probationer, a less formal enquiry may be sufficient **Bishantal Gupta V. State of Haryana & Others** (1978 ILLJ 317 SC).

A domestic enquiry proceeded against a workman after serving of charge-sheet on him, but at a particular stage, the workman withdrew from the enquiry. Consequently, without even completing the enquiry ex-parte, in the manner prescribed by the standing orders, the employer dismissed the workman from service for alleged misconduct. Adjudicating upon the industrial dispute, arising out of the dismissal without completing the domestic enquiry in accordance with the relevant provisions of the standing orders was invalid.

Affirming the view of the Labour Court in appeal, the Supreme Court observed that, the fact that the workman withdrew from the enquiry at an early stage did not absolve the enquiry officer from concluding the enquiry by taking evidence ex-parte. **Imperial Tobacco Co. of India V Its Workmen**, (1961 IILLJ 414 SC: AIR 1962 SC 1348).

In the case of **M.C. Dhir V State of Punjab**, (1982 Oct. Lab IC NOC 117) (Punjab & Haryana), the petitioner employee of the State of Punjab was suspended pending completion of the department proceedings, but as his age of retirement came just after the suspension he was allowed to retire and so the suspension order was revoked. But, one and half years after his retirement, the case was reopened under **Rule 2.2 (b) of the Punjab Civil Services** (punishment & appeal rules, 1970) and a disciplinary proceeding was initiated against the retired employee. Held that initiation of disciplinary proceedings against the employee after his retirement was wholly without jurisdiction - **Supreme Court decision** (1970 Lab IC 271 SC).

Where witnesses in support of the charge are not at all examined during the enquiry and the workman charged is only asked to put questions to the witnesses without even furnishing him with a copy of previously recorded statements, held the enquiry is not fair - **Phulbari Tea estate V Workmen** (1969 IILLJ 663 SC 1960 ISCR 32).

Workmen are charged with active participation in an act of misconduct. Held, misconduct must be proved against each workman before each of them can be held guilty. The theory of conspiracy has no application for activities of the union which represents them - **Punjab National Bank Ltd. V. Workmen,** (AIR 1960 SC 160).

In **C.L. Subramaniam V Collector of Customs,** (AIR 1972 SC 2118) the Supreme Court observed that the fact that the case against the delinquent employee was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales be tilted against him.

In the case of **Board of Trustees for the Port of Bombay V D.R. Nadkarni and others,** (1983 ILLJ SC,) on the question of the claim of the charge-sheeted workmen to be represented by a legal practitioner, the Supreme Court held that where the employer has on its pay-roll Labour Officer, Legal Advisers and lawyers in the garb of employees and they are appointed as presenting cum prosecuting officers, the enquiry officer should, unless the rules prescribed for such enquiry place an embargo on the right of the employee to be presented by a legal practitioner, in his discretion permit the employee to appear through a legal practitioner.

He would however do so considering the nature of charges and issues which may arise in course of the enquiry. Where legally trained minds represent the employer in the domestic enquiry, and the enquiry officer is a man of employer's establishment, the weighted scales and tilted balance can be partly restored if the delinquent is given the same legal assistance as the employer has employed.

In the case of **A.J. Vaswani v Union of India (1983, April Lab IC 625, per J. Ghose & Pyne),** the Calcutta High Court found that the appellant Sri. Vaswani, a preventive officer under the collector of customs (under suspension) during the departmental enquiry against him prayed for representation through a lawyer but the prayer was not allowed.

The department had an experienced Police Inspector to present its case before the enquiry officer. No government servant agreed to represent the delinquent officer in the enquiry because top officials who were witnesses in the enquiry had to be cross- examined. There were legal and factual complexities. Further, legal issues were involved in the case. Besides, the delinquent was not fit in body and mind since long suspension had affected his health and mind. Considering all factors, the High Court held that the above facts and circumstances were good grounds justifying a permission to the delinquent to be represented by a legal practitioner.

The strict technical rules of procedure of the Indian Evidence Act do not apply to the adjudicatory proceedings before the adjudicatory authorities under the Industrial Disputes Act, much less would they apply to domestic enquiries, **Central Bank of India v Prakash Chand Jain,** (1969, II LLJ 377/382 (SC)).

However, the substantive rules, which would form part of principles of natural justice cannot be ignored by domestic tribunals - **Central Bank of India V Prakash Chand Jain,** (1969, II LLJ 377'382 (SC)).

In **Shadilal v State of Punjab,** AIR 1973 SC 1124, the Supreme Court observed that the application of the principles of natural justice is not a question of observance of a formulae. In essence, it is meant to assure that the party concerned has an opportunity of being heard. Whether in a particular case it has been violated or not will depend on the facts and circumstances of the case. It cannot be said that there will be infraction of the principles of natural justice unless procedures of the courts are observed.

The Industrial Tribunal is not hampered by strict rules of evidence or pleading or technicalities of procedure. It can collect information which has any bearing or relevance in determining the issue raised before it - **Hiralal Sada Shiv Rao v State Industrial Court,** (1967, I LLJ 168 Bom (DB)).

The admission by the tribunal of evidence after the case has been fully argued, even without notice to the other side, may be justified in certain circumstances - **Khardah & Co. Ltd. v Its Workmen, (1963, II LLJ 452 SC).**

Although the strict rules of evidence applicable to a civil court do not bind the Industrial Tribunal, yet it cannot refuse a party an opportunity to place all the relevant evidence on the point in an issue. A finding otherwise given will be vitiated - **Western India Match Co. Limited v Industrial Tribunal,** AIR 1958 MAD 398 DB : ILR 1958 MAD 672.

In **Associated Cement Co. Ltd v Their Workmen,** (1963, II LLJ 396 SC), the Supreme Court laid down the following rules of evidence for observance in the domestic enquiry:

(i) If the evidence adduced by the workman and his witnesses is inconsistent with some circumstances or documentary evidence on record, their attention must be drawn to it so as to enable them to explain the apparent inconsistency the defence version should not be rejected on account of the adverse circumstances.

(ii) Any evidence given by witnesses in some other Proceedings is inadmissible. If that evidence is to be used, the witnesses must be examined again and the workman must be given an opportunity to cross-examine them.

In the case of **T.R. Murthy v Divisional Manager, United India Insurance Company Ltd.** (1982, November Lab IC 1745 AP), a disciplinary enquiry was started against an employee on the charge of producing false medical bills for disbursement. The charge was based on the medical certificate produced in support of medical expenses.

The Andhra Pradesh High Court held that the doctor was the only appropriate person to speak about the circumstances in which he gave certificate and thereafter withdrew it. Had the doctor been produced, the delinquent could have the opportunity of cross- examining him to elicit facts and circumstances to belie the version of the doctor. The gulf of lacunae was sought to be filled up by adducing as witness two officers to whom the doctor had narrated his version. The endorsement of the doctor was sought to be proved by them. Failure to examine the doctor who was a material witness to prove the charge vitiated the proceedings.

Reasonable Opportunity:

The requirement that reasonable opportunity of being heard must be given has two elements. The first is that opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justifiable and it is for the tribunal to decide whether an opportunity has been given and whether that opportunity has been reasonable - **Fodco (P) Ltd. v S M Bilgrami,** AIR 1960 SC 418/419, per **Das Gupta J.**

In the case of **Motor Industries Co. Ltd v D Adinarayanappa and another,** (1978, I LLJ 443 Kant), the issue before His Lordship was whether a domestic enquiry held by the management which is valid in all respects is invalid on the ground that before holding the enquiry, an opportunity of answering the charges should have been given to the delinquent employee.

Held, informing the delinquent employee of the specific charges levelled against him in writing and giving him an opportunity to defend himself in an enquiry, fulfills the requirement of the principles of natural justice and it is not a necessary requirement of the principles of natural justice that before holding an enquiry, and earlier opportunity of furnishing reply to the charges should be given to the delinquent.

The basic requirement of a fair opportunity is that enquiry must be conducted honestly and bona fide with a view to determining whether the charge framed against a particular employee is proved or not, and therefore care must be taken to see that the enquiry does not become an empty formality - **Associated Cement Co. Ltd. Their Workmen,** (1963, II LLJ 396 SC, per **GAJENDRAGADKAR, J.**

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination - **Mesngles Tea Estate v Their Workmen,** (1963 II LLJ 392 SC, per **Hidayatulla, J).**

Principles of natural justice - Dismissal on ground of misconduct - From the Post of Assistant Provost - For which no extra allowance or remuneration is payable - Post is adjunct to public Office - any allegation of misconduct is likely to reflect on his image - He is entitled to get an opportunity of hearing before such action.

Case: Dr. Mahabir Saran Dass Jaiswal v State of U.P. and others. (Writ petition No. 2963 of 1990, July 19, 1990).

Any allegation of misconduct concerning the adjunct office is likely to have reflection on the image of the incumbent as holder of public office. Accordingly, the allegation of 'misconduct towards the Principal' is likely to have prejudicial effect on the service career of the petitioner as Reader in King George's Medical College. Readership in King George's Medical College is a public office. The petitioner is in the employment of U.P. Government. Since the allegation of misconduct is likely to affect petitioner's service career as a public servant, we are of the opinion, that the petitioner was entitled to opportunity of hearing before being condemned as an indisciplined person.

The Rules of natural justice are not embodied rules. Therefore, coming to the conclusion, that any particular procedure adopted is contravening the principles of natural justice, the court must be satisfied that the procedure adopted was not conducive to reach a just decision.

Police Constable was charge-sheeted after eighteen months for absence on one occasion and for coming late to the parade on another occasion and removed from service subsequently. Held, that the delay must be considered fatal from the point of view of reasonable opportunity to the employee to show cause against the charge levelled against him.

It would be asking for the impossible to expect the employee to explain factually the reasons which occasioned the delay - (1980, I LLJ 260, GUJ).

Disciplinary Proceedings - Initiated against employee - On charge of assault of another employee of same concern - At the dispensary of ESI Hospital - Outside of the establishment - Such act of assault by itself does not become an act subversive of discipline.

Case: The Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Ltd. v Ramchandra Shankar Shinde and another (Writ petition No. 4329 of 1984, Feb 20, 1990, Bombay High Court).

If two employees of a common employer fight away from the establishment or if any one employee assaults another, outside the establishment that by itself does not become an act subversive of discipline. Even if there is reference to the work place or what the other employee is supposed to have done will not necessarily involve the question of discipline. If such assault takes place within the premises of the employer then per se there may be a presumption that it affects the other workmen and the question of breach of discipline may be assumed or implied.

This is a personal grievance although it may be connected with the work of the employee. Unless the employees are connected directly with the assault cannot, in my opinion, be regarded as having causal connection with acts subversive of discipline when such assault or threats takes place away from the premises of the establishment.

In connection with a disciplinary proceeding against a Govt. Servant, charge memos were served on him in 1958, 1964, and 1966 on same charges but no action was taken on them. Meanwhile the concerned officer was promoted. In 1971, another charge memo was served on him and there was an order for recovery of money from him. Held, that the order cannot be sustained due to delay of thirteen years. The delay leads to the inference that the charges framed in October 1958 and repeated in 1964 and 1966 have been abandoned - **P.F. George V State of Tamil Nadu & another,** (1980 ILLJ 513 MADRAS)

Disciplinary Proceedings - Not barred just because a criminal proceeding is pending on some charges - Rule providing dismissal on conviction - Does not support the contention that disciplinary proceedings must wait the decision of criminal proceedings.

Per Nainar Sundaram and Swamidurai, JJ. - The settled view is that even though there could have been an acquittal in the criminal proceedings, still prosecution of disciplinary proceedings

would not be barred. Departmental proceedings can be taken even after the original case too initiated in respect of identical charge which might have ended in acquittal.

This principle to a very great extent indicates that departmental proceedings have got an independent angle of testing the charges levelled therein and they have got to be viewed from independent standard and the decision in favour of the employee in the criminal proceedings need not necessarily stand in the way of prosecution the disciplinary proceedings against him.

It would be a different matter if the service rules or regulations lay down a contrary position. In such a case, the service rules or regulations will certainly govern. There could also be a service rule or a regulation, interdicting the prosecution at parallel level, the disciplinary proceedings, along with the criminal proceedings. In such a contingency also such a service or rule or regulation has to govern.

Disciplinary Proceedings - Against the petitioner - Initiated on the last day of his service - Could not be continued after the retirement - The charge memo filed after retirement, enquiry conducted thereon and the final orders passed have to be quashed.

Enquiry officers are not courts and, therefore, they are not bound to follow the procedure prescribed by the Trial Courts nor are they bound by strict rules of evidence. Their only obligations are those which the law casts on them. Namely; they should not take any action on information which they receive, unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it - **State of Mysore v Shivabasappa Shivappa,** (1964 ILLJ Sc, Per Venkatrama Ayyar).

But the principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules contained in the Evidence Act - **Central Bank of India Ltd. V Prakash Chand Jain** (1969 IILLJ 377 SC, per Bhargava,J.)

A workman who is to answer a charge must not only know the accusation but also the testimony by which the accusation is supported. For instance, if a document is relied upon by a witness and also by the enquiry officer in his finding, it must be made available to the workman before he is called upon to the Industrial Tribunal (1966 IILLJ 282, per B.N. Banerji).

In the case of **Tata Iron & Steel Co. V Central Govt. Industrial Tribunal** (1966 IILLJ 749 Pat), it was held that withholding of important piece of evidence namely, documents, reports, etc., which have bearing on the charges from the persons charged are sufficient grounds to show that the principles of natural justice have been violated in the domestic enquiry.

If the findings of the enquiry are based on reports given by the superior officers but, such reports are not made available to the concerned workmen nor are the officers made available for cross examination, the enquiry would not be fair and proper **Sur Enamel & Stamping Works Ltd. V their Workmen,** (1963 IILLJ 367 SC per Das Gupta J.)

It is well settled principle that a document or piece of evidence not included in the memorandum of charges and not disclosed to the party charged cannot be made the foundation of the findings against the delinquent. Such a procedure militates against the principle of natural justice and would vitiate the proceedings - **G.S. Sial V President of India and others,** (1981 Lab IC 59 ALL).

If a charge-sheeted workman requests the enquiry officer to order the management to produce two officers just for cross examination and not as defence witness, the enquiry officer is justified to reject the request. He cannot compel the company to produce the officers - **Ruston & Hornsby Pvt. Ltd. V T.B.Kadam,** (1975 IILLJ 352).

The workman is entitled to reasonable time to prepare and adduce defence in a domestic enquiry. When a workman is asked to present his defence in an hour, held there was failure of natural justice and the domestic enquiry was bad - **Delhi Cloth and General Mill Co. V Thejvir Singh,** (1972 ILLJ 01).

The duty to produce the defence witnesses is on the workman charged and not on the enquiry officer - **State Bank of India V Jain** (1971 IILLJ 599)

There is a two-fold test to identify **Perversity of a Finding.** The first test is that, the finding is not supported by any legal evidence at all and the other test is that, on the basis of the material on record, no reasonable person could have arrived at the finding complained of - **Central Bank of India Ltd. V Prakash Chand Jain,** (1969 IILLJ 377 SC).

Petitioner was dismissed not on charge served on him but on the other facts and circumstances which were never disclosed to him. As he had no opportunity to meet those charges, it was held that, there had been a failure of the principles of natural justice - **Raghabans V State of Bihar,** (AIR 1957 Pat. 100)

In the case of **State of Punjab V Bakhtawar Singh,** (1972 4 SC 73) it was held that, when the dismissal order was passed considering cumulative effect of the lapses of the charge-sheeted employee, the order is not maintanable, because previous lapses were discharged during the enquiry.

Where the order of dismissal merely states that from the material on file the authority is of opinion that he is not fit to be retained in service and so he should be removed. It was held that, the order cannot be upheld since it is not a speaking order and so an arbitrary order - **State of Punjab V Bakhtawar Singh** (1972 4 SC 730).

Different kinds of Punishments:

Different kinds of punishments enumerated above are dealt with in detail as follows:

(a) **Warning:** Warning is a minor punishment. It has to be administered in writing. In the case of Sankar Pillai V Kerala State, (1950 ILLJ 621 KER.) it was held that, warning should be administered after obtaining explanation from the workman about the act or omission alleged. The procedure to be adopted for administering warning need not be as elaborate as that for discharge or dismissal.

In the case of **Madhavan V Commissioner of Income Tax** (1983 IILLJ 356) the question arose before the Kerala High Court, whether a departmental promotion committee can take into consideration a warning given to an employee in considering him for promotion. It was held that, a censure inflicted as a regular penalty cannot have the effect of automatically postponing the employee's promotion. It is difficult to see how a warning which is not even a punishment and which is not given in accordance with the principles of natural justice can stand on a better or stronger footing in the matter of preventing an employee's promotion.

(b) **Fine:** Fine is a pecuniary punishment inflicted by the employer on the employee for certain act or omission. There may be provision in standing orders for imposition of fine. However the power to impose fine is subject to the provision of **Sec. 8 of the Payment of Wages Act.**

(c) **Withholding Increment:** In the case of graded scales, increments are automatic till the stage of efficiency bar is reached. With-holding of increment before the stage of efficiency bar is reached is punishment. Such punishment can be inflicted only when a charge of inefficiency or misconduct has been proved - **Rashiklal Nandlal V Bank of Baroda** (1956 ILLJ 103 Lat).

(d) **Suspension as Punishment:** Suspension as punishment can be inflicted on a workman for a specified period under contract of service or the standing orders after the workman is found guilty of misconduct commited by him - **Ramnaresh Kumar V State of West Bengal ,** (1958 ILLJ 567, 571 CAL. Db.) Suspension pending enquiry cannot be regarded as punishment for, punishment presupposes the commission of an offence and till the offence is proved to the satisfaction of the management, suspension pending enquiry cannot be considered to be punishment - (1954 LAT 79).

Punishment of suspension would not be tantamount to lockout defined in sec. 2 (l) of the Industrial Disputes Act. The effect of suspension is that the relationship of the master and servant is temporarily suspended with the consequence that the servant is not bound to render the service and the master is not bound to pay - **Balvantray Ratilal Patil v State of Maharashtra,** (1968) II LLJ 700, 703 (SC).

(e) **Retrospective Suspension:** In the case of **Nepal Chandra Guchit v District Magistrate,** (1966, II LLJ 71 Calcutta), the Calcutta High Court held that suspension like other punishments like discharge or dismissal with retrospective effect is illegal and invalid.

In the case of **Hemant Kumar Bhattacharya v S.N. Mukherjee**, AIR 1954, Calcutta 340 (DB), the Calcutta High Court held that where an order of suspension can be split into two periods of time, one retrospective and the other prospective, and the retrospective part can be severed from the prospective part, the retrospective part would be invalid and the prospective part would be perfectly valid and shall operate upon its own strength.

(f) **Demotion:** An employee is said to be demoted when he is downgraded from the present job and is reduced to a lower cadre of service. This punishment is somewhat analogous to "reduction in rank" as envisaged by Art. 311 of the Constitution. The procedure to be followed for administering this punishment is the same as in the case of discharge or dismissal.

In the case of **National Engineering Employees Union v R.N. Kulkarni**, (1968) II LLJ 82 Bombay (DB), the employer terminated the service of the employee but considering the past record, offered him a job on same salary and fixed a date for his exercising option for the job. The employee did not exercise the option. The labour court held that the order of termination was in fact an order of demotion and ordered further enquiry on the question whether the order was mala fide. The High Court observed that as the employee did not avail himself of the option, his services had ended after the appointed date of exercising the option. Hence the order is not the order of demotion but was of actual termination of service.

(g) **Discharge:** Discharge like dismissal puts an end to the contract of service and severes the relationship of employer and employee. In case discharge the contract of service is terminated with effect from a particular date but he does not lose the benefit acquiring up to that date - **Calcutta Chemical Co. Ltd v D.K. Burman**, (1969) Lab IC 1948, 1506 (Pat) (DB).

In the case of **Workman of Containers and Closers Ltd v First Labour Court**, (1962) I LLJ 471 (Cal), the Calcutta High Court observed "it is well settled that there can be no discharge or dismissal made with retrospective effect". Such dismissal cannot be sustained in law. However, a dismissal with retrospective effect is within the competence of the employer if the terms of service, either contractual (Standing Orders) or Statutory permits such dismissal with retrospective effect.

The employer need not assign any reason for discharging a probationer. The fact that certain reasons given by the employer did not appeal to the Industrial Tribunal it could not take away or detract from such right. The Industrial Tribunal could not sit over the judgement of the employer to absorb the probationer - **Caltex India Ltd. v Second Industrial Tribunal, W.B.**, (1963) I LLJ 156 Calcutta.

Where a workman was dismissed from service by the employer having been adjudged guilty of three charges of misconduct, but the Tribunal quashed the order of dismissal holding that dismissal was improper because two of the three charges were not sustainable, the High Court in disposing the writ of appeal, agreed with the tribunal and upheld its award - **Royal Printing Workers v Industrial Tribunal**, [1963] II LLJ 60 Madras.

The word victimisation has not been defined in the statute. The term was considered by the Supreme Court in the case of **Bharat Bank Ltd. v Employees** reported in AIR 1950 SC 188. The court observed: "It (victimisation) is an ordinary English word which means that a certain person has become a victim, in other words that he has been unjustly dealt with". When, however, the word 'victimisation' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section.

Where an employee's services are terminated on mere suspicion of the police, without independent consideration of the matter by the employer and the termination did not appear to be within the Standing Orders, the termination is definitely under colourable exercise or power.

So the labour court is competent to enquire whether the termination was permitted by provisions of the Standing Order - **Indian Copper Corporation Ltd. v State of Bihar**, (1970) II LLJ 492 (1971 Lab IC 137 Pat (DB).

An employee who had incurred displeasure of the employer was dismissed for sleeping during duty hours. Two other employees who committed the same offence were only warned. Held such a case falls within the ambit of tribunal's power of interference - **South Kojuma Colliery v Presiding Officer**, AIR 1965 Pat 386 (DB).

IMPORTANT SUPREME COURT AND HIGH COURT JUDGEMENTS

RELATING TO DOMESTIC ENQUIRY

Article 311 (2) (b) of the Constitution

Union of India and Another and Tulsiram Patel

In the said case, the Supreme Court has held that a Government Servant can be dismissed or removed from service without holding an enquiry under Art. 311 (2) (b) of the Constitution provided it was in the interest of the public.

The Court observed, "Government Servants who are inefficient, dishonest, corrupt or have become a security risk should not continue in service and should be summarily dismissed or removed from service and instead of being allowed to continue in it at public expense and at public detriment."

The above ruling was given by a Constitution Bench with a 4:1 majority. The judgement was written by Justice D.P. Madon Pathak. Mr. Justice Thakkar dissented. The Judges overruled the ruling of a three Judge Bench of the Supreme Court in Challappan's Case which held that a delinquent Government could be dismissed or removed from service only after he was given an opportunity to be heard.

Conditions Laid Down Under Article 311 (2) - stipulates three conditions where an enquiry need not be held before the dismissal or removal of a Government Servant.

(i) Where a person is dismissed, removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge.

(ii) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry.

(iii) Where the President or the Governor as the case may be is satisfied that in the interest of the Security of the State, it is not expedient to hold such enquiry.

Referring to Art. 311 (2) (b), the judges have pointed out that sometimes by not taking prompt action might result in the situation worsening and at times becoming uncontrollable. This could also be construed by the trouble makers and agitators as a sign of weakness on the part of the authorities.

It would not be reasonably practicable to hold an inquiry where the Government Servant terrorises, threatens or intimidates disciplinary authority of the witnesses to the effect that they are prevented from taking action or giving evidence against him. It would not be reasonably practicable to hold the enquiry where an atmosphere of violence or general indiscipline and insubordination prevails.

Referring to art. 311 (2) (b), the judges said it would be better for the disciplinary authority to communicate to the Government Servant its reason for dispensing with the inquiry. The Court also observed that the stipulated clause regarding no inquiry in certain cases was **MANDATORY** and not **DIRECTORY.**

JUSTICE R. KRISHNA IYER ON EVIDENCE ACT AND DOMESTIC ENQUIRY

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All Materials which are logically probative for a prudent mind are permissible. There is no allergy to heresay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act.

The essence of a judicial approach is : objectivity, exclusion of extraneous materials and consideration and observance of natural justice. Of course, fair play is the basis and if independence of judgement vitiate the conclusion reached such findings even though of a domestic tribunal cannot be held good.

The simple point is, was there some evidence or was there no evidence - not in the sense of technical rules governing regular court proceedings but in a fair/common sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. (1982 II LLJ State of Haryana v Rattan Singh 46, SC).

SUPREME COURT ON EVIDENCE ACT AND DOMESTIC ENQUIRY

The Evidence Act does not apply to enquiries conducted by the tribunals even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law (Union of India and T.R. Varma Vol 13 FJR 237 SC).

Will the Omission to produce the Preliminary Reports Vitiate the enquiry?

The omission by the company to produce the preliminary reports on the strength of which the charges against these workmen were found will not vitiate the enquiry. Those reports were collected by the company to satisfy itself whether disciplinary action against the workmen should be launched or not. They did not form part of the evidence before the enquiry officer nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be ground for holding that their non-disclosure was non-observance of the rules of natural justice. Tata Engineering & Locomotive Co. 1960 IILLJ 812 SC.

Resignation Pending Disciplinary Action

By entering into contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would however normally require to be accepted by the employer, in order to be effective. It can be read in certain circumstances an employer would be justified in refusing to accept an employee's resignation as for instance when an employee wants to leave in the middle of a work in which his presence and participation are necessary.

An employer can also refuse to accept resignation when there is a disciplinary enquiry pending against an employee. If he is allowed to resign when an enquiry is pending against him, it would enable him to escape the consequences of adverse findings against him. Therefore on such occasion the employer is justified in not accepting the resignation. (Central Inland Water Transport Corporation Ltd. and Tarunkanti Sengupta and Another 1986 II LLJ 171 SC).

Should an Advocate be permitted in all domestic enquiries ?

In the Board of Trustees v Nadkarni case reported in 1983 I LLJ Page 1 - the Supreme Court stated that in the past there was informal atmosphere before a domestic enquiry forum and that strict rules of procedural law did not hamstring the enquiry. We have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers, Legal Advisors, Lawyers in the garb of employees and they are appointed as Presenting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself.

The weighted scales and tilted balance can only be partly restored if the delinquent given the same legal assistance as the employer. It applies with equal vigour to all those who must be responsible for fairplay. When the Bombay Port Trust Advisor and Junior Assistant Legal Advisor would act as the Presenting cum Prosecuting Officer in the enquiry, the employee was asked to be represented by a person not trained in law, was held utterly unfair and unjust. The employee should have been allowed to appear through legal practitioner and failure vitiated the enquiry.

Bombay High Court Decision

Apart from the provisions of law, it is one of the basic principles of natural justice that the enquiry should be fair and impartial. Even if there is no provision in the Standing Orders or in Law, wherein an enquiry before the domestic mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to a denial of reasonable request to defend himself and the

essential principles of natural justice would be violated (Ghatge Patil Transport Pvt Ltd. and B.K. Patel and others 1984 II LLJ Bombay High Court, Page 121).

Calcutta High Court Decision

Though the court should discourage involvement of legal practitioners in simple domestic enquiries, like disciplinary enquiries, for avoiding complications and delays, yet the court's refusal of such representation would constitute failure of the enquiry itself. Principles of Natural Justice demands for the consideration in the light of the facts and circumstances of each individual case (India Photographic Co. v Saumitra Mohan Kumar 1984 I LLJ 471 HC).

Scope of Investigation by labour courts and Industrial tribunals:

In cases of termination, generally the tribunal would be required to find out whether the same amounts to victimisation or unfair labour practice or was it so capricious or unreasonable as to lead to an inference that it has been based on some ulterior motives. In other words, it is to enquire into the bonafides of the management (Assam Oil Co. 1960) ILLJ (SC) (Chartered Bank 1960) IILLJ 222 (SC).

The Indian Iron and Steel Case (1958 I LLJ 260 SC) and subsequent decisions have laid down that there could be an interference:

(i) When there is want of good faith,

(ii) When there is victimisation or unfair labour practice,

(iii) When the management had been guilty of a basic error or violation of principles of natural justice, and

(iv) When, on the materials before the tribunal, the finding is found to be completely baseless or perverse.

In the Industan Construction Case, 1965 (10) FIR, the Supreme Court again laid down that the tribunal cannot substitute its own apprisal of the evidence for that of the officer conducting the domestic enquiry.

Want of Good Faith: This only means that on the evidence available the conclusion must have come objectively - not having made up one's mind to find the worker concerned guilty. It was pointed out in the Mackenzie Co. (1959 ILLJ 285 SC), the management must have materials before them to base its conclusions.

Victimisation or Unfair Labour Practice: The Supreme Court in the Bharat case (AIR 1950 188 SC), observed that the word Victimisation was not a term of Act or law and it only meant that a certain person has become a victim and that he has been unjustly dealt with.

Where the punishment imposed was shockingly disproportionate to the misconduct, victimisation is inferred. In (1061 IILLJ 644 SC), Bharat Sugars case, the supreme court held that before an industrial adjudication can find an employer guilty of an intention to victimise, there must be reason to think that the employer was intending to punish workmen for their union activities while purporting to take action ostensibly for some other activity.

Basic Error: If the evidence in disciplinary proceedings instituted in respect of a concerted action shows that 'A' was guilty actually, but quite erroneously the decision of the enquiry officer states that 'B' was guilty, it will be a basic error of fact.

Baseless or Perverse Findings: It has been pointed out by the courts that the findings could be said to be perverse only if it is shown that such a finding is not supported by any evidence or is entirely opposed to whole body of the evidence adduced Doom Dooma Tea Case (1960 IILLJ 56 SC) and Hamdard Dawakhana Case (1962 IIILJ 762 SC). Merely that the authority could possibly come to a different view on the evidence recorded would not make the finding of the domestic tribunal perverse. The Calcutta High Court (1966 IILJ 535) said ' a wrong finding is not necessarily a perverse finding'.

Personal Bias : The principles governing the doctrine of 'bias' are:-

a) No man shall be a judge in his own case; and

b) Justice should not only be done, but manifestly and undoubtedly seen to be done, (Subba Rao. J AIR 1959 SC 1378)

There is authority for the view that, where there are certain rules governing the procedure of enquiries, the mere violation of such rules will not give a party a cause of action unless there has been, in consequence, prejudice caused. **Veerabadreshwar Rao & Oil Mill Vs Collector, Central Excise.** (AIR 1966).

Protection during Pendency of Proceedings (sec 33 ID.ACT.): Under this section when a proceeding is pending before a Conciliation Officer, Labour court, Arbitrator or Industrial Tribunal, no workman concerned in the industrial dispute pending before the said authorities could be punished by way of dismissal or discharge except under certain conditions:

a) If the misconduct with which the workman had been charged is connected with the dispute pending, he cannot be discharged or otherwise punished except with the express permission of the authority before whom the proceeding is pending.

b) Where misconduct is not connected with the proceeding pending, the workman could be dismissed or discharged for the misconduct provided he is paid or tendered a month's wages and D.A. and an application is simultaneously made before the authority concerned for approval of the action taken.

c) Protected workmen cannot be discharged or punished whether by dismissal or otherwise except, with the express permission in writing of the authority concerned.

Any violation of the provisions stated above during pendency of proceedings before labour court or tribunal can be taken up by the employee as complaint under sec. 33A to be adjudicated and an award passed.

Section 2 A of Industrial Disputes Act: Previously individual workman could not raise industrial disputes with reference to their dismissal or discharge. It can only be by collective action. As a result of the introduction of this section on 1st December 1965, even individual workman could directly approach the conciliation officer / Government claiming relief for dismissal or discharge and this claim is deemed to be an 'industrial dispute'.

Quantum of Punishment: With the introduction of sec. IIA of I.D.Act, with effect from 15.12.71. the absolute right of the employer to decide on the quantum of punishment has been abridged and the tribunals will have power for the first time to differ both on a finding of misconduct arrived at and also on the punishment imposed by the employer. **Firestone Case** (1973 ILLJ 278 SC.)

Evidence before the Tribunal: If no domestic enquiry is at all held or if the enquiry is in any defect it is optional for the management to adduce evidence before the tribunal and justify the dismissal or hold an enquiry afresh, if the domestic enquiry is set aside on technical grounds **Motipur Sugars Case** (1965 IILJ 162 SC). It has also been held by the Supreme Court in the Ritz Theatre Case (1962 IILJ 498) that the adduction of evidence before the tribunal may be without prejudice to the management's stand that the domestic enquiry was complete and proper in itself.

Discrimination: An act of discrimination could only occur if amongst those equally situated an unequal treatment is meted to one or more of them. While some of the workmen participated in an illegal strike instigating others also to participate and also intimidated the officers were charge sheeted leaving others who participated, the same cannot be said to be discrimination. **Motor Industries Case** (1969 IIILJ 673 SC.)

Retrospective dismissal: Punishment with retrospective effect will be invalid and inoperative, if it is not specifically provided for in the standing orders. In such cases, the employer would be at liberty to set right the situation by issuing another order prospectively. The workman would be entitled to wages for the intervening period.

Criminal and Domestic Enquiry Proceedings: The scope of these two are different. The degree of proof varies. Just as criminal judgement is not binding upon a Civil Court, acquittal by a Criminal Court of a person does not bar the domestic authority to pursue the enquiry proceedings or to come to a different conclusion.

Gherao: In **Jay Engineering Case** (AIR 1968 Cal. 407), the Calcutta High Court defined gherao as a physical blockade of a target either by encirclement or forcible occupation accompanied by wrongful confinement as also unlawful assembly. Distinctive character of gherao is existence in it of coercive method. It is an offence punishable under the Indian Penal Code. The employer will have every right to take disciplinary action against employees for participation in gherao whether peaceful or disorderly and punish them after holding a fair and proper enquiry.

Refusal to obey transfer orders: Where the contract of employment provides for transfer, the order of dismissal for refusal to obey the transfer order will be justified except, where the order was punitive, malafide or in the nature of victimisation. Where the service rule provided for the transfer of an employee from one company to another company under the same owners, the dismissal for disobeying the order of transfer was held justified by the Supreme Court in **Madhuband Colliery Case** (1966 II LJ 738).

Discharge of Probation: Discharge of a probationer without assigning reason during the period of probation as per contract of service or standing order will be valid, except where it is held to be punitive or malafide.

Losing of Lien: Where an employee lost his lien on employment by operation of standing order for continuous absence or over-stayal of leave, the same does not amount to termination by employer. Losing of lien in such a case is not by any positive action by the employer but by automatic operation of standing order.

CHAPTER V

INDUSTRIAL DISPUTES ACT

- Section 11 A.

SUPREME COURT ON SECTION 11A OF

INDUSTRIAL DISPUTES ACT, 1947.

Section 11A :

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

The legal position as on 15.12.1971 (When S. 11A introduced in the Industrial Disputes Act) was brought into force regarding the power of labour court or industrial Tribunal when deciding the dispute arising out of dismissal or discharge of a workman could be summarised as follows:

(i) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power if action of the employer is justified.

(ii) Before imposing the punishment, the employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(iii) When a proper enquiry has been held by an employer, and the finding misconduct is the plausible conclusion flowing from the evidence adduced at the said enquiry, the tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body.

(iv) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it.

It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee too to adduce evidence.

(v) The effect of an employer not holding an enquiry is that the tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impunged order of dismissal or discharge is at large before the tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved.

In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(vi) The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(vii) It has never been recognised that the tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(viii) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the tribunal has no power to refuse.

The giving of an opportunity to an employer to adduce evidence for the first time before the tribunal is in the interest of both the management and the employee and to enable the tribunal itself to be satisfied about the alleged misconduct.

(ix) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a tribunal for the first time, punishment imposed cannot be interfered with by the tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(x) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this court in **Management of Panitole Tea Estate v The Workman** (ILLJ 233, 1971), within the judicial decision of a labour court or tribunal.

To invoke S.11A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication, the tribunal has to be satisfied that the order of discharge or dismissal was not justified.

If it comes to such a conclusion, the tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The tribunal has also power to give any other relief to the workman including the imposition of a lesser punishment having due regard to the circumstance. The proviso casts a duty on the tribunal to rely only on the section, in our opinion it indicates a change in the law, as laid down by this court, has been affected.

It is well settled that in constructing the provisions of a welfare legislation, the court should adopt, what is described as a beneficient rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But the court should not also lose sight of another canon of interpretation that a statute, or for that matter, even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by Industrial Courts arising out of orders of discharge or dismissal.

Therefore, it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decision, and if so, whether there is a clear expression of that intention in the language of the section.

The limitations imposed on the powers of the tribunal by the decision in **Indian Iron & Steel Co. Ltd. Case** (Supra) can no longer be invoked by an employer. The tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the tribunal that finally decides the matters.

If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even not to adduce evidence for the first time before the tribunal justifying the order of discharge or dismissal. The court is not inclined to accept the contention on behalf of the workman, that the right of the employer to adduce evidence before the tribunal for the first time recognised by this court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, it would have been differently worded. Admittedly there are no express words to that effect and there is no indication that the section has impliedly changed the law in that respect.

Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The state at which the employer has to ask for such an opportunity has been pointed out by this court in **Delhi and General Mills Co. Ltd.** (Supra). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this court in the decision just referred to above, it is open to the tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If

its finding on the subject is in favour of the management, then there will be no occasion for additionc evidence justifying his action. This right in the management to sustain its order by adducing independen evidence before the tribunal, if no enquiry has been held or if the enquiry is held to be defective, ha been given judicial recognition over a long period of years. It was agreed that even after S.11A the employer and employee can adduce evidence regarding legality or validity of the domestic enquiry, i one had been held by the employe:.

Having held that the right of the employer to adduce evidence continues under the nev section, it is needless to state that, when such evidence is adduced for the first time, it is the tribunc which has to be satisfied on such evidence about guilt or otherwise of the workman concerned. The law, as laid down by this court that under such circumstances the issue about the merits of the impungec order of dismissal or discharge is at large before the tribunal and that it has to decide for itself whethe the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by thi Court, the exercise of managerial functions does not arise at all.

Therefore, it will be seen that both in respect of cases where a domestic enquiry has beer held as also in cases where the tribunal considers the matter on the evidence before it for the first time the satisfaction under S.11A, about the guilt or otherwise of the workman concerned, is to come to c conclusion one way or other.

Even in cases where an enquiry has been held by an employer and a finding o misconduct arrived at, the tribunal can now differ from that finding in a proper case and hold that nc misconduct is proved.

Under S.11A, the Industrial Tribunal or the Labour Court may hold that the provec misconduct does not permit punishment by way of discharge or dismissal and in cases under such circumstances award to the workmen any lesser punishment instead.

The power to interfere with the punishment and alter the same has now been conferrec on the tribunal by S.11A. From the wording of the proviso to S.11A it could not be infered that the righ of the employer to adduce evidence for the first time has been taken away as the tribunal is obliged tc confine its scrutiny only to the materials available at the domestic enquiry.

The expression materials on record occuring in the proviso cannot be confirmed only tc the matters which were available at the domestic enquiry. On the other hand the materials on the recorc in the proviso must be held to refer to materials on record before the tribunal.

They take in:

1. the evidence taken by the management at the enquiry, or
2. the above evidence and, in addition, any further evidence before the tribunal, or
3. evidence placed before the tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

The above items by and large should be considered to be the materials on record as specified in the proviso. The court is not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The provision only confines the tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal.

It is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment.

From the proviso, it is not certainly possible to come to the conclusion that when once it is held that an enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the tribunal. Nor does it follow that the proviso deprives an employer of his right to adduce evidence for the first time before the tribunal.

The expression "fresh evidence" has to be read in the context in which it appears, namely, as distinguished from the expression materials on record. If so read, the proviso does not prevent any difficulty at all.

The Legislature in S.11A has made a departure in certain respects in law as laid down by this court. For the first time, power has been given to a tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held.

The tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the proviso.

The proviso emphasises that the tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workman only on the basis of the materials on record before it. The tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The matter in the proviso refers to the order of discharge or dismissal that is being considered by the tribunal.

The court should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This court has consistently been holding that an employer is expected to hold a proper enquiry according to the standing orders and principles of natural justice.

It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the tribunal, even though it has no power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer.

Further, by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or malafide. It cannot be over-emphasised that conducting of a proper and valid enquiry, will improve the relationship between him and the workmen and it will serve the cause of industrial peace. Further, it will also enable an employer to persuade the tribunal to accept the enquiry as proper and the finding also as correct.

Notes to Section 11A

This section has no retrospective operation and therefore does not apply to disputes which had been referred prior to the 15th December, 1971, on which date, Sec. 11A was brought into operation. **Workmen of Firestone tyre & Rubber Co. of India (P) Ltd. v The Management and others** - 1973 (1) LJ 278; **The Gujarat Mineral Development Corporation v P.H. Brahmbhatt** - 1974 (1) LLJ 97 and **East India Hotels v Their Workmen and others** - 1974 LIC 532).

A direction withholding payment of back wages either fully or partially is undisputably penal in nature. An award directing reinstatement of an employee without back wages and without any other kind of punishment specified in the regulations of the management is not bad merely because the employee was found guilty of misconduct, if in the opinion of the tribunal the misconduct is not so grave as to warrant the extreme penalty of discharge or dismissal.

The term lesser punishment in the section cannot be restricted by reading words which are not contained in the section. This section does not state that the lesser punishment should be one which is provided in the Regulations or Standing Orders of the management. The provision takes in its sweep all punishments lesser than discharge or dismissal, whether provided for in the Regulations or Standing Orders of the management or not. (**Andhra Pradesh State Road Transport Corporation v Labour Court, Guntur, and another** - 1978 LIC. 359).

Very wide powers have been conferred by the legislature on the tribunals to decide the questions between the workmen and the employer. They can even re-appraise the evidence laid before the enquiry officer and examine the correctness of his finding.

DOMESTIC ENQUIRY AND DISCIPLINARY PROCEEDINGS

Selected Case Laws

(Excerpted)

1. Scope of sec. 11A - Section 11A of the Industrial Disputes Act was inserted in te Act with effect from 15. 12. 71.

Under the amendment introduced by section 11A, the powers of the Tribunal have been widened. The Tribunal has now to be satisfied that the order of discharge or dismissal passed by the employer is justified. Even if the order is found to be justified, the Tribunal can now award a lesser punishment in lieu of discharge or dismissal as the circumstances may require The Tribunal can now reappraise the evidence of the domestic enquiry. If there has been no enquiry or the enquiry has been held to be defective, the jurisdiction of the Tribunal is of original nature. The Tribunal can in that case try the merit itself by giving an opportunity to the employer to adduce evidence before it for the first time to justify the order of discharge or dismissal. Further, the Tribunal may hold that though the charges of misconduct have been established, an order of discharge or dismissal is not justified. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct has not been established be evidence. To come to a conclusion either way, the Tribunal will have to reappraise proved misconduct does not merit punishment by way of discharge or dismissal, on that ground it may award lesser punishment. What was once largely in the realm of satisfaction of the empolyer, is now the satisfaction of the Tribunal which finally decides the matter.

However, an error in judgment is a good defence against charge of dmaging employer's proprety - Indian General Navigation and Railway Co.v. Workmen (1961) II LLJ 117: AIR 1967 SC 406.

When a worker failed to arrange store items properly as per order of higher authority he is just guilty of negligence and not of insubordination or disobedience - Bharat Sugar Mills v Jai Singh (1961) II LLJ 644.

To justify disciplinary action, the employer has to prove that the employee had contravened the express or implied conditions of service - Bharat Electronics Ltd. v Industrial Tribunal (1970) Lab IC 337 Mys (DB).

Dismissal must be only on the ground set out in the chargesheet and not outside it - Punjab National Bank Ltd. v Workmen, AIR 1960 SC 160: (1960) I SCR 806.

DOMESTIC ENWUIRY

In the case of Associated Cement Co. Ltd v Workman, (1963) II LLJ 396 (SC), the Supreme court laid down the following rules of evidence directing that violation of the said rules shall render the enquiry unfair and vitiated, (a) when the defence taken by the workman and his witnesses is inconsistent with some circumstance or documentary evidence on record, they should be asked to explain the apparent inconsistency and their defence should no be rejected on the ground of inconsistency without affording opportunity to them to explian the inconsistency (b) any evidence given by the witnesses in some other proceeding is inadmissible. If that evidence is to be used, the workman must be given an opportunity to cross-examine them.

In the case of State of Haryana and another v Rattan Singh (1982) I LLJ 46 (SC), the Bench of three Judges of the Supreme court held "it id well settled that in a domestic enquiry, strict and sophisticated rules of evidence 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. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such materials and should not glibly rely on what is strictly speaking, not relevant under the Indian Evidence Act. The essentials of judicial approach is objectivity, exclusion of extraneous matters or considerations and observance of rules of natural justice.

Of course fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal cannot be held good."

There is clear violation of the cannons of fair play and natural justice if the Enquiry Officer takes on the role of a witness in addition to his own and gives evidence as a witness and then takes over again as the Enquiry Officer. Such an illegality vitiates the enquiry and renders the order of dismissal bad in law - Andhra Scientific Co. Ltd. v Seshagiri Rao, (1961) II LLJ 117.

The enquiry at the initial stage was conducted by the general manager of the company. Then he stepped down and was examined as a witness and a person who was active in securing evidence to establish the charge against the concerned workman was assigned the task of holding the enquiry. Hold, that the domestic enquiry was vitiated for violation of the principles of natural justice and the Labour court should have taken evidence itself and come to an independent conclusion - Andhra Scientific Co. Ltd, v Seshagiri Rao (1951) II LLJ 117 (SC).

In Ramlal v Union of India, AIR 1962 Raj 57, the watchman Ramlal, in reply to the charge-sheet craved mercy on the ground that this was the first occurrence during his service for eleven years, pointing out at the same ti the difficulties of a watchman escorting the train at the night in detecti a preplanned theft of goods carried by rail on the track. He was dismissed from service without formal enquiry on the ground that it was admission of guilt with a conditional apology. Their Lordships set aside the order of dismissal observing that when it was not a clear and unambiguous admissio of guilt, the employer should have held a formal enquiry, before dismissing watchman."

It is true that neither a permanent employee nor a probationer can be punished without a formal charge and enquiry. But in case of probationer, a less formal enquiry may be sufficient - Bishanlal Gupta v State of Haryana & others, (1978) I LLJ 317 (SC).

A domestic emquiry proceeded against a workman after service of charge-sheet on him, but at a particular stage, the workman withdrew from the enquiry. Consequently, without even completing the enquiry exparte, in the manner prescribed by the standing orders, the employer dismissed the workman from service for alleged misconduct. Adjudicating upon the industrial dispute, arising out of the dismissal of the workman, the Labour Court held that the order of dismissal without completing the dimestic enquiry in accordance with the relevant provisions of the standing orders was invalid.

Affirming the view of the Labour court in appeal, the Supreme Court observed that the fact that the workmen withdrew from the enquiry at an early stage did not absolve the Enquiry Officer from concluding the enquiry by taking evidence exparte - Imperial Tobacco Co. of India v Its Workmen, (1961) II LLJ 414 (SC) : AIR 1962 SC 1348.

In the case of M.C. Dhir v State of Punjab, (1982) October Lab IC (NOC) 117 (Punjab & Haryana) the petitioner employee of the State of Punjab was suspended pending completion of the department proceedings, but as his age of retirement came after the suspension he was allowed to retire and so the suspension order was revoked. But one and a half years after his retirement, the case was reopend under Rule 2.2 (b) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and a disciplinary proceeding was initiated against the retired employee. Held that initiation of disciplinary proceedings against the employee after his retirement was wholly without jurisdiction - The decision of the Supreme court in (1970) Lab IC 271 (SC) relied upon.

Where witnesses in support of the charge are not at all examined during the enquiry and the workman charged is only asked to put questions to the witnesses without even furnishing him with a copy of previously recorded statements, held, the enquiry is not fair - Phulbari Tea Estate v Workmen (1959) II LLJ 663 (SC): (1960) I SCR 32.

Workmen are charged of active participation in an act of misconduct. Held, misconduct must be proved against each workman before each of them can be held guilty. The theory of conspiracy has no application in industrial adjudication workmen cannot be held responsible for activities of the union which represents them - Punjab National Bank Ltd. v Workmen, AIR 1960 SC 160.

In C.L. Subramaniam v Collector of Customs, AIR 1972 SC 2118, the Supreme Court observed that the fact that the case against the delinquent employee was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales be weighed against him.

In the case of Board of Trustees for the Port of Bombay v D.R. Nadkarni & others, (1983) I LLJ 1 SC, on the question of the claim of the charge-sheet workmen to be represented by a legal practitioner, the Supreme Court held that where the employer has on its pay-roll Labour Officer, legal advisers and lawyers in the garb of employees and they are appointed as presenting cum prosecuting officers, the Enquiry Officer should, unless the rules prescribed for such enquiry place an embargo on the right of the employee to be represented by a legal practitioner, in his discretion permit the employee to appear through a legal practitioner.

He would however do so considering the nature of charges and issues which may arise in course of the enquiry. Where legally trained minds represent the employer in the domestic enquiry, and the Enquiry Officer is a man of employer's establishment the weighted scales and titled balance can be partly restored if the delinquent is given the same legal assistance as the employer has employed.

In the case of A.J. Vaswani v Union of India (1983) April Lab IC 625, per J. GHOSE & PYNE, the Calcutta High Court found that the appellant Sri. Vaswani, a preventive officer under the collector of customs (under suspension) during the departmental enquiry against him prayed for representation through a lawyer but the prayer was not allowed. The department had an experienced Police Inspector to present its case before the enquiry officer. No Government Servant agreed to represent the delinquent officer in the enquiry because top officials who were witnesses in the enquiry had to be cross-examined. There were legal and factual complexities. Further legal issues were involved in the case. Besides the delinquent was not fit in body and mind becau - long suspension had affected his health and mind. Considering all factors, the High court held that the above facts and circumstances were good grounds justifying a permission to the delinquent to be represented by a legal practitioner.

The strict technical rules of procedure of the Indian Evidence Act do not apply to the adjudicatory proceedings before the adjudicatory authorities under the Industrial Disputes Act, much less would they apply to domestic enquiries Central Bank of India v Prakash Chand Jain, (1969) II LLJ 377/382 (SC).

However, the substantive rules which would form part of principles of natural justice cannot be ignored by domestic trubunals - Central Bank of India v Prakash Chand Jain (1969) II LLJ 377/382 (SC).

In Shadilal v State of Punjab, AIR 1973 SC 1124, the Supreme Court observed that the application of the principles of natural justice is not a question of observance of a formulae. In essence it is meant to assure that party concerned has an opportunity of being heard. Whether in a particular case it has been violated or not will depend on the facts and circumstances of the case. It cannot be said that there will be infraction of the principles of natural justice unless procedures of the courts ae observed.

The Industrial Tribunal is not hampered by strict rules of evidence or pleading or technicalities of procedure. It can collect information which has any boaring or relevance an determining the issue raised before it - Hiralal Sada Shiv Rao v State Industrial Court, (1967) I LLJ 168 Bom (DB).

The admission by the Tribunal of evidence after the case has been fully argued, even without notice to the other side, may be justified in certain circumstances - Khardah & Co. Ltd. v Its Workmen, (1963) II LLJ 452 (SC).

Althouth the strict rules of evidence applicable to a Civil Court do not bind the Industrial Tribunal, yet it cannot refuse a party an opportunity to place all the relevant evidence on the point in an issue. A finding otherwise given will be vitiated - Western India Match Co. Ltd. v Industrial Tribunal, AIR 1958 Mad 398 (DB): ILR (1958) Mad 672.

In Associated Cement Co. Ltd. v. Their Workmen, (1963) II LLJ 395 SC, the Supreme Court laid down the following rules of evidence for observance in the domestic enquiry:

(i) If the evidence adduced by the workman and his witnesses is inconsistent with some circumstance or documentary evidence on record, their attention must be drawn to it so as to enable them to explain the apparent inconsistency the defence version should not be rejected on account of the adverse circumstance.

(ii) Any evidence given by witnesses in some other proceedings is inadmissivle. If that evidence is to be used, the witnesses must be examined again and the workman must be given an opportunity to cross-examine them.

In the case of T.R. Murthy v Divn. Manager, United India Insurance Co. Ltd. (1982) November Lab IC 1745 AP, a disciplinary enquiry was started against an employee on the charge of producing false medical bills for disbursement. The charge was based on the medical certificate produced in support of medical expenses. The falsity of themedical reimbursement was sought to be proved upon endorsement of the doctor on the medical bill and withdrawal of his certificate. The Andhra Pradesh High Court held that the doctor was the only appropriate person to speak about the circumstances in which he gave the certificate and therafter withdrew it. Had the doctor been produced, the delinquent could have the opportunity of cross-examining him to elicit facts and circumstances to belie the version of the doctor. The gulf of lacunae was sought to be filled up by adducing as witness two officers to whom the doctor had narrated his version. The endorsement of the doctor was sought to be proved by them. Failure to examine the doctor who was a material witness to prove the charge vitiated the proceedings.

Reasonable Opportunity:-

The requirement that reasonable opportunity of being heard must be given has two elements. The first is that opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Tribunal to decide whether an opportunity has been given and whether that opportunity has been reasonable - Fodco (P) Ltd v. S.M. Bilgrami, AIR 1960 SC 418/419, per Das Gupta J.

In the case of Motor Industries Co-Ltd. v D. Adinarayanappa and another, (1978) I LLJ 443 Karn, the issue before His Lordship was whether a domestic enquiry held by the management which is valid in all respects is invalid on the ground that before holding the enquiry, an opportunity of answering the charges should have been given to the delinquent employee. Held, informing the delinquent employee of the specific charges levelled against him in writing and giving him an opportunity to defend himself in an enquiry, fulfills the requirement of the principles of natural justice and it is not a necessary requirement of the principles of natural justice that before holding an enquiry, and earlier opportunity of furnishing reply to the charges should be given to the delinquent employee.

The basic requirement of a fair opportunity is that enquiry must be conducted honestly and bona fide with a view to determining whether the charge framed against a particular employee is proved or not, and therefore care must be taken to see that the enquiry does not become empty formality - Associated Cement co. Ltd. v Their Workmen, (1963) II LLJ 396 (SC), per GAJENDRAGADKAR, J

It is an elementary principles that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he against him - Nesngles Tea Estate v Workmen, (1963) II LLJ 392 (SC), per HIDAYATULLA, J.

The rules of natural justice are not embodied rules. Before, therefore, coming to the conclusion that any particular procedure adopted is contravening the principles of natural justice, the court must be satisfied that the procedure adopted was not conducive to reach a just decision.

Police constable was charge-sheeted after eighteen months for absence on one occasion and for coming late to the parade on another occasion and removed from service subsequently. Held that the delay must be considered fatal from the point of view of reasonable oppertunity to the employee to show cause against the charge levelled against him.

It would be asking for the impossible to expect the employee to explain factually the reasons which occasioned the delay - (1980) I LLJ 260 (Guj).

In connection with a disciplinary proceeding against a Government Servant, charge memos were served on him in 1958, 1964 and 1966 on same charges but no action was taken on them. Meanwhile the concerned officer was promoted. In 1971, another charge memo was served on him and ther was an order for recovery of money from him. Held the order cannot be sustained due to delay of thirteen years. The delay leads to the inference that the charges framed in October 1958 and repeated in 1964 and 1966 have been abandoned - P.F George v State of Tamil Nadu & another, (1980) I LLJ 513 (Mad)

Enquiry Officers are not courts and, therefore, they are not bound to follow the procedure prescribed by the Trial courts nor are they bound by strict rules ofevidence. They only obligations which the law casts on them is that they should not action any information which they receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it - State of Mysore v Shivabasappa Shivappa, (1964) I LLJ 24 (SC), per VENKATRAMA AYYAR.

But the principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which can not be ignored on the mere ground that domestic tribunals are not bound by the technical rules contained in the Evidence Act - Central Bank of India Ltd. v Prakash Chand Jain (1969) II LLJ 377 (SC), per DHARGAVA, J.

A workman who is to answer a charge must not only know the accusation but also the testimony by which the accusation is supported. For instance, if a document is relied upon by a witness and also by the Enquiry Officer in his finding, it must be made available to the workman before he is called upon to Fourth Industrial Tribunal (1966) II LLJ 282, per B.N. BANERJEE, J.

In the case of Tata Iron & Steel Co. v Central Govt. Industrial tribunal, (1966) II LLJ 749 (Pat), it was held that with holding of important piece of evidence, namely, documents, reports, etc., which have bearing on the charges from the persons charged are sufficient grounds to show that the principles of natural justice have been violated in the domestic enquiry.

If the finding of the enquiry are based on reports given by the superior officers but such reports are not made available to the concerned workmen nor are the officers made available for cross-examination, the enquiry would not be fair and proper Gur Enamel & Stamping Works Ltd. v Their workmen, (1963) II LLJ 367 (SC), per Das Gupta J.

It is well-settled principle that a document or piece of evidence not includes in the memorandum of charges and not disclosed to the party charged cannot be made the foundation of the findings against the delinquent. Such a procedure militates against the principle of natural justice and would vitiate the proceedings - G.S. Lal v President of India and others, (1981) Lab IC 58 (All).

If a charge-sheeted workman requests the enquiry Officer to order the management to produce two officers just for cross-examination and not as defence witness the Enquiry Officer is justified to reject the request. He cannot compel the company to produce the offiecrs - Ruston & Hornsby (P) Lt v T.B. Kadam, (1975) II LLJ 352.

The workman is entitled to reasonable time to prepare and adduce defence in a domestic enquiry. When a workman is asked to present his defence in an hour, held there was failure of natural justice and the domestic enquiry was bad - Delhi Cloth and General Mill Co. v Thejvir Singh, (1972) I LLJ 20

The duty to produce the defence witnesses in on the workman charged and not on the Enquiry officer - State Bank of India v Jain (1971) II LLJ 599.

There is two- fold test of perversity of a finding. The first test is that the finding is not supported by any legal evidence at all and the other test is that on the basis of the material on record, no reasonable person could have arrived at the finding complained of - Central Bank of India Ltd. v Prakash Chand Jain, (1969) II LLJ 377 (SC).

Petitioner was dismissed not on charge served on him but on other facts and circumstances which were never disclosed to him. As he had no opportunity to meet those charges, held, there had been failure of the principles of natural justice - Raghabans v State of Bihar, AIR 1957 Pat 100.

In the case of State of Punjab v Bakhtawar Singh, (1972) 4 SCC 73, it was held that when the dismissal order was passed considering cumulative effect of the lapses of the charge-sheeted empolyee the order is not maintainable, because previous lapses were disregarded during the enquiry.

Where the order of dismissal merely states that from the material on file the authority is of opinion that he is not fit to be retained in service and so he should be removed, held, the order cannot be upheld since it is not a speaking order and so an arbitrary order - State of Punjab v Bhaktwar Singh. (1972) 4 SCC 730.

Defferent kinds of punishments enumerated above are dealt with in detail as follows:

(a) Warning: Warning is a minor punishment. It has to be administered in writing. In the case of Sankar Pillai v Kerala State, (1960) II LLJ 621 (Ker) it was held warning should be administered after obtaining explanation from the workman about the act or omission alleged. The procedure to be adopted for adminstering warning need not be as elaborate as that for ordering discharge or dismissal.

In the case of Madhavan v Commissioner of Income Tax (1983) II LLJ 356, the question arose before the Kerala High Court whether a departmental promotion committe can take into consideration a warning given to an employee in considering him for promotion. Held that a censure inflicted as a regular penalty cannot have the effect of authomatically postopning the employee's promotion. It is difficult to see how a warning which is not even a punishment and which is not given in accordance with the principles of natural justice can stand on a better or stronger footing in the matter of preventing an employees' promotion.

(b) Fine: Fine is a pecuniary punishment inflicted by the employer on the employee for certain act or omission. There may be provision in standing orders for imposition of fine. However the power to impose fine is subject to the provisions of sec. 8 of the Payment of Wages Act.

(c) With holding increment: In case of garded scales, increments are automatic till the stage of efficiency bar is reached. Withholding of increment before the stage of efficiency bar is reached is punishment. Such punishment can be inflicted only when a charge of inefficiency or misconduct has been proved - Rashiklal Nandlal Joshi v Bank of Baroda (1956) I LLJ 103 (LAT).

(d) Suspension as punishment: Suspension as punishment can be inflicted on a workman for a specified period under contract of service or the standing orders after the workman is found guilty of misconduct committed by him Ramnaresh Kumar v State of West Bengal, (1958) I LLJ 567, 571 Cal (DB).

Suspension pending enquiry cannot be regarded as punishment for punishment presupposes the commission of an offence and till the offence is proved to the satisfaction of the management, suspension pending enquiry cannot be considered to be punishment - 1954 LAT 79.

Punishmentof suspension would not be tantamount to lockout defined in sec. 2 (i) of the Industrial Disputes Act. The effect of suspension is that the relationship of the master and servant is temporarily suspended with the consequence that the servant is not bound to render service and the master is not bound to pay - Balvantray Ratilal Patil v State of Maharashtra, (1968) II LLJ 700, 703 (SC).

(e) Retrospective suspension: In the case of Nepal Chandra Guchit v District Magistrate, (1966) II LLJ 71 (Cal), the Calcutta High Court held that suspension like other punishments like discharge or dismissal with retrospective effect is illegal and invalid.

In the case of Hemant Kumar Bhattacharya v S.N. Mukherjee, AIR 1954 Cal 340 (DB) the Calcutta High Court held that where an order of

suspension can be split into two periods of time, one retrospective and the other prospective, and the retrospective part can be severed for the prospective part, the retrospective part would be invalid and the prospective part would be perfectly valid and shall operate upon its own strength.

(f) Demotion: An employee is said to be demoted when he is downgraded from the present jov and is reduced to a lower cadre of service. This punishment is somewhat analogous to" reduction in rank" as envisaged by Art. 311 of the Constitution. The procedure to be followed for administering this punishment is the same as in the case of discharge or dismissal. In the case od National Engineering Employees Union v R.N. Kulkarni (1968) II LLJ 82 Bom (DB), the employer terminated the service of the employee but considering past record, offered him a job on same salary and fixed a date for his exercising option forthe job. The employee did not exercise option. The Labour Court held that the order of termination was in fact an order of demotion and ordered further enquiry on the question whether the order was mala fide. The High Court observed that as the employee did not avail himself of the option, his services had ended after the appointed date of exercising the option. Hence the order is not the order of demotion but was of actual termination of service.

(g) Discharge: Discharge like dismissal puts an end to the contract of service and severes the relationship of employer and employee. In case of discharge the contract of service is terminated with effect from a particular date but he does not lose the benefit acquiring up to that date - Calcutta chemical Co. Ltd v D.K. Burman, (1969) Lab IC 1948, 1506 (Pat) (DB).

.In the case of Workman of Containers and Closers Ltd. v First Labour Court, (1962) I LLJ 471 (Cal), the Calcutta High Court observed "It is well settled that there can be no discharge or dismissal made with retrospective effect." Such dismissal cannot be sustained in law. However a dismissal with retrospective effect is within the competence of the employer if the terms of service, either contractual (Standing orders) or statutory permits such dismissal with retrospective effect.

The employer need not give any reason for discharging a progationer. The fact that certain reasons given by the employer did not appeal to the Industrial Tribunal it could not take away or detract from such right. The Industrial Tribunal could not sit over the judgement of the employer to absorb the probationer - Caltex India Ltd. v Second Industrial Tribunal, W.B., (1963) I LLJ 156 Cal.

Where a workman was dismissed form service by the employer having been adjudged guilty of three charges of misconduct, but the Tribunal quashed the order of dismissal holding that dismissal was improper because two of the three charges were not sustainable, the High Court in disposing the writ of appeal, agreed with the Tribunal and upheld its award Royal Printing Workers v Industrial Tribunal, (1963) II LLJ 60 Mad.

The word "victimisation" has not been defined in the statute. The term was considered by the Supreme Court in the case of Bharat Bank Ltd. v Employees reported in AIR 1950 SC 188. The court ovserved: "It (victimisation) is an ordinary English word which means that a certain person has become a victim, in other words that he has been unjustly dealt with." When, however, the word 'victimisation' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section.

Where an employee's services are terminated on mere suspicion of the police, without independent consideration of the matter by the employe, and the termination did not appear to be within the standing orders, the termination is definitely under colourable exercise of power. So the Labour Coyrt is competent to enquire whether the termination was permitted by provisions of the standing order - Indian Copper Corporatio Ltd. v State of Bihar, (1970) II LLJ 492: (1971) Lab. IC 137 Pat.(DB).

An employee who had incurred displeasure of the employer was dismissed for sleeping during duty hours. Two other employees who committed same offence were only warned. Held such a case falls within the ambit of Tribunal's power of interference - South Kojuma Colliery v Presiding Officer, AIR 1965 Pat 386 (DB).

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Disciplinary Action and Procedure for Workmen Staff
(Memorandum of Settlement dated 10th April 2002)

1. A person against whom disciplinary action is proposed or likely to be taken shall in the first instance, be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view, the following shall apply.

2. By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of Law.

3.a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the Bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6 below.

c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so directs.

d) If he prefers an appeal or revision application against his conviction and is acquitted, in case he had already been dealt with as above and he applies to the management for reconsideration of his case, the management shall review his case and may either reinstate him or proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharge, and the provision set out above as to pay, allowance and the period of suspension will apply, the period up-to-date for which full pay and allowances have not been drawn being treated as one of suspension. In the event of the management deciding, after enquiry not to continue him in service, the employee shall be liable only for termination with three months pay and allowance in lieu of notice, as directed above.

4. If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply.

i. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

A) engaging in any trade or business outside the scope of his duties except with the written permission of the Bank;

B) unauthorised disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank.

C drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank.

D wilful damage or attempt to cause damage to the property of the bank or any of its customers;

E wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

F habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him.

G wilful slowing down in performance of work;

H gambling or betting on the premises of the bank

I speculation in stocks, shares, securities or any commodity whether on account or that of any other persons;

J doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

K giving or taking a bribe or illegal gratification from a customer or an employee of the bank;

l) abetment or instigation of any of the acts or omissions above- mentioned.

m) Knowingly making a false statement in any document pertaining to or in connection with his employment in the bank.

n) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the bank from the concerned authority.

o) Resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases not covered by the above Sub-Clause (n) and where a report to that effect has been received by the bank from the concerned authority and the employee does not accept the charge.

p) Remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days.

q) Misbehaviour towards customers arising out of banks business.

r) Contesting election for parliament/legislative assembly/ legislative council/ local bodies/ municipal corporation/ panchayat, without explicit written permission of the bank.

s) Conviction by a criminal Court of Law for an offence involving moral turpitude.

t) indulging in any act of sexual harassment of any woman at her workplace.

Note: Sexual harassment shall include such unwelcome sexually determined behaviour (whether directly or otherwise) as

a) physical contact and advances;
b) demand or request for sexual favours;
c) sexually coloured remarks;
d) showing pornography; or

e) any other unwelcome physical verbal or non-verbal conduct of a sexual nature.

(For State Bank of India)

u) the giving or taking or abetting the giving or taking of dowry or demanding directly or indirectly from the parents or guardians of a bride or bridegroom, as the case may be, any dowry.

Explanation - For the purpose of sub clause (u) the word "dowry" has the same meaning as in the "Dowry Prohibition Act, 1961".

6. An employee found guilty of gross misconduct may;

a) be dismissed without notice; or

b) be removed from service with superannuation benefits i.e.Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

c) be compulsorily retired with superannuation benefits i.e.pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

d) be discharged from service with superannuation benefits i.e.Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or

f) have his increment/s stopped with or without cumulative effect; or

g) have his special pay withdrawn; or

h) be warned or censured, or have an adverse remark entered against him; or

i) be fined.

7. By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

a) absence without leave or overstaying sanctioned leave without sufficient grounds;

b) unpunctual or irregular attendance;

c) neglect of work, negligence in performing duties;

d) breach of any rule of business of the bank or instruction for the running of any department;

e) committing nuisance on the premises of the bank;

f) entering or leaving the premises of the bank except by an entrance provided for the purpose;

g) attempt to collect or collecting moneys within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank, unseemly or unsatisfactory behaviour while on duty;

k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;

) incurring debts to an extent considered by the management as excessive;

n) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of ankers or by or on behalf of the Bank in ases not covered by sub-clause (n) under ross Misconduct and where a report to iat effect has been received by the bank om the concerned authority and the nployee accepts the charge;

refusal to attend training ogramme without assigning sufficient d valid reasons;

Not wearing, while on duty, ntity card issued by the bank;

Not wearing, while on duty, the form supplied by the bank , in clean idition.

An employee found guilty of minor conduct may:

be warned or censured; or

have an adverse remark entered nst him; or

have his increment stopped for a od not longer than six months.

A workman found guilty of onduct, whether gross or minor, shall ie given more than one punishment in ect of any one charge.

In all cases in which action under es 4,6 or 8 may be taken, the edings held shall be entered in a kept specially for the purpose, in the date on which the proceedings ield, the name of the employee eded against, the charge or charges, idence on which they are based, the iation and the evidence, if any, ed by the said employee, the or findings, with the grounds on they are based and the order shall be recorded with sufficient s, as clearly as possible and such of the proceedings shall be signed officer who holds them, after which a copy of such record shall be furnished to the employee concerned if so requested by him in writing.

11. When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.

12. The procedure in such cases shall be as follows:-

a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended-

(i) (x) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

(y) where the employee is not a member of any trade union of bank employees on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed;

OR

(ii) at the request of the said union by a representative of the state federation or all India organisation to which such union is affiliated;

OR

(iii) with the Banks permission, by a lawyer.

He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

Note: In case of workmen in Banks, representation in domestic enquiry can only be as laid down in the Bipartite Settlement Therefore, a reference to registered trade union of bank employees in clause 19.12 of the First Bipartite Settlement would refer to a trade union of workmen only.

(Reference SBI, Chandigarh Circle Circular Letter no. CirDO/P&HRD/45/2005-06 DTD 17th June, 2005)

b) Pending such inquiry or initiation of such inquiry he may be suspended, but if on the conclusion of the enquiry, it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc.

c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a months' pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action.

d) If the representative defending the employee is an employee of the Bank at an outstation branch within the same Circle, he shall be relieved on special leave (on full pay and allowances) to represent the employee and be paid one return fare. The class of fare to which he will be entitled would be the same as while travelling on duty. In case of any adjournment at the instance of the bank / Enquiry Officer, he may be asked to resume duty and if so, will be paid fare for the consequential journey. He shall also be paid full halting allowance for the period he stays at the place of the enquiry for defending the employee as also for the days of the journeys which are undertaken at the banks cost.

Explanation:

'State' for the purpose, shall mean the area, which constitutes a political State, but this explanation will not apply to SBI.

e) An enquiry need not be held if:

(i) the bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct;

(ii) the employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice; and

(iii) the misconduct is such that even if proved the bank does not intend to award the punishment of discharge or dismissal.

However, if the employee concerned requests a hearing regarding the nature of punishment, such a hearing shall be given.

f) An enquiry need not also be held if the employee is charged with minor misconduct and the punishment proposed to be given is warning or censure. However,

(i) the employee shall be served a show cause notice advising him of the misconduct and the evidence on which the charge is based; and

(ii) the employee shall be given an opportunity to submit his written statement of defence, and for this purpose has a right to have access to the documents and material on which the charge is based;

iii) If the employee requests a hearing such a hearing shall be given and in such hearing he may be permitted to be represented by a representative authorised to defend him in an enquiry had such an enquiry been held.

) Where an employee is charged with minor misconduct and an enquiry is not held on two previous occasions, an nquiry shall be held in respect of the ird occasion.

3. Where the provisions of this ettlement conflict with the procedure or les in force in any bank regarding sciplinary action, they shall prevail over e latter. There may, in such procedure rules, exist certain provisions outside e scope of the provisions contained in is Settlement enabling the bank to smiss, warn, censure, fine an employee have his increment stopped or have an verse remark entered against him. In such cases also the provisions set out Clauses 10 and 11 above shall apply.

. The Chief Executive Officer or the ncipal Officer in India of a bank or an ernate Officer at the Head Office or ncipal Office nominated by him for the pose shall decide which officer (i.e.the ciplinary authority) shall be empowered take disciplinary action in the case of h office or establishment. He shall also ide which officer or body higher in us that the officer authorised to take ciplinary action shall act as the ellate authority to deal with or hear dispose of any appeal against orders sed in disciplinary matters. These norities shall be nominated by gnation, to pass original orders or and dispose of appeals from time to and a notice specifying the norities so nominated shall be ished from time to time on the banks e board. It is clarified that the plinary authority may conduct the iry himself or appoint another officer ne Enquiry Officer for the purpose of ucting an enquiry.

The appellate authority shall, if the employee concerned is so desirous, in a case of dismissal, hear him or his representatives before disposing of the appeal. In cases where hearings are not required, an appeal shall be disposed of within two months from the date of receipt thereof. In cases where hearings are required to be given and requested for, such hearings shall commence within one month from the date of receipt of the appeal and shall be disposed of within one month from the date of conclusion of such hearings. The period within which an appeal can be preferred shall be 45 days from the date on which the original order has been communicated in writing to the employee concerned.

15. Every employee who is dismissed or discharged shall be given a service certificate without avoidable delay.

16. Any notice, order, charge-sheet, communication or intimation which is meant for an individual employee, shall be in a language understood by the employee concerned. In the case of an absent employee notice shall be sent to him by registered post with acknowledgement due. If an employee refuses to accept any notice, order, charge-sheet, written communication or written intimation in connection with disciplinary proceedings when it is sought to be served upon him, such refusal shall be deemed to be good service upon him, provided such refusal takes place in the presence of at least two persons including the person who goes to effect service upon him. Where any notice, order, charge-sheet, intimation or any other official communication which is meant for an individual employee is sent to him by registered post with acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same is to be deemed as good service.

भारतीय स्टेट बैंक
State Bank of India
Corporate Centre - Mumbai

e-Circular

P&HRD.
Sl. No. : 546/2006 - 07
Circular No. : CDO/P&HRD-IR/56/2006 - 07
Friday,January 12,2007.

All Branches & Offices of
State Bank of India

12th January 2007.

Dear Sir,

LAPSES IN CONDUCTING ENQUIRY,
LIST OF DO's AND DON'TS FOR DISCIPLINARY AUTHORITIES/
ENQUIRY OFFICERS/PRESENTING OFFICERS

Of late it has been observed that a number of industrial disputes raised by discharged/dismissed employees are going against the Bank. On an analysis it is found that there are lapses while conducting enquiry and the cases have not been dealt with deftly as a result of which the Tribunals have not only castigated the bank but have also passed awards either for conducting fresh enquiry or for reinstating the dismissed/discharged employees. Tribunal generally do not interfere with the findings of the Enquiry Officer or Disciplinary Authority if they are not arbitrary or perverse and if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice. The standard of proof as in criminal proceedings is not applicable to disciplinary proceedings and all that is required to be seen in disciplinary proceedings is that whether there is evidence and that evidence is sufficient to bring home the charge against the delinquent employee.

2. The process of contesting the cases in Labour Court-cum-Industrial Tribunals and challenging the awards where we differ with their findings involves money, man power and time at various levels. To nip the dispute in the bud, it is felt that Bank should take such preventive measure that does not give any scope to the Tribunal to find fault with the enquiry proceedings. The genesis of the problem when analysed is found to be as under:-

(i) The Enquiry Officers/the Disciplinary Authorities/the Appellate Authorities are either not fully conversant with the enquiry proceedings or do not view the issues objectively.

(ii) The Bank does not have a common pool of officers in the Region/Module/Circle who can be trained in this area from time to time and be kept updated so that consistency in quality can be maintained.

(iii) The number of cases allotted to an Enquiry Officer is at times too many for which the cases drag on for months/years.

(iv) The Disciplinary Authorities have not been able to perceive their roles clearly in a manner, which would enable them to render full justice to both the sides in a case of disciplinary action, viz., the chargesheeted employee and the Bank as an organisation.

3. It has, therefore, been decided to proceed in the matter as under:-

(i) A common pool should be formed of the officers whose services can be used as Presenting Officers and Enquiry Officers as and when the need arises, at the Region/Module/Local Head Office level.

(ii) They should be properly trained and groomed by deputing them to STCs/ Staff College/Academy etc. They should be kept updated in matters relating to disciplinary proceedings etc. The training programmes should be specifically evolved for the purpose, wherein the Presenting Officers should be taught to properly present the case, lead the evidence, present the argument etc. Similarly, EOs should be taught the art of appreciating the evidence, recording the evidence, writing the report etc. The training programmes should invariably include sessions relating to:-

(a) drafting of the chargesheet,

(b) principles of natural justice

(c) evidence before Enquiry Officer – production of documents/examination of witnesses etc.

(d) disposal of the case by Enquiry Officer, appreciation and evaluation of evidence and drafting of enquiry report

(e) legal issues, case laws

(f) consideration by Disciplinary Authority/Appellate Authority/Reviewing Authority.

The Law Officers of the Module/Local Head Office or even Corporate Centre should invariably be involved in the training process.

(iii) The number of cases allotted to an Enquiry Officer/Presenting Officer should be reasonable so as not to burden him unnecessarily and in the process getting the issue protracted.

(iv) A list of do's and don'ts for DAs, EOs and POs have been prepared in consultation with Law Department at this office. This will help an officer carry out his assigned job in a more fruitful manner. A copy of this should be supplied to every DA/EO/PO, whenever an officer is appointed as such.

4. We shall be glad to receive your confirmation that a system has been put in place for giving effect to above instructions.

Yours faithfully,

for Managing Director & Group Executive
(National Banking)

nk/all-D.enquiry

ANNEXURE

Do's for the Presenting Officers (PO):

1. Receive the following documents from the Disciplinary Authority; (i) a copy of the Articles of Charge and the Statement of the imputation of misconduct.; (ii) a copy of the Statement of Defence, if any, submitted by the chargesheeted person in reply to the chargesheet.; (iii) copies of earlier statements of witnesses mentioned in the list of witnesses; (iv) the evidence providing the delivery of chargesheet to the charged employee; (v) a copy of the order appointing the EO/IA.

2. Be furnished with the details of the case. No information or document having bearing on the case should be withheld from him.

3. Be briefed adequately regarding the case, especially on the weak and controversial points so as to think of the ways and means to meet the deficiencies.

4. Prepare carefully for the job, with the sole object of proving the charges levelled by the management and familiarize with all the technicalities of the case.

5. Meet the prosecution witnesses in advance and discuss with them the strategy likely to be adopted during the enquiry.

6. Show the witnesses the statements recorded by them earlier, so that they may refresh their memory.

7. Study all the documents (listed and others) and try to reconstruct in mind each step in the event/transaction involved.

8. Scrutinize the part played by the chargesheeted person and others. For each such step, see which of the oral and documentary evidence is necessary and adequate to present the case.

9. Make a thorough study of each element of the event and transaction, and each incidence of misconduct attributed to the chargesheeted person.

10. During the course of the enquiry, keep calm and composed.

11. Show utmost courtesy and respect to the EO/IA and render him all possible assistance.

12. Remain alert and make sure that the enquiry proceeds on the right lines. Whenever any attempt is made by the defence to deviate or to bring in irrelevant issues, intervene.

13. Present the oral and documentary evidence on behalf of the management in a proper sequence and then cross-examine the witnesses presented by the defence with a view to demolishing their testimony.

14. After the examination and cross-examination of the witnesses is over, present arguments either orally or in writing highlighting the evidence of the prosecution witnesses which support the charges and pointing out the contradictions, inconsistencies and fallacies of the evidence adduced by the other side.

15. While summing up, give cogent arguments drawing specific attention to the points, which prove the charge and explain with reasons why the evidence, which appears to be going against the charge, should be rejected.

16. Give clear and convincing justification on the basis of which the EO is expected to hold the charges as proved.

17. Never get yourself emotionally involved in the case, nor express personal happiness or unhappiness over the EO eventual findings.

Don'ts for the Presenting Officer(PO) :

1. Don't develop any animosity towards the chargesheeted person or his representative.

2. Don't insist on your witnesses to say something that is not a fact as the fundamental objective of a departmental enquiry is to get into the truth.

3. Don't be impolite, arrogant and indecent in behavior.

4. Don't hobnob with the Defence Representative(DR).

5. Don't allow the presence of those not directly concerned with the case, including those from CBI, Police etc. in the course of deposition.

6. Don't demand adjournment unnecessarily.

7. Don't contact the defence witness before or after the enquiry.

Do's for Enquiry Officers(EO) :

1. Be clear about the scope and functions as an Enquiry Officer (EO). An Enquiry Officer should basically enquire into the truth of the charge against the official and nothing else.

2. Be unbiased, fair, just and judicious and harbour no personal enmity/grudges against the chargesheeted employee (CSE).

3. Be interested in seeking justice and fair play in the process.

4. In the course of enquiry proceeding ensure that both sides get even handed approach from EO which is deemed as just and reasonable opportunity for both.

5. Draw up a positive programme in consultation with the parties.

6. Allow adjournments for reasonable reasons only and record reasons therefor.

7. Be serene and even handed during hearings.

8. Ensure previous statements of listed witnesses are made available to the CSE well in time for cross-examination, atleast three days before examination starts.

9. Protect the witnesses from any unfair treatment during examination.

10. Ensure that the witness understands the question put to him before he answers and see that the answers given in vernacular is properly translated in English and recorded.

11. Recall a witness for re-examination only if it is absolutely necessary in the interest of justice.

12. Watch the demeanor of the witness while deposing and make a note of that.

13. Use your powers judiciously to put such questions to a witness as to bring out the truth so that you have a fair and clear understanding of the whole case.

14. Exercise powers to give judicious orders on point of objections raised during the course of enquiry.

15. Finding must be based upon evidence adduced during the enquiry and which the other party has had the opportunity to refute, examine and rebut.

16. Draw inferences as a rational and prudent person would do considering the oral/ documentary evidence, noting whether what was said or done was consistent with the normal probability of human behaviour.

17. Base your conclusions on a report which looks reasonable. Clearly indicate in the report the relation between the imputations, evidence and conclusions.

18. Conclusions should be logical and have probative value.

19. After signing the report, EO ceases to be functus-officio and can't make any changes or offer comments, clarifications etc.

Don'ts for Enquiry Officers (EO) :

1. Don't be interested either in the CSE as proved guilty or being exonerated.
2. Don't let any undue delay takes place.
3. Don't allow parties to dominate the proceedings.
4. Don't allow lengthening the agony of the CSE.
5. Don't indulge in loose talk or give your views at any stage.
6. Don't consult others behind the back of the CSE.
7. Don't hold the ex-parte proceedings if the CSE who is under suspension is unable to do so on account of non-payment of subsistence allowance.
8. Don't refuse the CSE to rejoin the ex-parte proceedings from the point of time.
9. Don't allow the questions those are considered irrelevant or are malicious or likely to cause annoyance to the witnesses during cross-examination.
10. Don't allow leading questions during the examination stage.
11. Don't allow production of new evidence to fill a gap in the evidence, but only allow where there is inherent lacuna or defect in the evidence originally produced.
12. Don't bring in any extraneous matter which has not appeared either in the Articles of charges or in the statement of imputations or the evidence adduced at the enquiry and against which the charged employee had no opportunity to defend himself.
13. Don't indulge in unnecessary hair splitting arguments about the letter of the rule/instructions but confine to the misconduct and whether the charge of misconduct is made out against the CSE.
14. Don't summarise the versions of both the sides and then select one.
15. Don't fail to follow the principles of natural justice during the course of the enquiry.
16. Don't overstep your role. It is not your role to condemn the CSE or suggest a deterrent punishment.

Do's for Disciplinary Authority(DA)/Appellate Authority(AA):

In a disciplinary proceeding, punishment is imposed for an act of misconduct, not in order to seek retribution or give vent to a feeling of wrath, but to correct the fault of the employee concerned by making him more alert in future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they don't expose themselves to similar punishment.

1. On receipt of the inquiry report, take an independent view whether the charge is established or not.

2. Ensure that the findings are based on the records of the inquiry proceedings.

3. You may differ with the findings of the EO and draw your own inference and conclusion where you feel that the findings of the EO are perverse or conflicting, or are not totally based on the evidence and record.

4. Consider whether or not to agree with the conclusions of the EO.

5. Inform the CSE if the past bad record is to be considered for the purpose of determining the quantum of the penalty, and give him a chance to explain.

6. While differing with the findings of the EO record the reasons thereof in writing and convey the same to the CSE and give him an opportunity to substantiate his stand.

7. In case the charge is not proved by the EO and it is still held to be proved, analyse evidence adduced in the enquiry. In the absence of the same it may be construed that the findings of the DA are perverse and not supported by evidence.

8. After taking a tentative decision about the quantum of punishment, address a communication, commonly known as 'second show cause notice' to the CSE(in case of award staff) informing him the nature of proposed punishment and call upon him to show cause - within a stipulated time – as to why the proposed punishment should not be imposed upon him.

9. Instead of submitting written reply, if the CSE seeks appearance in person, give him a 'personal hearing'.

10. If there are reasons to consider that the charge is proved, take a decision in regard to the imposition of punishment on the CSE.

11. Before deciding about the nature and quantum of punishment, carefully consider the inquiry report and satisfy yourself that the inquiry has been conducted properly in a fair and impartial manner and that the CSE has been given all reasonable opportunities to defend his case.

12. Examine the chargesheet before it is served and include such charges that can be proved on the basis of direct/circumstantial evidences, deposition of witnesses. A lengthy chargesheet not backed by evidences leads not only to delays but creates an impression in the mind of the Courts that employee has unnecessarily been prosecuted for wrongs he did not commit.

The general principles need to be kept in view by the Disciplinary Authority while proposing punishment for the delinquent which are as follows:-

(a) To weigh and examine the entire set of evidence put up in the course of the inquiry for ensuring that the inference drawn by the EO in his finding is reasonable and just.

(b) To examine the nature and gravity of the misconduct proved against the employee.

(c) To consider the aggravating/extenuating circumstances that may exist.

(d) To establish the previous record, if any, of the CSE and to see if a sympathetic view can be taken in the event of an unblemished record.

(e) To see if the employee is genuinely repentant.

(f) To verify the nature of punishment usually inflicted for an identical misconduct so that consistency and uniformity in action could be ensured and whimsical decisions could be avoided.

(g) To ensure that the punishment is generally commensurate with the gravity of the misconduct.

(h) The order passed should show that DA/AA have considered the EO's report, evidences, submissions and such consideration should reflect in the order.

Don'ts for Disciplinary Authorities(DA)/Appellate Authorities(A A) :

1. Don't violate the principles of natural justice at any stage of the proceedings that will make the enquiry vitiated and consequently the punishment illegal.

2. Don't state that the charges are proved by circumstantial evidences without narrating the circumstances.

3. Don't leave reasons unrecorded while differing with the findings of the EO.

4. Don't allow the punishment inflicted inconsistent with the charges proved against the CSE.

5. Don't remain silent on the issue of how to treat the suspension period of the CSE. This gives opportunity to the CSE to claim payment of full salary and allowances for the period of suspension.

6. In the course of personal hearing do not allow the CSE to be represented by his defence counsel or by any other person

भारतीय स्टेट बैंक
भारतीय स्टेट बैंक
State Bank of India

मध्यवर्ती कार्यालय, पत्र पेटी क्र. 12, मुंबई-400 021.
केन्द्रीय कार्यालय, पत्र पेटी क्र. 12, मुंबई-400 021.
Central Office, Post Box No. 12, Bombay-400 021.
तार/Telegram : 'APEX'

13T GMR

Reference of personal hearing to be relieved

The Chief General Manager,
State Bank of India,
Hyderabad.

छुट्टी पर
On Leave

पा. क्रमांक/No. PA/CIR/ 3

दिनांक/तारीख/Date April 7, 1995.
Chtr.17, 1917(S)

Dear Sir,

DISCIPLINARY PROCEEDINGS
DEATH OF AN EMPLOYEE

Frequent references are made to us by Local Head Offices enquiring whether terminal benefits of a deceased employee can be released to legal heirs where disciplinary proceedings were pending at the time of his death. This and some other related issues were examined at this office recently. The issues in brief were:

i) Whether any disciplinary enquiry against legal heirs or action is possible after death when an employee-workman or officer - died while under suspension or pending completion of disciplinary proceedings?

ii) What would be the position regarding terminal benefits payable to the employee's heirs when he died during the pendency of departmental/ criminal proceedings for misconduct?

iii) What proceedings or recourse to the Bank are possible when there is a clear case of misappropriation, theft or breach of trust on the part of an employee but he died before initiation or completion of criminal or departmental proceedings?

The above issues were examined in detail and our opinion s given below:

i) Regarding the first issue, our views are that if an employee has been under suspension and he died during suspension, he has to be treated as having died on duty and the period of suspension till his death has to be treated as on duty. This follows from the maxim that only after conclusion of disciplinary proceedings, there is a jurisdiction vested on the Disciplinary Authority to decide as to how the period of suspension has

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to be treated. In view of the death of the employee before completion of the disciplinary proceedings, whether initiated or not, the stage at which the authority gets jurisdiction to treat the suspension as one of suspension does not arise. Therefore, the employee has to be treated as on duty till his death.

ii) On the second issue, we consider that disciplinary proceedings abate with the death of an employee. Neither the Bank's Provident Fund Rules nor the Pension Fund Rules contemplate holding of an enquiry for fixing the liability of a deceased employee to be adjusted against his terminal dues. The Payment of Gratuity Act as well as Gratuity Rules of the Bank do not provide for any enquiry to be held after the death of the employee to determine the liability which can be set off against the gratuity. In the case of an employee who died before the completion of disciplinary or criminal proceedings pending against him, all retiral benefits have to be paid to the nominee under the Provident Fund Rules or to his legal heirs. There is no provision in any of the Awards, Bipartite Settlements or the Service Rules for the Bank to hold an enquiry or continue the enquiry after the death of a charged employee. Our view is supported by the decision of the Bombay High Court reported in 1986 L.I.C. 248. All terminal benefits are, therefore, liable to be paid to the nominee/ legal heirs of the deceased employee who died during the pendency of disciplinary/ criminal proceedings and there is no scope for the Bank to hold or continue any enquiry by issuing a show cause notice to his legal heirs after his death.

iii) Regarding the third issue, while the misconduct alleged against the deceased employee has no significant effect on the release of terminal benefits, the only recourse the Bank can have if there is a clear case of misappropriation is to file a suit in a Court of law for the recovery of the embezzled amount as against the assets of the deceased impleading his legal heirs. The said action is possible only if it is within the period of limitation.

You may deal with similar cases arising in your Circle/ ce accordingly.

s faithfully,

Dy. Managing Director &
rate Development Officer

workshop on Disciplinary and Vigilance proceedings Study Materials

COURTESY BY

Dr.E.Ilamathian, M.A., Ph.D.,
Director
UGC – Academic Staff College
University of Madras
CHENNAI – 600 005.

Power Point Preparation

1. PRELIMINARY ACTION
2. FRAMING CHARGE SHEET /SHOWCAUSE NOTICE
3. SUSPENSION PENDING ENQUIRY?
4. SERVICE OF CHARGE SHEET
5. EXPLANATION
6. ENQUIRY OFFICER APPOINTMENT
7. NOTICE OF ENQUIRY
8. ENQUIRYPROCEEDINGS
9. FINDINGS
10. SECOND SHOWCAUSE NOTICE
11. FINAL ORDERS

STEPS IN DOMESTIC ENQUIRY

PRINCIPLES OF NATURAL JUSTICE

AUDI ALTERAM PARTEM (HEAR THE OTHER SIDE),

NEMO JUDEX CAUSA SUO (NO MAN SHALL BE THE JUDGE IN HIS OWN CAUSE),

SECTION 2(OO) OF THE I.D. ACT 1947,

FR & FS

SERVICE REGULATIONS OF BANKING INDUSTRY

SHOWCAUSE NOTICE

- FRAMING THE CHARGE SHEET
- 5 Ws
  - WHEN?
  - WHERE?
  - WHICH?
  - WHO?
  - WHAT?

SERVICE

- SERVICE OF CHARGE SHEET
- IN PERSON
- NOTICE BOARD
- RPAD
- SPL MESSENGER
- PASTING ON THE DOOR
- ADVT.
- REFUSAL- ENDORSEMENT

SUSPENSION PENDING ENQUIRY

- Only in case of serious misconduct,
- employee continuance is harmful
- as per Standing orders/FR&FS,

Subsistence Allowance- as per the Payment of Subsistence Allowance Act, S.O , FR&FS

EXPLANATION

- If the explanation is valid drop the charges ,
- Appropriate action,
- D.E only after notice,
- Delay- accede to reasonable request,
- Failure to give explanation -reminders

SECOND SHOW CAUSE NOTICE

- If there is a provision in the Standing Orders regarding the issue of second Show-cause notice before issuing the order of Punishment, show-cause notice should be given. It is not a must unless there is an express provision to that effect.

PUNISHMENT

- Only a competent authority can issue the order of Punishment.
- The Competent authority can either accept or reject the findings.
- Punishment should be based on the recorded evidence and as per the provisions in the Standing Orders.

- Employee's past record, extenuating or aggravating circumstances should be considered while issuing the order of Punishment.
- Will not take effect with retrospective effect unless there is a provision in the Standing Orders.
- Should be speaking Order.

- Punishment should not be out of proportion to the misconduct and a common yard stick should be followed to avoid the charges of discrimination or victimisation.

COMMUNCATION

- Punishment will take effect on communication only
- Entries should be made in the personal records.

NOTICE OF ENQUIRY

- Give reasonable time (say 48 hours) or the period provided in the Standing Orders.
- Give details (Time, place, date)
- Inform about exparte proceedings; if the employee fails to attend the enquiry.
- Inform the employee that all reasonable opportunities for a proper defence will be given.

ENQUIRY OFFICER

- Should be an unbiased person.
- Advocates, Retired Officers and outsiders can conduct enquiries.
- Should not be the prosecutor as well as the Judge.
- Witnesses should not conduct enquiries.

- Charge sheeted employee can cross-examine witnesses and adduce evidence on his side.
- Management representative can cross-examine the charge-sheeted employee and the defence witnesses.
- Charge sheeted employee can not be compelled to give evidence or written statement.

- One witness should give evidence at a time and not in the presence of other witnesses.
- Enquiry officer should obtain the signature of the witnesses and charge-sheeted employee in every page of the Enquiry Proceedings. In the case of refusal make necessary endorsements.

- Enquiry Officer can control the number of witnesses and questions. Proper discretion should be there while exercising this function.
- Charge sheeted employee should be permitted to inspect the documents marked.
- Can not insist on copies of reports given by complainants if the Complainants are giving evidence and subjecting themselves for cross-examination.

- Proceedings should be faithfully recorded by the Enquiry Officer or by his Assistant, on the instructions from the Enquiry Officer. If the third party records evidence in the presence of the Enquiry Officer, necessary endorsement should be made in the records.
- Evidence at every stage should be read over to the delinquent employee before obtaining signature.

FINDINGS

- Should be recorded, should be based on evidence and not extraneous matters.
- Should be logical
- Normally, the Enquiry Officer should find out whether the employee is guilty or not
- Should not recommend punishment, unless express provision is there in the Standing Orders.

Case Law-Suspicion, as is well known, however high it may be, can under no circumstances be held to be a substitute for legal proof – Supreme Court judgment

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7431 OF 2008

(Arising out of SLP (C) No. 14429 of 2007)

ROOP SINGH NEGI ... APPELLANT

Versus

PUNJAB NATIONAL BANK & ORS. ... RESPONDENTS

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellant was working as a peon in the respondent – Bank.

On or about 24.11.1993, a complaint was lodged by the Manager of the Bank alleging that some drafts which were presented for encashment by M/s Anil Trader and some other persons and purported to have been issued from the Mall Road Branch of the Bank had in fact not been issued therefrom.

A First Information Report (for short, "FIR") under Section 380/120B of the Indian Penal Code was registered. The investigation of the said case was assigned to one Shri Janardhan Singh, Senior Inspector. He submitted a report on 11.12.1993, inter alia, opining that the integrity of the appellant who had been transferred to Rampur, Shimla was doubtful. It was concluded:

"In view of the facts stated above we are of the view that both the joint custodian i.e. Shri H.C. Grover – Manager, presently posted at BO Chandni Chowk, Delhi and Shri P.C. Gupta – AM are responsible for the loss of the drawing book since either of the two have remained one of the custodians from 1.6.93 to 24.8.93. The loss of drawing book could have been avoided had they taken due care and precaution.

Further, Shri Sharad Narain, Sr. Manager is also responsible as he has failed to ensure compliance of laid down instructions in respect of monthly checking of security forms and also for non-submission of M.C. after 31.5.93."

In the said report, various procedural lapses on the part of some officers of the Bank were also pointed out.

3. After five years of the said incidence, a disciplinary proceeding was initiated against the appellant stating that during the period 18.11.1991 and 9.10.1993, he had taken away one blank draft issue book bearing No. 626401 to 626425. A show-cause notice was issued. Cause was shown by him. He was found guilty by the Enquiry Officer. In the said proceeding, reliance was placed on the purported confession of the appellant before the police authorities in the year 1993. It was marked as Exhibit PE-3.

4. Indisputably, the forms and other important books and documents belonging to a Bank never remain in the custody of a peon. It was accepted that documentary evidences were collected by the police officers. Those documents were simply produced; they were not proved. The purported confession by the appellant was also not proved. Only because the said confession was made before the police authorities, the enquiry officer inferred on the basis thereof that the appellant had connection with those persons who had used those bank drafts, stating:

"....Therefore, the undersigned is of the opinion that PE-4 proves that Shri Roop Singh Negi has connections with the said culprits. On examination of witness MDW-1 on 20/7/99, he has said that according to the statement of Shri Roop Singh Negi, he has confessed that on the instructions/saying of Rajbir, Devinder alias Mental, Asif and Brahmpal, who are the residents of trans-Yamuna area he had stolen the draft book...."

It was, inter alia, concluded:

"In view of the above details/proceedings it is proved that the delinquent employee has admitted that drafts being no. QWA-626401 to 626425 have been stolen from Branch office Mall Road Delhi Branch vide page no. 25057 and has caused financial loss to the bank but he has not admitted that he has stolen the said drafts. As the main charge on the delinquent employee is of stealing the draft books and other documents, therefore, in such matters direct proof/evidence are not available generally and the conclusion has been arrived at on the basis of assumptions...."

Assumption of certain factual foundation was drawn on the basis of the documents supplied by the police as would appear from the following findings of the Enquiry Officer.

"1. Efforts were made to through Lost Draft book no. 626404 dated 6.9.93 for Rs. 6,90,000/- as prepared the fake draft and encashed through OBC Farukabad prepared through PNB Branch Farukabad and again draft drawn on OBC Delhi and encashed through CBI Narain branch.

2. From this draft no. 626402 dated 24.8.93 for Rs. 5,40,000/- made in the name of M/s Ajay Sales and encashed from Farukabad Branch.

3. From the pages, draft no. 626415 dated 27.9.93 for Rs. 7,35,000/- and draft no.626423dated 1.10.95 for Rs. 8,65,000/- drawn on branch Saharanpur and encashed on branch Khalsi Lines Saharanpur.

4. Arresting of culprits namely K.K. Gupta, Rajbir, Ashok Kumar, Ravinder Pal Singh, Kante Gupta and Harvinder alias Billa with the remaining pages of the draft book by the Thane Mysori (Ghaziabad) police.

5. Stealing of draft book bearing no. 626401 to 626425 and other documents from branch Mall Road Delhi.

6. First draft was issued on 24.8.93 from the stolen draft book which fact came to the knowledge of Mall Road Delhi Branch from the Central Bank of India Branch Officer.

7. Before 9.10.1993 Shri Roop Singh Negi was posted in the Mall Road Delhi Branch.

8. Bank Security Form Department is out of reach of non-bank employees/outsiders."

It was purported to have been found:

"1. Stealing of drawing book and specimen signatures of officers happened before 24.8.93.

2. The factum of stealing the drafts came to the knowledge on 24.11.93 while the same was done on 24.8.93. Draft book has been stolen from Security Form Department in such a manner which fact has come to the knowledge very late. Possibly this draft book has been taken away available at the last serial nos. of the draft books.

3. From the whole embezzlement it is clear that the gang had full knowledge of the banking working or any employee was involved in this embezzlement/fraud.

4. That fraud has been committed so cleverly so that there is no direct proof or evidence available."

Conclusion was drawn up on the basis of the above facts by the Enquiry Officer as under:

"That Shri Roop Singh has direct or indirect links with the culprits who were arrested by the Thane Mysori (Ghaziabad) along with pages of drafts and on the basis of whose statement Shri Roop Singh Negi was arrested by the Delhi Police on 9.12.93 from Rampur Bushahar Himachal Pradesh and taken to Delhi. Having links with the aforesaid accused, it is proved that Shri Roop Singh Negi has stolen the draft book no. 626401 to 626425 from the Security Form Department."

5. Before the disciplinary authority, the appellant contended that there was no evidence against him. The attention of the disciplinary authority was furthermore drawn to the fact that by an order dated 9.5.2000, the Criminal Court passed an order of his discharge. Only charges under Section 411 of the Indian Penal Code were framed against one Rajbir. Neither the State nor the Bank preferred any revision petition thereagainst. The same attained finality. The Regional Manager acting as a disciplinary authority by an order dated 24.1.2001 without assigning any reason and without considering the contentions raised by the appellant including the fact that he had been discharged by the criminal court, directed the appellant to be dismissed from services, stating:

"That I have again gone through the facts carefully and I hold you responsible for gross misconduct in terms of Bipartite Settlement clause 19.5 (amended from time to time) and there is no justification to reduce the proposed punishment. Therefore, in terms of the Bipartite Settlement clause 19.6, I confirm the proposed punishment "Dismissal from Bank Service". As you are under suspension, therefore, I order that in terms of Bipartite Settlement Provisions you will be eligible for subsistence allowance only till your dismissal from bank service."

6. Appellant made a representation against the said order before the appellate authority. The appellate authority noticing his contentions in details, inter alia, on the premise that appellant had been given an opportunity of personal hearing, the appeal was dismissed, opining:

"In view of the above, the submissions made by the appellant in his appeal dated 23.02.2001 and his verbal submissions made during personal hearing are devoid of merits. As such I find no reasons to interfere or alter the order of Disciplinary Authority. Thus keeping in view the nature and gravity of the proven charges, punishment of "Dismissal from Bank Service", imposed upon Shri Negi by Disciplinary Authority vide its order dated 24.01.2001 is hereby confirmed and appeal of Shri Negi is rejected."

7. The appellate authority also did not apply his mind to the contentions raised by the appellant; no reason was assigned in support of his conclusion. On what evidence, the appellant was found guilty was not stated.

8. Aggrieved by and dissatisfied with the said orders, the appellant filed a Writ Petition. The same by reason of the impugned judgment has been dismissed, stating:

"...The writ jurisdiction can be exercised by this court only in exceptional circumstances which have not been mentioned by the petitioner in the petition. However, once the petition was admitted for hearing in exercise of the writ jurisdiction after a lapse of so many years since the writ petition was admitted in the year 2001, it may not be appropriate for this Court to pass an order now that the petitioner should make out a case for reference to the industrial tribunal and therefore the petition filed by the petitioner is being considered."

9. The High Court noticed the decision of this Court in Kuldeep Singh vs. Commissioner of Police & ors. [(1999) 2 SCC 10], Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. [(2006) 4 SCC 713] and Bhagwati Prasad Dubey vs. The Food Corporation of India [AIR 1988 SC 434] whereupon reliance has been placed by the learned counsel appearing on behalf of the appellant, and held:

" All the aforesaid decisions are not directly attracted to the present facts though the law laid down applies to the present facts. But in the facts of the case it is not a case of no evidence but only in regard to the conclusions drawn based upon the evidence which reappraisal cannot be done by this Court. Coming to the arguments that there can be no reappraisal of the evidence by this Court once the findings have been given by the Enquiry Officer considering the evidence, it is not the case of the petitioner that there was no evidence at all as against him led before the Enquiry Officer, but the dispute is in regard to the conclusion drawn by the enquiry Officer based upon evidence. According to law even if two views are possible to be drawn against the petitioner on the basis of the Enquiry Report one which has been drawn by the Enquiry Officer cannot be held to be wrong taking the plea that the second view was also possible to be drawn based upon evidence. The decision of Hon'ble Apex Court in Narinder Mohan Arya's case (supra) clearly lays down that the proceedings of departmental enquiry report are quasi criminal in nature. Therefore the guilt of the delinquent official is not required to be proved beyond any reasonable doubt as in a criminal case.

We have considered the report of the Enquiry Officer and the penalty imposed by the Bank is based upon evidence as such it is not open to this Court to consider that some other view was also possible and since it was not a case of no evidence therefore there cannot be reappraisal of evidence or draw its own conclusion by this Court based upon evidence. The findings recorded by the Enquiry Officer and the punishment imposed by the respondent Bank or its officers call for no interference by this court and as such there is no merit in the petition which is dismissed accordingly."

10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents

thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

11. In Union of India vs. H.S. Goel [(1964) 4 SCR 718, it was held:

"....The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issued without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that sine no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charged framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by he appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondents case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him? In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

12. In Moni Shankar v. Union of India and Anr. [(2008) 3 SCC 484], this Court held:

17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely – preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

13. In Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), whereupon both the learned counsel relied upon, this Court held:

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1958 SCR 1080) and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735, Kuldeep Singh v. Commissioner of Police and Ors. (1999) 2 SCC 10]."

The judgment and decree passed against the respondent therein had attained finality.

In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. Appellant therein in the aforementioned situation filed a Writ Petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is *non est* in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasized that a finding can be arrived at by the Enquiry Officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non application of mind. This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679] to opine:

"41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr. (2004) 8 SCC 200 and Manager, Reserve Bank of India Bangalore v. S. Mani and Ors. (2005) 5 SCC 100. Each case is, therefore, required to be considered on its own facts.

42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it would be lawful to do so. In Manager, Reserve Bank of India, Bangalore (supra) this Court observed:

39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out."

14. In that case also, the learned single judge proceeded on the basis that the disadvantages of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating:

"....No such finding has been arrived at even in the disciplinary proceedings nor any charge was made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere *ipso dixit* on his part cannot be a substitute of evidence.

45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an Enquiry Officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of a court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error."

15. Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held:

"....Although the charges in a departmental proceedings are not required to be proved like a criminal trial, *i.e.*, beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

16. Yet again in Jasbir Singh vs. Punjab & Sind Bank & ors. [(2007) 1 SCC 566], this court followed Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), stating:

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do."

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely *ipse dixit* as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

18. For the aforementioned reasons, the judgment of the High Court is set aside. The appeal is allowed with costs and appellant is directed to be reinstated with full back wages. Counsel's fee assessed at Rs.25,000/-.

.....J.

[S.B. Sinha]

.....J.

[Cyriac Joseph]

New Delhi;

December 19, 2008

State Bank of India
Corporate Centre - Mumbai

e-Circular

CREDIT POLICY AND PROCEDURES DEPARTMENT
Sl. No. : 374/2006 - 07
Circular No. : CCO/CPPD-ADV/56/2006
Wednesday, October 18, 2006.

The Chief General Manager,
State Bank of India,
LHO / CAG / MCG / SAMG.

CPP/KKK/CIR / 56

October 9, 2006

Dear Sir/Madam

New Delhi:

Information Technology Act 2000
Bankers' Books Evidence Act

The Bankers' Books Evidence Act 1891 Section 2 has been amended by the IT Act, 2000. Besides amending Section 2 of the above act, Section 2A has been inserted in the IT Act 2000. The provisions contained in the amendment requires certifications by the Branch Manager/Accountant and specific certifications by the Person in-charge of the Computer Systems. We draw your attention in this regard to Systems and Procedures Department circular S&P/MMJ/932 dated 22nd December 2003, wherein detailed guidelines for furnishing the above mentioned certificates in respect of Loan accounts in respect of which suits are filed before Courts and Debt Recovery Tribunals etc.

2. In this connection, we have been advised by Inspection & Management Audit Dept, Corporate Centre, Hyderabad that branches continue to certify the computer print out of statements of accounts with the legend which was in vogue when manual ledgers were maintained, and the amendment effected by IT Act, 200 is not being adhered to.

3. Please ensure that the instructions contained in the circular of S&P Dept mentioned in para 1 above are complied with fully. We enclose for your ready reference a copy of S&P circular S&P/MMJ/932 dated the 22nd December 2003, referred to above.

Yours faithfully,

Sd/-

Dy Managing Director
& Chief Credit Officer

The Chief General Manager,
State Bank of India,
Local Head Office,

S&PAMMJ/932 Date : 22/12/2003

Dear Sir,

INFORMATION TECHNOLOGY ACT (2000)
BANKERS' BOOKS EVIDENCE ACT

As you are aware, under the "Bankers' Books Evidence Act 1891", the Bank is not compelled, unless by special order of the Court, to produce its books as evidence in any legal proceedings to which it is not a party. It is ordinarily sufficient for the Bank to furnish relative extracts from its books, duly certified by the branch manager or manager, in the form specimen of which was provided in para 67 of chapter 1 of volume II of Bank's Book of Instructions.

2. Hitherto, branches have been following the above instructions. Bank records, in computerised branches, are maintained in the computer system or floppies or CDs. Under these circumstances, it has become difficult for the computerised branches comply with the above quoted instructions.

3. Section 2 of the Bankers' Books Evidence Act 1891 has been suitably amended to widen the meaning of "Bankers' Books" and "Certified Copies" and also Section 2A has been inserted in recently enacted Information Technology Act 2000. As per the amendment, the meaning of "Bankers' Books" include not only those kept in written form, but also printout of data stored in floppies, disks, tape or any other form of electromagnetic data storage device. Similarly, "certified copy" not only means the copy of any entry maintained in written form, but also consist of printouts of data stored in a floppy, disc, tape or any other electromagnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2 A of the IT Act 2000. Further, a certificate from the person in-charge of the computer system to the effect that to "the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data" also has to be submitted as per the IT Act 2000.

4. In the light of the above amendments, it has become necessary to provide a comprehensive 'certificate' applicable to computerised branches in lieu of the 'certificate' provided in the Book of Instructions which is applicable to manual branches. The specimen certificate is enclosed to the draft circular forwarded herewith.

5. In this connection it may be observed that the proposed certificate contains precise details of the Bank's Computer Systems. Therefore, it may not be difficult to visualise that the details of the certificate are discussed by the defendant's advocates and difficult clarifications are sought. As such, it is considered necessary that while releasing to branches for use, the branch staff concerned are properly educated at appropriate fora."

6. We request you to arrange to educate the staff concerned in the matter by organising workshops / seminars through STCs and at ZO / LHO levels with the active participation of officials from C&C/DPC and Law Departments. Once the system is stabilized, we do not anticipate any further difficulties. We also request you to monitor the implementation of the new instructions through departments concerned for at least one year.

7. Please arrange to issue instructions as per the enclosed Draft Circular to the branches / offices under your control for meticulous compliance. We clarify further that where records are available in manual / written form, the certificates are to be issued in the existing proforma, even though the branch has been computerised subsequently.

8. Manual branches may be advised to follow the extant instructions in the matter.

9. Please arrange accordingly.

Yours faithfully,

Dy. Managing Director & CDO

All Ihos – it act 2000

CORPORATE CENTRE LETTER NO.S&P/MMJ/932 dated 22/12/2003

EXTANT INSTRUCTIONS

In terms of para 67 of Chapter 1 of volume II of Book of Instructions the Bank is not compelled, unless by special order of the Court, to produce its books as evidence in any legal proceedings to which it is not a party; it is ordinarily sufficient for the Bank to furnish relative extracts from its books, duly certified by the branch manager or manager, in the form incorporated there in.

REVISED INSTRUCTIONS

Hitherto, branches have been following the extant instructions. Consequent to computerisation of many branches, records are maintained in the computer system or floppies or CDs. Under these circumstances, it has become difficult for the computerised branches to comply with the above quoted instructions.

2. As per the Information Technology Act 2000, certain amendments have been made in respect of Bankers' Books Evidence Act 1891. As per the amendment, the meaning of "Bankers Books" include not only those kept in written form, but also printout of data stored in floppies, disks, tape or any other form of electromagnetic data storage device. Similarly, "certified copy" not only means the copy of any entry maintained in written form, but also consist of printouts of data stored in a floppy, disc, tape or any other electromagnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2 A of the IT Act 2000. Further, a certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data" also has to be submitted as per the IT Act 2000.

3. In the light of the above amendments, it has become necessary to draft a comprehensive 'certificate' applicable to computerised branches in lieu of the 'certificate' provided in the Book of Instructions which is applicable to manual branches. Draft certificate is enclosed.

4. In this connection, it may be observed that "the proposed certificate contains precise details of the Bank's Computer Systems. It is not difficult to visualise that the

clarifications are sought. It has therefore been decided that while releasing the final certificate to branches for use, the Circle / Zonal Office authorities should ensure that the branch staff concerned are properly educated in the matter at appropriate fora.

5. Authorities have been advised to arrange for educating the staff concerned in the matter by organizing workshops / seminars through STCs and at ZO / LHO levels. Branches may take up this matter with their controllers whenever necessary.

6. Manual branches will continue to follow extant instructions in the matter. We clarify further that where records are available in manual / written form, certificates are to be issued in the existing proforma even though the branch has been computerised subsequently.

7. Please arrange to bring the contents of the Circular to the notice of all staff working at your branch.

RATIONALE:

Consequent on the computerisation of branches and as per the requirements under IT Act 2000.

2 A(a) – to be signed by BM / Accountant / Manager of Division
2 A(b) & 2 A(c) – to be signed by System Administrator
Unless both sign the certificate is incomplete

Certificate Under Section 2A(a) of The Banker's Book Of Evidence Act, 1891 (as amended)

This is to certify that the statement of account for the period from ---------- (date) to ---------- (date) of Mr./Mrs/Ms. ---------- (Name of the borrower) bearing No. _____ (A/c No.) at (the _____ (Name of the Branch), where the account of the said borrower is maintained in the books of the Bank in a written form,

*is a true copy of entries contained in the ordinary books of the Bank which have been made in the usual and ordinary course of business and such books are still in the custody of the Bank.

*is a copy of the entries contained in the ordinary books of the Bank which have been made in the usual and ordinary course of business and the books are still in the custody of the Bank and such copy has been obtained by _____ (specify the mechanical or other process by which it is obtained) which itself ensures the accuracy of the copy;

*is a copy of the entries contained in the ordinary books of the Bank which have been made in the ordinary course of business but the books from which such copy has been prepared has been destroyed in the usual course of bank's business after the date on which the copy had been so prepared.

*and consists of printouts of data stored in a hard disk / DAT / CD -Rom / Other (specify)@ and is a printout of such entry / copy of printout of such entry.

Date :
Place :

Branch Manager / Accountant
Name and Designation

Instructions :
1. *Strike out whichever is not applicable.
2. Fill in the blanks appropriately.
3. Verify the clauses with actual practice being followed.
4. Modify the format if necessary.
5. @Delete words which not applicable.

Certificate Under Section 2A(b) and 2A(c) of The Banker's Book Of Evidence Act, 1891 (as amended)

This is to certify that the branch uses Bankmaster software for conducting its banking business. The Bankmaster software works on Disk Operating System (DOS). *[Where the software is required to be used on a Local Area Network, the Bank is using the Bankmaster software with Novell Netware.]* The systems used by the Bank are standard systems and the particulars of

A) safeguards adopted by the system to ensure that data is entered or any other operation performed by authorised persons are as follows: –

i. Data can be entered or another operation performed on the system only by authorised persons allotted unique user ids with passwords known only to the users only. Encrypted passwords are stored in system.

B) safeguards adopted to prevent and detect unauthorised change of data are as follows : –

i. Use of the system is based on the rights and privileges granted to each authorised user in the system.

ii. Transactions requiring authorisation entered by one user in the system are cleared / checked by another authorised official. Transactions not so cleared / checked are detected and reported for appropriate action and control at appropriate level laid down.

iii. All changes in customer profiles are entered using appropriate menus with appropriate control for the amendments. Issue of cheque books, recording of stop instructions, interest rates are also similarly controlled.

iv. The daily transactions are printed in the Day Book for all accounts and checked against relative vouchers / statements.

C) safeguards available to retrieve data that is lost due to system failure or any other reason are as follows : –

i. One hard disk backup and two back ups on DAT/CD-Roms of all data files is taken on all working days on site / off site.

ii A detailed Disaster Recovery Plan to meet any unforeseen eventuality and recover lost data is drawn up and approved appropriate authority.

D)manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices are as follows : –

i. The data transfer from the database to DAT/CD-Roms is done using authorised backup utility available to an authorised official.

E) mode of verification in order to ensure that data has been transferred accurately to such removable media are as follows : –

i. The backup utility used for data transfer has inbuilt facility to indicate completion of backup or otherwise. Error, if any, is shown in error log to enable the user to take appropriate corrective action

F) mode of identification of such data storage devices are as follows : –

i. Backup media is labelled internally and externally to identify the contents of the backup.

G) arrangements for the storage and custody of such data storage devices are as follows : –

i. Backup media is stored off site as per the arrangement approved by the appropriate authority.

H) safeguards to prevent and detect any tampering with the system are as follows : –

i. Authorised users only can log into the system with their passwords during hours and on days defined in the system

ii. An Audit Trail program checks for unauthorised tempering with the data.

I) any other factor which will vouch for the integrity and accuracy of the system are as follows : –

i. The Bank uses appropriate anti-virus softwares at the Branch as per the policy of the Bank.

ii. To take care of power failure or erratic power supply, UPS systems are installed at the Branch.

iii. The computer systems including, inter alia, the server, nodes, printers and UPS systems are covered by appropriate Annual Maintenance Contracts for carrying out repairs and maintenance work to keep the systems running efficiently and effectively.

This is to further certify that to the best of my knowledge and belief, the computer system operated properly on ** ..... (date) and I was provided with all the (computer system having hard disk / DAT/CD-Rom / Other, if any)@ data and the printout of the account bearing No. ..... (A/c No.) represents correctly / is appropriately derived from the (computer system having hard disk / DAT/CD-Rom / Other, if any) data at the ---------- (Branch) for the period from ----------(date) to --------- ----(date).

Date :
Place :

Person In-charge of computer system

Instructions : –

1. Fill in the blanks appropriately (Law Deptt to advise as to which date is to be filled in here)
2. *Strike out where LAN is not being used.
3. @Delete items not applicable.
4. **The date on which print out is taken.

CIRCULAR CIRDO/G/ 320 /99-2000

STATE BANK OF INDIA

LAW DEPT.

CHENNAI LHO

Date: 29.10.99

CIRCULAR TO ALL BRANCHES IN CHENNAI CIRCLE

BANKERS' BOOKS

PRODUCTION OF CERTIFIED COPIES

It is observed that copies of statement of accounts, ledger extracts and other documents used in the ordinary course of business of the Bank which are filed into the Court in suits filed by the Bank or against the Bank do not contain the certificate as required under law.

2. It may be noted that the object of the Bankers' Book of Evidence Act 1891 is to make the entries in Bankers Book admissible in evidence and for the use of the copies of entries of such books, instead of compelling the Bank to produce the original entries and documents. In terms of Sec.4 of the said Act, a certified copy of any entry in a Bankers' Book shall in all legal proceedings be received as prima facie existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case and to the same extent as, the original entry.

3. In this connection, 'a certified copy' means a copy of any entry in the book

certificate written at the foot of such copy that it is true copy of such entry. That such entry is contained in one of the ordinary books of a Bank and was made in usual and ordinary course of business and that such book is still in the custody of the Bank. In the absence of such certificate, the document sought to be filed will not be admitted in evidence. In such circumstances, the bank may have to file the original entry in the Court. It may also be noted any certificate which is not in the format prescribed in the Act, will not be accepted by the Court.

4. In view of the above, before filing any document into the court it is necessary for the branches to ensure that every copy of the ledger extract and other documents bear the following certificate appended at the foot of such copy with the seal of the Bank and signature of the Manager.

" Certified that the above is a true copy of entries in the Cash Credit/Term Loan ledger which is one of the ordinary books of the Bank. That such entries were made in the usual and ordinary course of business and that such books are still in the custody of the Bank.

Sd/- Branch Manager
SBI
... Branch."

5. The Act prescribes that only the Branch Manager, Principal Accountant (Manager of a division) can

the Bankers Book. The above statutory requirement applies to suits before Debts Recovery Tribunal also, apart from Civil court cases. Further, the certified copies should also reflect all the entries as they appear in the original ledgers or account books. It should indicate the actual rate of interest, the effective date of its application and the dates on which the revised rates are to be applied. The balances arrived in the account daily to the transactions effected on day to day basis should be reflected along with the opening and closing balances.

6. Branches are therefore advised that irregular and incorrect certificate under Bankers Books Evidence Act would materially and substantially affect banks interest in court cases.

7. Please note to ensure that the above instructions are strictly complied with. Any lapse on the part of the officials in this regard will have to be viewed seriously.

A.R.NARAYANA PRASAD
CIRCLE DEVELOPMENT OFFICER

P: Production of certified copies of Bankers' Book

Index Under:

PRACTICAL APPROACH
IN
DISCIPLINARY PROCEEDINGS

Compiled by

SHRI H GANAPATHY

Former President,

State Bank's Staff Union (Chennai Circle)

WORKSHOP ON DISCIPLINARY PROCEEDINGS

15th to 17th AUGUST 2013 at TIRUPATI

Under the aegis of

NATIONAL CONFEDERATION OF BANK EMPLOYEES

H.Q. HYDERABAD

INTRODUCTION

Decades of bitter struggles and unparalleled sacrifices by the workers won many rights to them through their collective will. The relationship became one of "Employer and Employee".

New Economic Reforms under the guise of Globalisation and Privatisation bring sea change in the service industries which include banking. Attempts are made to pass on the Production and Distribution to the control and ownership of a few individuals. These attempts are pitted against the wage earner thus converting the relationship into a new order viz. "Master and Servant".

In the changed scenario the master will tend to have all the rights leaving none to the servant. The master may victimize the workers by dismissing them invoking the hire and fire policy. The law at least in theory abhorred and condemns arbitrariness and colourable exercise of power. The present day statutes of course curb the unfettered rights of the employer to punish and even to dismiss the workers. The enunciation of the procedures in the area of the discipline and the codification of the acts of misconduct are the results of the hard bargaining strength of the Trade Unions. As a result the worker was given the right to be heard. The employer was compelled to afford reasonable opportunity to the worker and to conform to the principles of the Natural Justice. Thus arose the concept of Disciplinary Proceedings.

Bank Managements have started specializing on the area of disciplinary matters setting up separate departments or cells in their Head Offices and Zonal Offices. Legally qualified persons are being appointed as Officers to man these departments/cells. Therefore a need has arisen for the Trade Unions to strengthen their Defences. Virtually it is a game of chess. Besides thinking of our moves on the board, a reasonable assessment of counter moves has to be made and strategies ought to be worked out to meet the moves of the Managements.

THE PROCEDURE TO TAKE DISCIPLINARY ACTION – ITS ORIGIN

Initially the Industrial Employment (Standing Orders) Act 1946 had been regulating the disciplinary proceedings against the workers where no specific rules and procedures were in vogue. The provisions of the Standing Order had only influenced the tribunals in awarding a disciplinary procedure. As a result in July 1950 Sen Award came into being and its many provisions as regards disciplinary procedures were carried forward in Sastry Award 1953. The award given by Desai Tribunal in 1962 again reproduced what had been stated in Sastry Award.

The procedures laid down in the awards to a great extent transformed the days of jungle law to due process of law with the result before taking disciplinary action against an employee there has to be an enquiry and such an enquiry has to conform to the principles of Natural Justice. This is besides giving a reasonable opportunity to a charge-sheeted employee to defend himself in such an enquiry.

The Awards drew a distinction between an offence and misconduct. The misconduct was divided into gross and minor. The Awards also went on to explain what would constitute a misconduct. They also laid down the punishments that would be imposed upon a worker against whom charges have been established in a domestic enquiry

according to the nature of the misconduct. The Awards also empower the Management of a Bank to place an employee under suspension pending enquiry.

The most important feature of the chapter on disciplinary action in the Awards was the right given to the bank employee to be defended in an enquiry by a Representative of a registered Union of Bank Employee which many industries and establishments deny even today.

Justice should not only be done but appear to be manifestly done which means that the formalities should be observed by the Managements not only in letter but also in spirit. The presence of a Representative of the Union should ensure against the lapses of the procedure getting familiarised with a role to be played by him in a domestic enquiry. A Representative of a Union is different from a lawyer in a court of a law. He acts not only as a Defender of the Charge-sheeted employee but also a Representative of the Union. He has to put his heart and soul into the work that has been assigned to him or has been taken up by him.

When an act of commission or omission takes place leading to a situation where proceedings have to be launched against an erring employee, it is the prerogative of the Management to treat the incident either as an offence and leave it to outside agencies or to deem it as a misconduct and assume upon it the right to decide it in a domestic tribunal within the four walls of the bank.

OFFENCE

Offence means any acts or omission made punishable by an law for the time being in force as per the definition given in the General Clauses Acts 1897. Every offence is not however an offence involving moral turpitude.

Determination of the question whether an offence involves moral turpitude requires consideration of the following aspects, viz.

Whether the act constituting the offence was such as could shock the moral conscience of the Moral turpitude means something done contrary to honesty or good morals. In general terms and understanding, offences like cheating, falsification of accounts, forgery, fraud, misappropriation, theft etc. would involve moral turpitude but not the breach of traffic rules are prohibition offences.

1) Whether the act constituting the offence was such as could shock the moral conscience of the society in general
2) Whether the motive which led to the act was a base one
3) Whether on account of the act have been committed the perpetrator could be considered as a person of a depraved character or a person who was to be looked down upon by society.

The Awards provide that disciplinary actions can be taken against an employee who is convicted of an offence involving moral turpitude. A "conviction" must not be confused with a "sentence". Upon conviction an employee may be sentenced to imprisonment and / or find or released under the Probation of Offender's Act 1958.

SUSPENSION

The Awards and Settlements empower the Bank Management to place an employee under suspension pending enquiry or initiation of such enquiry. An employee therefore can be placed under suspension even before serving the charge sheet.

Placing an employee under suspension pending investigation is not correct and the decision to suspend should be in "conformity with Bipartite Settlement" which means that suspension can only be ordered pending enquiry or initiation of such enquiry. The following are to be ensured while ordering suspension against an employee

1) The order must be in writing
2) The charges should be of serious nature
3) The order must be signed by the Designated Authority
4) The order must make a reference to the payment of subsistence allowance
5) The charge sheet should follow the order within a reasonable period

When the employee is exonerated he is entitled to full pay and allowances and to all other privileges for the period of suspension.

When an employee dies before finalisation of department / Court Proceedings he would be entitled to pay and allowances for the period of suspension up to the date of his death.

SUBSISTENCE FOR SUPENDED EMPLOYEE

The following provision shall apply in regard to payment of subsistence allowance to workmen under suspension

1) For the first 3 months, 1/3 of the pay and allowances which the workman would have got but for the suspension.
2) Thereafter ½ of the pay and allowances
3) After one year, full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workman or any of his Representatives. Where the investigation is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after six months from the date of receipt of report of such agency, or one year after suspension, whichever is later and in the event of the enquiry is delayed for reasons attributable to workman or any of his Representatives.

INCREMENT DURING SUSPENSION

An employee under suspension is entitled to increment as and when they fall due and also the variation in the dearness allowance slabs.

DEDUCTION

Statutory deduction can be made from the subsistence allowance except contribution to P.F. Recovery towards loans availed by the employee can also be made. However the subsistence allowance cannot be attached by Court Orders.

INDEFINITE SUSPENSION PENDING ENQUIRY IS PUNITIVE

Indefinite or unending suspension is held punitive in law and not permissible. Law course have revoked the suspension merely on the ground that the suspension is indefinite or prolonged one. Prolonged suspension is unjust as it is against Natural Justice. A relevant case is here below:

"In the case of Board of Trustees of the Port of Bombay vs. Dilip Kumar Ragavendara Nath Nadkarni, (1983) 1. SCC 124 ; 1983 1 LLJ 1, the Court held that the expression "Life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of Natural Justice and fair play in action. The conditions of service are within the executive power of the state or its legislative power under the proviso to Art. 309 of the constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of Natural Justice that the delinquent Officer when place under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognized, it would imply that the executive is being vested with totally arbitrary and unfettered power of placing its Officers under disability and distress for an indefinite duration."

(O.P.Gupta Vs. Union of India, 1987 4 SCC 328, 340,341; AIR 1987 SC 2257)

"If the disciplinary proceedings are allowed to continue for an indefinitely long period and the Officer kept under suspension, it would imply that the Bank is vested with a total arbitrary and unfettered power of placing its Officer under suspension for an indefinite duration. No Court can accept such a power with the Bank".

(Ramoo Ramesh Vs. Andara bank 1992 3 SLJ 144 ; 1992 2 LLJ 838

WHEN SUSPENSION COMES TO AN END

The Order of Suspension comes to an end when the punishing authority passes the final order and the order of suspension merges with the final order.

Revocation of suspension or death of an employee also puts an end to the order of suspension

MEMOS

Memo is a starting point of disciplinary proceedings. It is only an attempt on the part of a Management to gather information. It is also an opportunity given to an employee to explain his side of the case. In the normal circumstances a memo must be answered. It may be even a blessing not to answer a memo under certain abnormal conditions and exigencies. Best discretion must be left in the hands of Trade Union Representative who knows it better.

Before answering, a memo should be studied thoroughly not only for its contents but also the background materials available. If proper assessment of the situation is made

and also aim of the Management behind the issuance of the memo, we will be able to do justice to the issue. It is possible to stop the offensive at that point itself and make the Management retrace its steps or not to allow them from proceeding further in the matter. Instances are not rare when much of the information wanted by the Management has come from the employees themselves and from their own replies. Managements issue the memos by way of probing the matter.. One may even send a one-sentence reply denying the allegation and such denial will also constitute a reply.

If necessary, even at the reply stage we can seek the permission of the authorities to peruse the register or a voucher before answering a memo.

CHARGE SHEET

A charge sheet is the basic document from the Management – basic in the sense that a Management cannot go beyond what is stated in a charge sheet.

A charge sheet should be signed by the appropriate authority already designated.

A charge sheet must be specific and unambiguous in framing the charge which means that the contents should not be capable of more than one interpretation.

A charge sheet should be specific about the nature of misconduct, the date, time and place of the occurrence of the incident referred to in the charge sheet.

The words use should be mentioned in charge sheet relating to use of abusive or intimidatory language however demeaning or defamatory or vulgar the language used might have been.

There should be no element of pre-determination or conclusion on the part of the Disciplinary Authority while framing the charges.

There should be no reference to the earlier misconducts, if any, on the part of the charge sheeted employee.

There must be a reasonable time frame or limit to answer the allegations contained in the charge sheet.

REPLY TO CHARGE SHEET

Once a charge sheet is received the ball is in the court of the charge-sheeted employee. He is placed in the position of making up decisions.

a) whether to reply or not and
b) if he chooses to reply, what he should say or what he should not say.

The employees giving reply on their own and repenting later for the same and succumbing to pressures from the Branch Manager / Investigating Officer to give "confession statements" some time witnessed by the Local Secretaries have to be scrupulously avoided.

A charge sheet on the face of it may have certain glaring mistakes viz. factual and typographical errors, quoting of the irrelevant clauses etc.

As far as possible a charge sheet should be replied to as it is an opportunity given to the employee to rebut in writing the allegations contained in the charge sheet and the reply is a basic document as is the charge sheet to management.

While replying, care should be taken not to mention or refer to the factual errors. Whenever such mistakes are pointed out, the Disciplinary Authorities have lost no time in issuing what is called an amended charge sheet.

Where the facts are overwhelmingly against the charge sheeted employee, the allegations are to be met by way of partially admitting and partially denying – accepting the facts of the case and denying the motives attributed.

When a charge sheet is replied to, the judicial function of the disciplinary authority is to consider the reply dispassionately and judiciously and come to a conclusion whether to proceed further or drop further proceedings. But very often the reply submitted by the charge sheeted employee is always found not satisfactory and an enquiry follows automatically.

WAIVER OF ENQUIRY

A waiver of enquiry will arise only in the following cases

1. When the employee is advised of the misconduct through a show cause notice with a punishment for which he may be liable for such misconduct.
2. The employee makes a voluntary admission of guilt to aforesaid show cause notice; and
3. The misconduct is such that even if proved the Bank does not intend to award the punishment of discharge or dismissal.

In all the cases not covered by above conditions, the next stage after the reply is the holding of an enquiry where the explanation is found not satisfactory by the Disciplinary Authority.

CONSTITUTION OF ENQUIRY

When a Disciplinary Authority is not satisfied with the reply given by the charge sheeted employee, the matter proceeds to the next stage viz, constitution of enquiry which is over and above the preliminary investigation that might have been ordered earlier.

When the preliminary investigation take place, some times the Investigating Officer is flanked with the head of the department while putting questions to upset the employees psychologically and frighten them which procedures should be stoutly opposed. When questions are put during investigation orally they should be answered only orally and the participating employees are under no obligation to sign the statements.

The domestic enquiry is a fact finding mission and the appointment of the enquiry officer is communicated to the charge sheeted employee in writing simultaneously advising the appointments of the Presenting Officer to present the management's case.

The enquiry Officer has no powers to summon the witnesses and the standard of proof is not one of establishing guilt beyond reasonable doubt as in a court of law. Simple proof is sufficient and preponderance of probabilities would be the guiding factor.

The employee who is to be tried has to be informed of all the circumstances and materials appearing against him sufficiently in advance of the commencement of the enquiry proceedings.

The charge sheeted employee has a right to demand from the enquiry officer the list of documents and names of the witnesses proposed to be relied upon by the prosecution.

On the date of the enquiry, the concerned persons viz. the enquiry officer, presenting officer, charge sheeted employee and defence representative meet in a place and at the time indicated in the notice of the enquiry. Others who are not connected with the enquiry, however big they may be, are not to be permitted inside the enquiry room.

The first question that is put to the charge sheeted employee is whether he has received the charge sheet and the second question is whether he accepts the charge or not. In cases where the charges are of a complex nature, a flat denial may not be possible, but the employee can reply "I deny the charges as framed in the charge sheet".

One of the fundamental duties of an enquiry officer will be to record the proceedings diligently and faithfully. Once the preliminary questions are recorded, the enquiry officer will advise the presenting officer to go ahead with the presentation of the management's case.

At this stage the defence has got a right to raise what is known as "preliminary objections" on matters which include all the infirmities, defects etc. on the charge sheet like

a) Ambiguity and vagueness regarding the details of the charge like time, place, date etc.
b) Typographical errors
c) Unauthenticated alterations
d) Misclassification of charges
e) Absence of the actual words of threat, intimidation and abuse.
f) Charge sheet emanating from undersigned, non-designated authority
g) Undue delay from the time of suspension to the charge sheet, from the first memo to the charge sheet
h) Attempts to victimize and / or harass trade union activist and office bearers
i) Presence of a legally trained person as presenting officer

Whether a ruling given on the spot or subsequently on the above objections, it must be backed by reason and sound arguments conveying why the objections are being overruled by the enquiry officer.

If the objections on which the ruling is re[redacted]very vital importance and will have the effect of affecting further proceedi[redacted]e it will be better an adjournment is taken or granted.

PRESENTATION OF CASE BY PRESENTING OFFICER

While some Presenting Officers try to make a short recital of the charges, some straight away attempt to open the case. The enquiry then mover over to the next stage viz. marking of documents and releasing the list of witnesses of which the Presenting Officer might have already given an indication to the charge sheeted employee in writing. This apart the prosecuting officers proclaim their right to bring in further witnesses or documents if found necessary.

MARKING OF DOCUMENTS

Documents from the management side are marked as PEX or MEX and are serially numbered. Here the defence representative should exercise care to see that the originals are marked.

If any exhibit is found to be extraneous or irrelevant to the charge and enquiry, the defence can protest and object and strive for its removal from the list of the exhibits.

Here again important point to be noted is that these exhibits do not acquire evidentiary value automatically as they are introduced. They come to "life" only when presented through the maker of the documents which do not include the bank's accounting books. But the entries in these registers/books are open to scrutiny at the proceedings.

If at a later stage, the Presenting Officer wished to introduce a new document or a new witness, he has to explain the need for introducing additional evidence to the satisfaction of the enquiry officer and the defence.

EXAMINATION-IN-CHIEF

The presenting officer begins the case through examination of his witnesses by putting certain questions to them to bring about a sketch of what had happened.

In-Chief-examination the presenting officer should not put what is called a leading question.

A leading question is one in which the answer to be given by the witness is already there and witness has merely to say "yes" or "no". When leading questions are put, the defence representative must be alert to raise his objection.

It is for the witness to tell the enquiry officer from his personal knowledge what he saw or what he heard or what he knows.

A witness is not expected to answer the question in chief-examination by referring to his prior statements. The defence representative will have to object to such improper procedure being adopted.

But the prior statement if any, will have to be shown to the witness strictly for the purpose of identification.

The presenting officer has right to present his witnesses in any order, but the defence representative is to ensure against bringing the star witnesses at the end. Because the presenting officer may conveniently some times drop star witness and the defence representative should insist upon the production of star witness as the first witness.

CROSS-EXAMINATION

The testimony that has come through the chief examination is the matter for cross-examination.

There may be situation where the witnesses who are given prior statements which were adverse to the charge-sheeted employee may come out with a testimony which is favourable to the employee. In such circumstances it will be even harmful and dangerous to cross-examine the witness who has come out with a favourable testimony. This goes by the name "silent cross-examination".

The broad fourfold purpose of cross-examination is :

1. The chief purpose of the cross-examination is to destroy the prosecution case in toto if possible and also discredit the prosecution witnesses in the process.
2. Where it is not possible to destroy the prosecution case in toto, to reduce the gravity of offence or misconduct
3. To discover new evidence in favour of the employee.
4. To uncover the existing evidence.

In the process the defence can also summon the records not necessarily for marking but for inspection also.

A cross-examiner will have to maintain his cool at all times and cannot commit the costly mistake of losing his temper and balance and earn the displeasure of all concerned.

The two well-known methods of cross-examination are :

1. Silken and velvety method
2. Bullying and badgering method

There can be judicious mixture of growth by the defence representative.

The defence representative should not expect the management witness to admit all the suggestions put to him in cross-examination.

The defence should not jump into the crux of the issue at the outset.

The defence representative should decide where to start his cross-examination, the sequence through which the witness has to be taken through in an unexpecting manner and when all the possible routes are blocked, the final blow has to be given.
It will not be prudent to start the cross-examination at a point where the witness is fully turned to answer question. It can be in the form of a few questions here and a few questions there before mopping up.

A defence representative must also know to feel content where further cross-examination of a witness would prove unproductive.

While starting as well as ending an effective cross-examination, the defence representative has to take full advantage of all contradictions by the same witness, contradiction between one witness and another witness and contradiction between the present testimony in the prior statement.

EXPERT EVIDENCE

By expert evidence it is meant the testimony of or evidence given at the enquiry by certain persons like doctors, fire arm experts, hand writing experts etc.

The testimony of expert witness is only an opinion.

Now a days hand writing experts are being produced to identify the hand writing of the person involved. Since this is a nebulous science another expert can be pitted against the other expert.

DOCUMENTARY EVIDENCE

Vagaries, forgetfulness, inability for proper reproduction, inability to explain cogently which are characteristics of oral testimony are absent in documentary evidence.

A document simply by its produotion does not become evidence. It has to be proved through the maker. The management has to let in evidence as to its contents and prove it.

Once documents are marked as exhibits, the defence is entitled to take advantage of the entire documents and cross-examine widely with reference to all aspects of the entire document even if the chief examination is limited only to some particular aspects.

RE-EXAMINATION AND RE-CROSS EXAMINATION

Re-examination is the process by which the prosecution tries to seek clarification etc. in the areas where there is ambiguity in the testimony of management's witness arising out of cross-examination.

A good cross-examiner should leave no scope for re-examination.

Re-examination at any rate cannot be resorted to by way of retrieving lost ground or gaining new ground.

The attempts to bring in new elements or cover new ground which prosecution failed to do in chief examination should be strongly resisted by the defence representative.

DEFENCE EVIDENCE

When the situation is reached after the completion of taking evidence of all the management's witnesses, the defence should insist upon the prosecution to make a

declaration that he has no further witnesses and documents to be produced and only thereafter the defence side of the case is to be presented, if any.

The defence should exercise greater care in choosing the witnesses and should not pitch upon such person who cannot stand the test of cross-examination.

The defence should avoid as far possible examining the charge sheeted employee as a defence witness.

WRITTEN SUBMISSIONS OF PRESENTING OFFICER AND DEFENCE REPRESENTATIVE

Once the defence side of the case is also over, it is followed by a discussion between the three parties to fix a time frame before which the parties concerned give their written submissions.

A defence representative before preparing his submissions or before concluding it, must read attentively .the presenting officer's written brief and meet his points.

The defence submission should focus the advantageous areas of the proceedings to the pointed attention of the enquiry officer.

The defence submissions must contain briefly the charge or even refer to a memo that might have been the starting point.

The infirmities in the charge sheet should be discussed in the brief.

The violation of principles of Natural Justice during the course of enquiry proceedings must also be brought on record in the submission besides the other relevant matters arising out of the proceedings.

The purpose of the written brief is to bring on record that the testimony of prosecution witnesses had been totally false and motivated.

FINDINGS OF THE ENQUIRY OFFICER

On receipt of the written submissions from the presenting officer and defence representative, it is the duty of the enquiry officer to give his findings. Such findings must be backed by a reasoned report and submitted to the disciplinary authority who appointed him to enquire the charges.

The charge sheeted employee is to be given an opportunity by the disciplinary authority to comment on the report given by the enquiry officer before himself taking a view on that. If this is not provided then the enquiry will only get vitiated.

This is an opportunity which should be effectively utilized to point out lack of application of mind on the part of the enquiry officer to the recorded proceedings of the enquiry, bias, perversity, import of personal knowledge etc. if any.

It is open to disciplinary authority to differ from the enquiry officer over his findings and in that event he must give his own findings with cogent reasons.

SECOND SHOW CAUSE NOTICE

The stage now is to set to serve what is called a second show cause notice upon the charge sheeted employee.

The second show cause notice will specify the date on which a personal hearing to be given to the charge sheeted employee on the question why the proposed punishment should not be imposed upon him.

On receipt of the second show cause notice the defence representative must satisfy that all connected records cited above form part of the second show cause notice.

The colourable exercise of powers and hostile discrimination on the part of the disciplinary authority himself can form part of the reply to the second show cause notice besides making a mention on the harshness of the punishment and nature of the same.

Once the personal hearing is over the disciplinary authority has got to again exercise his mind judiciously in the matter and decide upon the quantum of punishment.

Once the punishment is imposed i.e. the disciplinary action is taken, the enquiry proceedings come to a close.

APPEAL

Everything connected with the enquiry from a to z can be taken up in the appeal right from the infirmities in the charge sheet, violation of principles of Natural Justice, denial of reasonable opportunity, bias, perversity, prejudice, basic error on the part of the enquiry officer and colourable exercise of powers by the disciplinary authority.

After having raised all the points which include those had been agitated from the very beginning before Appellate Authority, it must also be emphasized that the punishment imposed on the charge sheeted employee is disproportionate to the charges alleged in the charge sheet.

The Appellate Authority can either confirm or reduce or set aside the punishment imposed by the disciplinary authority.

The rejection of the appeal or reduction of punishment or even setting aside of punishment must be backed by a cogent and sound reasoning.

When the appeal is disposed by the Appellate Authority, the final curtain comes down to the proceedings.

With the disposal of the appeal preferred by the affected workmen to the Appellate Authority constituted under Awards, the disciplinary proceedings in so far as managements are concerned come to a close. The only alternative before the employee is to raise a dispute as enshrined in the Industrial Dispute Act 1947.

The basis of findings of the enquiry officer are the 'reasons'. A finding without reasons is no finding at all. The Enquiry Officer should state his reasons in support of his findings. Where enquiry officer failed to give reasons and has submitted a cryptic report findings suffer from serious infirmity.
(Sur Enamel & Stamping Works Ltd., 1963 II LLJ 367)

A case study of enquiry officer's report - judicial Appraisal

While dealing with the findings of the enquiry officer in Anil Kumar case, the observations of Supreme Court are relevant.

In this case, there was no enquiry worth the name and any punishment flowing out of such findings would be unsustainable. In the words of Supreme Court.

> "the enquiry officer has to act judicially. He has to apply his mind to the evidence and discuss the evidence and cannot merely record his ipsi dixit that the charges were proved. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. An order of termination based on such proceedings disclosing non-application of mind would be unsustainable.

(Anil Kumar Vs.Presiding Officer & Other 1986 1 LLJ 101)

Non application of mind

The application of mind by the enquiry officer in arriving at the findings supported by reasons is another important aspect. The application of mind as well as disclosure of reasons is essential for findings to sustain. Rajinder Kumar Kindra of Raymond Woollen Mills Ltd., was dismissed from service based on the findings of the enquiry officer. The enquiry officer held that Kindra was actively responsible for committing the fraud on the company with one R.S. Negi and all the charges as contained in the charge sheet against him were held proved.

The dismissal was challenged on the ground that the findings of the enquiry officer were perverse and there was no evidence in respect of either the charge of negligence or embezzlement of funds. The arbitrator award went against the employee. After having failed to get justice in the High Court, the matter was taken before the Supreme Court by special leave.

Allowing the appeal and setting aside the order of dismissal and directing reinstatement in service with full back wages and consequential benefits, the Supreme Court in its judgement observed as follows:

> "It is equally well settled that where a quasi-judicial Tribunal or Arbitrator records findings based on no legal evidence and the findings are either his ipsi dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the Arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based no legal evidence

and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. It went on to say that the High Court was in clear error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence"

(Rajinder Kumar Kindra Vs.Delhi Administration 1984 II LLJ 517)

Perverse findings

Where the findings of the enquiry officer is not supported by any legal evidence or the findings are such that on the basis of material on record, no reasonable person could have arrived at then it is called perverse findings. If findings are not supported by legal evidence and / or no reasonable person could have arrived at on the basis of the materials before him and / or based on ulterior considerations other than the proved misconducts of the workmen and / or basically wrong and not warranted by the evidence on record, the findings are perverse in nature.

An important case law on the point is as under:
A.L.Kalra was an employee of the Project and Equipment Corporation of India Ltd. He had taken advance for purchase of a plot of land and acquiring a vehicle. He was charge sheeted on the allegation that he did not utilise the advance for the purpose for which it was given nor did he refund it. After enquiry, he was removed from service. The employee unsuccessfully challenged the order of removal before the High Court of Delhi. When the matter was taken up before the Supreme Court in appeal, the findings of the enquiry officer came under attack as below:

"9. What is referred to as the report of the enquiry which is minutely scanned in the preceding paragraphs merely seems to be the record of the enquiry and recapitulations of the allegations and explanation. What is styled as findings of the enquiry officer are separately filed. This is a bald document of two paragraphs in which the enquiry officer records that the appellant has contravened rule of House Building Advance Rules and has thereby committed misconduct punishable under Rules. In paragraph 2, it is siated that the appellant has committed breach of rule of the Conveyance Advance Rules and has thereby committed misconduct punishable under Rules. By what process this conclusion is reached or what evidence appealed to him is left for speculation. The reasons in support of the conclusion are conspicuous by their absence. The findings are the ipsi dixit of the enquiry officer."

Further the role of the disciplinary authority as well as appellate authority in this case also came under attack by the Supreme Court.

"28. The situation is further compounded by the fact that the disciplinary authority which is none other than Committee of Management of the Corporation while accepting the report of the enquiry officer which itself was defective did not assign any reasons for accepting the report of the enquiry officer. After reproducing the findings of the enquiry officer, it is stated that the committee of management agrees with the same. It is even difficult to make out how the committee of

management agreed with the observations of the enquiry officer because at one stage while recapitulating the evidence the enquiry officer unmistakably observed that the appellant was subjected to double punishment and at other place, it was observed that granting extension of time and acceptance of documents and balance advance would tantamount to extending the time which would make the affair look wholly innocuous. This shows utter non-application of mind of the disciplinary authority and the order is vitiated."

While dealing with the appellate authority, the Supreme Court did not spare him too. In their Lordship's words.

"12. The salient feature which flies into the face about the findings recorded by the enquiry officer and the order made by the disciplinary authority as well as the appellate authority is that none of them made a reasoned order or speaking order and the conclusions are a mere ipsi dixit unsupported by any analysis of the evidence of reasons in support of the conclusions."

"29..... appellate authority after going through the records of the case, has decided to uphold the decision of the disciplinary authority and to confirm the penalty of removal from service imposed upon the appellant..... .....in order to ascertain whether the rule is complied with, the order of the appellate authority must show that it took into consideration the findings, the quantum of penalty and other relevant considerations ..... No attempt was made to urge that the three authorities had ever assigned reasons in support of their conclusions."

"30..... Therefore the order of removal from service as well as the appellate order are quashed and set aside."

(A.L.Kalra Vs. Project & Equipment Corporation of India Ltd., 1984 II LLJ 186)

In arriving at a finding, the Tribunal has totally ignored certain evidence on record. Such a finding will be perverse. The finding of the enquiry officer is perverse if it is based on no evidence and the enquiry officer, apart from evidence, is expected to appreciate the background and circumstances relating to a charge before arriving at his conclusion.
(Bhagwati Prasad Dubey Vs. Food Corporation of India and another 1987 II LLJ 533)

<u>Furnishing of enquiry officer's report - essential part of reasonable opportunity</u>

The delinquent is entitled to be supplied with a copy of the findings of the enquiry officer or the enquiry officer or the enquiry report after conclusion of the proceedings. Otherwise it is denial of reasonable opportunity. The Supreme Court on the subject stated.

"We make it clear that wherever there has been an enquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation

against it,m if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

(Union of India & Ors. Vs. Mohd. Ramzan Khan 1991 1 LLJ 29)

The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justica require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the enquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."
(Electronic Corporation of India Ltd. Vs. Karunakar (S.C.) (1994) 84 FJR 236, 237)

<u>Requirement of fair and proper enquiry</u>

The Supreme Court observed on the above subject as follows:

"Take the present case where, after the enquiry was held, the manager who held the enquiry has not recorded any findings and so, we do not know what reasons weighed in his mind and how he appreciated the evidence led before him. The learned Solicitor General contends that there was hardly any need to record any findings or to make a formal report in the present cases, because the manager who held the enquiry was

himself competent to dismiss the employees. We are no impressed by this argument. The whole object of holdin an enquiry is to enable the enquiry officer to decid upon the merits of the dispute before him, and so, i would be idle to contend that once evidence is recorded all that the employer is expected to do is to pass a order of dismissal which impliedly indicates that th employer accepted the view that the charges frame against the employee had been proved. One of the test which the industrial tribunal is entitled to apply i dealing with industrial disputes of this character i whether the conclusion of the enquiry officer wa perverse or whether there was any basic error in th approach adopted by him. Now such an enquiry would b impossible in the present case because we do not kno how the enquiry officer approached the question and wha conclusions he reached before he decided to dismis jadav. In our opinion, therefore, the failure of th manager to record any findings after holding the enquir constitutes a serious infirmity in the enquiry itself The learned Solicitor-General suggested that we migh consider the evidence ourselves and decide whether th dismissal of Jadav is justified or not. We are no prepared to adopt such a course. If industria adjudication attaches importance to domestic enquirie and the conclusions reached at the end of suc enquiries, that necessarily postulates that the enquir would be followed by a statement containing th conclusions of the enquiry officer. It may not be tha the enquiry officer need not write a very long c elaborate report but since his findings are likely t lead to the dismissal of the employees, it is his dut to record clearly and precisely his conclusions and t indicate briefly his reasons for reaching the sai conclusions. Unless such a course is adopted, it woul be difficult for the industrial tribunal to decid whether the approach adopted by the enquiry officer wa basically erroneous or whether his conclusions wei perverse. Indeed, if the argument urged before us by the learned Solicitor-General is accepted, it is like to impair substantially the value of such domest enquiries. As we have already observed, we must insi on a proper enquiry being held, and that means tha nothing should happen in the enquiry either when it held or after it is concluded and before the order dismissal is passed, which would expose the enquiry the criticism that it was undertaken as an emp formality. Therefore, we are satisfied that t industrial tribunal was right in not attaching a importance to the enquiry held by the manager in deali with the merits of the dispute itself on the eviden adduced before it."

(Khardah and Co Vs. Its Workmen 1963 II LLJ 456)

ANNEXURE to DBOD.NO.GC.BC.126/C.408A (89-90) dated July 3 Asadha 12, 1912 (saka) addressed to the Chief Executives of Sector Banks:

Guidelines for referring fraud / embezzlement cases to Bureau of Investigation / Local Police.

INSTITUTION OF SIMULTANEOUS DEPARTMENTAL ACTION WHEN A CASE FILED IN THE COURT AGAINST THE DELINQUENT EMPLOYEES:

EXTRACTS

"28.1 Prosecution should be the general rule in all cases which are found fit to be sent to court after investigation and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds. In other cases, involving less serious offences or involving malpractices of a departmental nature, departmental action only should be taken and the question of prosecution should generally not arise.

28.2 There is no legal bar to the initiation of departmental disciplinary action under the rules applicable to the delinquent public servant where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency / misconduct in criminal prosecution and departmental proceedings, as well as the standards of proof required in both cases are not identical. In criminal cases, the proof required for conviction has to be beyond reasonable doubts, whereas in departmental proceedings, proof based on preponderance of probability is sufficient for holding the charges as proved. What might, however, affect the outcome of the subsequent proceeding may be the contradictions which the witnesses may make in their deposition in the said proceedings. It is, therefore, necessary that all relevant matters be considered in each individual case and a conscious view taken whether disciplinary proceedings may not be started alongside criminal prosecution. In a case where the charges were serious and the evidence strong enough, simultaneous departmental proceedings should be instituted so that a speedy decision is obtained on the misconduct of public servant and a final decision can be taken about his further continuance in employment.

28.3 The Supreme Court in a case observed that it cannot be said that "Principles of natural justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. "They however, added that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced."

28.4 Should the decision of the court lead to acquittal of the accused, it may be necessary to review the decision taken earlier as a result of the departmental proceedings. A consideration to be taken into account in such review would be whether the legal proceedings and the departmental proceedings covered precisely the same grounds. If they did not and the legal proceedings related only to one or two charges i.e. not the entire field of departmental proceedings. it may not be found necessary to alter the decisions already taken. Moreover, while the court may have held that the facts of the case did not amount to an offence under the law, it may well be that the competent authority in the departmental proceedings might hold

that the public servant was guilty of a departmental misdemeanour and he had not behaved in the manner in which a person of his position was expected to behave."

Bipartite provisions specifically mention that when an employee is convicted of an offence involving moral turpitude he may be dismissed with effect from the date of his conviction. This is in tune with the prohibitory stipulations of Section 10(1)(b)(i) of the Banking Regulation Act 1949. The said Section lays down that no banking company shall employ or continue the employment of any person convicted of an offence involving moral turpitude.

Applicability of Indian Evidence Act 1972

Supreme Court observed that

"It is true that in numerous cases it has been held that the domestic tribunals, like an enquiry officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act but is has nowhere been laid down that even substantive rules which would form part of principles of natural justice also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which can not be ignored on the mere ground that the domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act."

(Central Bank of India Vs. P.C.Jain AIR 1969 S.C 983; 1969 2 SCJ 583; 1969 Lab I.C. 1380;1969 LLJ 377)

(The above judgement was relied on:
Khardah & Co Ltd. Vs. Their Workmen AIR 1964 S.C 719 M/s Kesoram Cotton Mills Ltd. Vs. Gangadhar AIR 1964 S.C 708)

"In a domestic enquiry, the strict and sophisticated rules of evidence under the Indian 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. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act."

(State of Haryana Vs. Rattan Singh AIR 1977 S.C 1512; 1977 Lab I.C 845)

Generally what is not permissible as evidence in a Court of Law is not permissible in domestic tribunal / enquiry.

The defence has to ensure throughout the proceedings that the evidence led before the enquiry officer is admissible. An evidence is admissible if it is relevant and legal. All irrelevant evidence is to be objected to by the defence as it cannot be taken cognizance of Relevancy of the evidence whether documentary or oral (witness) is important to decide the admissibility of evidence. An evidence is legal when it is admissible and genuine.

"The legal evidence may be direct or indirect or circumstantial. So long the evidence has a probative value and nexus, it would be a relevant evidence"

(State Bank of India Vs. J.D.Jain, 1977 11 Lab.I.C.1041)

Past record of the employee to be considered

It may be recalled that the Bipartite settlement provides for previous good record and length of service as mitigating and extenuating factors while awarding punishments by disciplinary authority. The following case law is relevant.

"Where the Standing Order framed in respect of an industry specifically providing that, in awarding punishment for misconduct of a workman the management shall take into account the gravity of the misconduct, the previous record, if any of the workman and any other extenuating or aggravating circumstances that may exist, having regard to the mandatory nature of the Standing Order, there is no option left to the management to neglect these relevant factors. When these factors have not been taken into consideration by the management while passing an order of dismissal of a workman, such order cannot be sustained."

(The management of Mahalakshmi Textile Mills, Pasumalai, Madurai Vs. The presiding officer, Labour Court, Madurai and others, AIR 1964 Madras 51)

One Mr D'Souza was discharged from the services of the Borosil Glass Works Ltd. and the case came up for consideration in the High Court of Bombay on the question of taking into account the previous record of the employee while imposing penalty.

Relying on the Mahalakshmi Textile Mills judgement the High Court of Bombay observed:

per G.N.Vaidya J

The compliance with requirements of such standing other ought not to be done merely as a matter of routine or of form but careful application of the mind to each of the relevant factors is required.... Such application of mind must be revealed in the order imposing the punishment. Even the model standing orders are statutorily binding on the management and on the workmen. The Industrial Tribunal therefore, had to give careful consideration on the findings on which the order of discharge or dismissal or any other punishment is meted out and there should be sufficient material to show that the punishing authority had applied his mind to the various allegations and what kind of punishment could ultimately be meted out to him. It was held that the employer had to show that as prescribed under the standing orders considered the previous record if any of the workman, the gravity of the misconduct and the extenuating or aggravating circumstances before discharging or dismissing the workman. Such application of mind must be revealed in the order itself.
(Borosil Glass Work Ltd. Vs. M.G. Chitale & Richard M.D.Souza 1974 II LLJ page 185)

Second/denovo enquiry & punishing authority

Under law there cannot be enquiry after enquiry on the same set of charges. The ratio of decided cases is clear that a second enquiry into the same set of charges is impermissible after the submission of enquiry report.

Case law

A departmental enquiry was held against an employee on certain charges. The question that came up before the Karnataka High Court was whether the same charge can be reopened in a fresh enquiry. The High Court held that "in the absence of conferment of specific power for reopening the enquiry and on special grounds, a second enquiry is without the authority of law."
(Kamat h V Karnatka State Road Transport Corpn. 1986 II LLJ 18)

So in the absence of a provision specifically available in the standing orders of the establishment the employer cannot order for second enquiry or denovo enquiry on the same set of charges.

Case law

Enquiry was held into the charge sheet issued to a Dena Bank employees and the enquiry officer on completion of the enquiry proceedings submitted his report. The Bank did not take any action on the enquiry report but issued another chargesheet superseding the earlier one on the same set of facts. Following an enquiry on the second chargesheet, punishment of reduction in pay to the next lower stage for a period of 2 years was imposed. When this action of the Bank was challenged, the Gujarat High Court held that the point was whether the relevant service rules permitted the issue of second chargesheet and whether in their absence an employee would be subjected to a second investigation. Since no specific provision was available in the relevant rules to conduct a second enquiry on the same set of charges, the second charge sheet, the enquiry based thereon, the report arrived thereafter and the punishment inflicted were all bad in law.
(J.K.Raval Vs. Dena Bank, Palanpur and others, 1994 II CLR 922)

SPECIAL CHAPTER

ON

VIGILANCE MANAGEMENT IN PUBLIC SECTOR BANKS

VIS – A – VIS

THE ROLE AND FUNCTIONS OF THE CVC

VIGILANCE MANAGEMENT IN PUBLIC SECTOR BANKS VIS-À-VIS THE ROLE AND FUNCTIONS OF THE CVC

1. INTRODUCTION:

This chapter deals with the application of the principles of vigilance to public sector Banks. Its objective is to apply and supplement rather than substitute the material contained in the earlier chapters. To that extent, it is not and should not be construed as a self-sufficient code.

1.1 Historical Background

The Central Vigilance Commission (hereinafter referred to as the Commission) was set up by the Government of India by its resolution dated 11.2.1964 in pursuance of the recommendation made by the Committee on Prevention of Corruption.* The Commission acts as the apex body for exercising general superintendence and control over vigilance matters in administration and probity in public life. The Commission has been accorded statutory status with effect from 25.8.1998 through "The Central Vigilance Commission Ordinance, 1998". While the Commission continues to perform the functions assigned to it by the Government's Resolution,(insofar as these are not inconsistent with the provisions of the Ordinance) it has also been given some additional powers with a view to strengthening its functioning.

2. MAJOR CHANGES BROUGHT IN ORDINANCE:

Some of the major changes brought out through the Ordinance are given below:-

(i) The Commission has been made a multi-member Commission, headed by the Central Vigilance Commissioner (CVC);

(ii) The Central Vigilance Commissioner and other Vigilance Commissioners (VCs) shall be appointed by the President by warrant under his hand and seal;

(iii) The Commission has been empowered to :-

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment (DSPE) insofar it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 ;

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*popularly known as the Santhanam Committee

(b) review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act;

(iv) The Commission has been given all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, while inquiring, or causing an inquiry or investigation to be made, into any complaint against a public servant, and in particular in respect of the following matters:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(v) The Commission is deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

(vi) No suit, prosecution or other legal proceeding shall lie against the Commission, the CVC, any VC, Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under the ordinance;

(vii) The CVC will head the committees to make recommendations for the appointments to the posts of the Director, CBI, and the Director of Enforcement.

3. JURISDICTION:

The Commission's jurisdiction is co-terminus with the executive powers of the Union. It can undertake any inquiry into any transaction in which a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of mal-practices or misdemeanors on the part of a public servant.

The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters.

For practical considerations, the Commission has restricted its jurisdiction to the officers of the rank of scale-III and above in the public sector banks; However, in composite cases involving officials who fall in the Commission's jurisdiction along with others who do not, the case as a whole has to be referred to the Commission for its advice. Such composite references enable the Commission to take an overall view of the individual accountabilities in the transaction.

Where a reference has been made to the Commission in respect of officers not within the jurisdiction of the Commission and award staff, by virtue of it being a composite case, it will be not necessary to approach the Commission for second stage advice in respect of such officials provided the Commission's advice has been accepted by the Banks.

4. WHAT IS A VIGILANCE ANGLE?

The Chief Vigilance Officers in the concerned organisations have been authorised to decide upon the existence of a vigilance angle in a particular case, at the time of registration of the complaint. Once a complaint has been registered as a vigilance case, it will have to be treated as such till its conclusion, irrespective of the outcome of the investigation. Although formulation of a precise definition is not possible, generally such an angle could be perceptible in cases characterised by:

(i) commission of criminal offences 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 person; or

(ii) irregularities reflecting adversely on the integrity of the public servant; or

(iii) lapses involving any of the following ;

(a) gross or wilful negligence;
(b) recklessness;
(c) failure to report to competent authorities, exercise of discretion without or in excess of powers/jurisdiction; and
(d) cause of **undue** loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
(e) flagrant violation of systems and procedures.

5. VIGILANCE CASES IN BANKS:

As in all organisations, vigilance activity in financial institutions is an integral part of the managerial function. The raison d'être of such activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organisation. In banking institutions risk-taking forms an integral part of business. Therefore, every loss caused to the organisation, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. It would be quite unfair to use the benefit of hind-sight to question the technical merits of managerial decisions from the vigilance point of view. At the same time, it would be unfair to ignore motivated or reckless decisions, which have caused damage to the interests of the organisation. Therefore, a distinction has to be drawn between a business loss which has arisen as a consequence of a bona-fide commercial decision, and an extraordinary loss which has occurred due to any malafide, motivated or reckless performance of duties. While the former has to be accepted as a normal part of business and ignored from the vigilance point of view, the latter has to be viewed adversely and dealt with under the extant disciplinary procedures.

Whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial interests of the organisation is one possible criterion for determining the bonafides of the case. A positive response to this question may indicate the existence of bonafides. A negative reply, on the other hand, might indicate their absence. It follows that vigilance investigation on a complaint would not be called for on the basis of a mere difference of opinion/ perception or an error of judgement simpliciter or lack of efficiency or failure to attain exemplary devotion in the performance of duties.* Such failures may be a matter of serious concern to the organisation but not from the vigilance point of view. They have to be dealt with separately.

The criteria indicated above for determination of a vigilance angle in a case would also obviously exclude all cases of misdemeanours in personal life. Administrative misconduct, such as, unpunctuality, drunken behaviour at work etc. would again be left to the disciplinary authority to deal with in a appropriate manner.

However, once a vigilance angle is evident, it becomes necessary to determine through an impartial investigation as to what went wrong and who is accountable for the same.

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* Union of India v. J. Ahmed AIR 1979 SC 1022.

6. INVESTIGATION BY CBI:

6.1 The Special Police Establishment, Central Bureau of Investigation, was constituted by the Government of India, under the DSPE Act, 1946, It inquiries and investigates into offences pertaining to corruption and other malpractices involving public servants. The SPE takes up cases for investigation on the basis of the information collected by them from their own sources or received from members of the public. It also investigates cases referred to them by the Commission and the administrative authorities. If the information discloses, prima - facie, commission of a cognizable offence, a regular case (RC) is registered u/s 154 Cr.P.C. But if the information prima facie discloses commission of irregularities, which call for further enquiry, a preliminary enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a regular case is registered for further investigation. As soon as a PE or a RC is registered, a copy thereof is sent to the Head of Department and/or the administrative Ministry. A copy of PE/RC is also sent to the Commission if the public servant concerned comes within the advisory jurisdiction of the Commission. The SPE generally does not take up inquiries or register a case where minor procedural flaws are involved. They are also expected to take note of an individual officer's positive achievements while recommending RDA so that a single procedural error does not cancel out a life time's good work.

ADVISORY BOARDS

6.2. Considering the complexities involved in commercial decisions of bankers especially in matters related to credit, the CBI may find it worthwhile to obtain the benefit of expert advice from various disciplines before registration of PE/RC. The existing Advisory Board on Bank Frauds(ABBF) would continue to assist CBI for this purpose, but would henceforth be redesigned as Central Advisory Board on Bank Frauds(CABBF). In addition, regional advisory boards comprising retired judges(of the level of presiding officers of district and session courts), retired police officials(of the level of DIG) and retired bank officials(of the level of GM or higher) would also be constituted. The CABBF as well as the new Regional Advisory Boards on Bank Frauds(RABBF) would form part of the organisational infrastructure of the CBI. Appointments on the Boards would be made from a panel of names approved by the CVC.

It would not be necessary for the CBI to refer cases of frauds in non-borrowal accounts to such boards. Even in respect of borrowal accounts it would not be necessary for them to take advice therefrom if the CVO of the bank has himself referred the matter to the CBI. Reference to the boards will thus lie only in respect of complaints in borrowal accounts which the CBI has suo motu found worthwhile to tentatively pursue.

The cases involving officers of the rank of GM or equivalent or higher would continue to be referred to the CABBF. The cases of other officials of lower rank would be required to be referred the RABBF. The Board concerned

would give its considered opinion within one month from the date of reference failing which the CBI would be competent to decide the matter without advice. It is also clarified that the advice of any of the aforesaid boards will not be binding on them.

Investigational and secretarial services required by the Boards would be provided by the RBI.

6.3 While the CBI have the powers to take up any fraud case for investigation irrespective of the amount of loss involved, in order to maximize the effectiveness of investigations the following guidelines may be followed in future:-

The Banking Securities & Fraud Cell (BS&FC) at Delhi, Bombay and Bangalore would handle information/complaints if the amount of the alleged bank fraud exceeds Rs.5 crores. If the amount of the alleged fraud ranges between Rs.25 lacs and Rs.5 crores, the information would be handled/investigated by the branch of the CBI having territorial jurisdiction over the area. If the amount involved in the bank fraud appears to be less than Rs. 25 lacs the complaint may be entrusted to the local police. However, having regard to the legal difficulties in the CBI taking over a case after it has been registered with the local police, the bank should also carefully examine the matter with regard to the inter-state/international ramifications of the case. Regardless of the quantum involved in the fraud, the CBI may register any case suo motu, if it has reason to believe that it has inter-state or international ramifications.

The BS&FC would be the focal point to co-ordinate the handling of all bank cases. The Banks would initially refer the matter to the respective zonal office of the BS&FC.(Jurisdiction of such offices to be indicated by the CBI). The BS&FC would either assume jurisdiction or pass on the matter to the concerned wing of the CBI under intimation to the Bank.

6.4 Full cooperation and facilities should be extended by the public sector banks to the CBI during the course of investigation. This would include making available to them the requisite documents with the least possible delay, directing such employees as are to be examined to appear before the investigating officer and making suitable accommodation in the bank's guest houses, available to touring officers (subject to availability), in accordance with their entitlement and on payment of the prescribed charges.

When the Banks make reference to the CBI for investigation, they should also make available duly certified photocopies of all relevant documents along with the complaint so that there is no delay in initiating action on the part of the CBI. The originals may be handed over to them only at the time of the actual registration of the case. Similarly, when CBI seizes documents, authenticated copies of all the documents, should within four days of the seizure, be made available to the CVO of the Bank. Further, whenever the CBI or other investigating agencies require assistance in tracing and freezing assets created

from the proceeds of an offence, the Banks would extend to them such assistance as may be requested for and is possible. The banks may also avail the services of Chartered Accountants/Computer professionals for the purpose.

7. INVESTIGATION REPORTS RECEIVED FROM THE CBI:

7.1 On completion of their investigation, the CBI forwards a copy of the SP's report to the concerned CVOs for further action. A copy of the SP's report is also endorsed to the Commission in cases in which the Commission's advice is necessary.

7.2 The CBI generally recommends prosecution in cases of bribery, corruption or other criminal misconduct; it also considers making similar recommendations in cases involving a substantial loss to the Government or a public body. The Commission's advice for prosecution however is required only if the sanction for prosecution is necessary under any law promulgated in the name of the President. In such cases, CVOs should furnish the department's comments within a month of the receipt of the CBI report by the competent authority. In other cases, as directed by the Supreme Court, the matter should be processed expeditiously to ensure that the required sanction is issued within a period of three months(the instructions issued by the Department of Personnel & Training vide O.M. dated 14.01.1998 also refer). However, in case of difference of opinion between the CBI and the administrative authority, the matter may be referred to the Commission for its advice irrespective of the level of the official involved.

7.3 Prosecution proposals should be able to meet the technical requirements laid down by the Courts. Apart from adequate evidence to establish that offence has been committed under the relevant provision of the law, there should be some facts on record from which it should be possible to infer or presume a criminal or guilty intention behind the omission or commission. In the absence of mens rea violation of rules or codal formalities could at worst be considered as transgressions of systems and procedures of the organisation and the same would, as such, be more suitable as the subject matter of RDA rather than criminal prosecution. In Maj. SK Kale v/s State of Maharashtra, 1977 Cri. L.J. 604 and Shri SP Bhatnagar v/s State of Maharashtra, 1979 Cri. L.J. 566 the Supreme Court ruled that irregularities per se may not amount to indication of criminal intent even if third parties had benefited.

7.4 In cases, where the CBI recommends RDA for major/minor penalty action or 'such action as deemed fit' against the officials and the Commission is to be consulted, the CVO should ensure that the comments of the department on the CBI report are furnished to the Commission within one month of the receipt of the CBI's investigation report. Further action in such cases may be taken as per the Commission's advice. In other cases, the CVO should take expeditious action to ensure that charge-sheets, if necessary, are issued within two months of the receipt of the investigation report from the CBI. It would not be necessary

for the CBI to follow the matter in such cases after the disciplinary authority has initiated action for RDA against the concerned officials in accordance with their recommendations. However, in case of difference of opinion between the CBI and administrative authorities, the matter would be referred to the Commission for advice irrespective of the level of the official involved. The organisation would take further action in accordance therewith.

7.5 The law of the land permits prosecution as well as RDA to proceed simultaneously (Jang Bhagdur Singh v/s Baijnath Tewari, 1969 SCR, 134).

Where the suspect officer is primarily accountable for conduct which legitimately lends itself to both criminal prosecution in a court of law as well as RDA, as a general rule, both should be launched simultaneously after consultation with the CBI or other investigating agencies charged with conducting the prosecution. Such simultaneous conduct of RDA and criminal prosecution should be resorted to especially if the prosecution case is not likely to be adversely affected by the simultaneous conduct of RDA. Keeping RDA in abeyance should be an exception rather than rule. The copies of all the relevant documents authenticated by the charged employees may be retained, for the purpose of RDA, before the original documents are sent to the Court. If the documents have already been sent to a Court of Law for the purpose of criminal proceedings, certified copies may be procured for the purpose of RDA. Care, however, should be taken to draft the charge-sheet for the purpose of RDA in such a manner that it makes the suspect official accountable for violation of various provisions of Conduct Rules without reference to criminal misconduct. No Bipartite Agreement should stand in the way of disciplinary action continuing parallely with the criminal investigation/trial. This is necessary in the interest of speedy action in vigilance cases.

8. COMPLAINTS AND ACTION THEREON:

8.1 Information about corruption, malpractices or misconduct on the part of public servants may come to the CVO's notice through various sources, such as, (I) the complaints received from the public, or through the administrative Ministry, CBI and the CVC; (ii) departmental inspection reports and stock verification surveys, (iii) scrutiny of property returns and the transactions reported by the concerned employee under the Conduct Rules, (iv) audit reports, (v) press reports, (vi) reports of parliamentary committees etc. Information received verbally should be reduced to writing and dealt with similarly.

In the first instance, the CVO or his nominee in consultation with disciplinary authority should decide if the information involves a vigilance angle. If so, he would register the information as a complaint in the Vigilance Complaint Register. He would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed/ or the matter requires further investigation. In the latter case, he would also have to decide as to

whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally.

The case may, with the approval of the CMD, be entrusted to the CBI if the allegations:

(i)are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc.; or

(ii) require inquiries to be made from non-official persons; or

(iii) involve examination of private records; or

(iv) need expert police investigation for arriving at a conclusion; or

(v) need investigation abroad.

8.2 In exercise of its extraordinary jurisdiction, the Commission has the power to call for a report in respect of any case with a vigilance angle in so far as it relates to any public servant falling within its jurisdiction. It also has the power to advise further course of action to the disciplinary authority in respect thereof. Therefore, whenever the Commission advises the CVO to investigate such a case, he shall not only submit his investigation report but subsequently also seek first stage advice on par with other cases falling with the Commission's ordinary jurisdiction.

8.3 A complaint involving a Presidential appointee may be forwarded to the CVO of the Banking Division. The latter in the first instance would decide whether the information involves a vigilance angle or not. If so, he would register that as a complaint in the Vigilance Complaint Register and would process the matter further to decide whether the allegations are general in nature or vague and deserve to be filed, or the matter requires further investigation. In the latter case, he would also decide as to whether the investigation into the allegations should be entrusted to the CBI or taken up departmentally. If it is decided to investigate the matter departmentally he may, in his discretion, take assistance of or seek factual reports from the RBI or the CVO or any other authority of the Bank concerned.

9. INVESTIGATION BY CVO:

9.1 ANONYMOUS/PSEUDONYMOUS COMPLAINTS:

9.1.1 Many anonymous/pseudonymous complaints are false and malicious. Inquiries into such complaints adversely affect the morale of the Organisation's personnel. Ordinarily, therefore, all such complaints should be ignored and filed.

Occasionally however, such complaints do constitute an important source of information especially in respect of influential officials against whom the complainant may be afraid to make open allegations. The discretion to inquire into such complaints, containing verifiable details, will vest in the disciplinary authority who will exercise the same in consultation with the CVO or his nominee. While taking such selective cognizance to pursue such a complaint, a copy of all information, as far as possible, should be made available to the official concerned for his comments. Further action should be considered only after considering his reply. If further investigation is necessary, all the relevant documents should be taken into custody to avoid any chance of their being tampered with subsequently. Such investigation into the allegations contained in an anonymous/pseudonymous complaint would be carried out along the same lines as that prescribed for any other type of complaint.

9.1.2 Anonymous/pseudonymous complaints received through the Commission for investigation and report however may be treated as "source information" and dealt with accordingly.

9.2 OTHER COMPLAINTS:

9.2.1 After it has been decided that the allegations contained in a complaint should be looked into departmentally, the CVO should proceed to make a preliminary enquiry (generally termed as investigation). He may conduct the preliminary enquiry himself or entrust it to one of the Vigilance Officers. He may also suggest to the administrative authority to entrust the investigation to any other officer considered suitable for the purpose in the particular circumstances. The purpose of such an enquiry is to determine whether, prima-facie, there is some substance in the allegations.

9.2.2 The preliminary enquiry may be made in several ways depending upon the nature of allegations and the judgment of the investigating officer, e.g.

(a) If the allegation contain information, which can be verified from documents, files or other departmental records, the investigating officer should, without loss of time, secure such records etc. for personal inspection. If any paper is found to contain evidence supporting the allegations, it should be taken over by him for retention in his personal custody to guard against the possibility of available evidence being tampered with later on. If the papers in question are required for any current action, it may be considered whether the purpose would be served by substituting authenticated copies of the relevant portions of the record, the originals being retained by the investigating officer in his custody. If that is not feasible, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of enquiry;

(b) In cases where the alleged facts are likely to be known to any other employee of the department, the investigating officer should interrogate them orally or ask for their written statement. In case of oral interrogation, a full record of interrogation may be kept and the person interrogated may be asked to sign as a token of his confirmation of his statement.

(c) Wherever necessary, important facts disclosed during oral interrogation on in written statements should be sought to be corroborated.

(d) If it is necessary to make enquiries from the employees of any other Government department or bank or PSU the investigating officer should seek the assistance of the concerned CVO for providing the necessary facilities.

9.2.3. During the course of preliminary enquiry, the concerned employee may as a fundamental administrative requirement also be given an opportunity to tender his version of the facts so as to find out if he has any plausible explanation. In the absence of such an explanation, the concerned employee may be proceeded against unjustifiably. There is, however, no question of making available to him any document at this stage. Such an opportunity, need not be given in cases in which a decision to institute department proceedings is to be taken without any loss of time, e.g. in cases in which the public servant is due to retire or superannuate soon and it is necessary to issue the charge sheet to him before retirement.

9.2.4 After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing **inter alia** the material to controvert the defence, and his own recommendations. This should be forwarded to the disciplinary authority through the CVO. The investigating officer/CVO or his nominee should make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They are also required to assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do. They may follow the following criteria for the purpose and highlight in the report if the answer to any of the questions is in the affirmative:-

(a) Can malafides be inferred or presumed from the actions of any of the concerned officials?

(b) Could any of the officials be said to have engaged in a misconduct or misdemeanor?

(c) Was the conduct of any of the officials reflective of lack of integrity?

(d) Did the official(s) act in excess of their delegated powers/jurisdiction and failed to report the same to the competent authority?

(e) Did they or any of them show any gross or willful neglect of their official functions?

(f) Is their any material to indicate that any of them acted recklessly?

(g) Has the impugned decision caused any **undue** loss to the organisation?

(h) Has any person/party or a set of persons/parties either within the Organisation or outside it been caused any undue benefit?

(i) Have the norms or systems and procedures of the Organisation been flagrantly violated?

9.2.5. Where a case involves both criminal misconduct as well as flagrant violation of systems and procedures of the organisation, further investigation into the former should be left to the CBI. The bank concerned however may simultaneously consider the latter and initiate appropriate disciplinary proceedings, in accordance with the prescribed procedure, if required. The CVO of the bank or his nominee and the DIG concerned of the CBI should coordinate their efforts to ensure that violation of rules, regulations and banking norms which are best covered under RDA are left to the disciplinary authority to deal with; the CBI on the other hand should focus their investigation on the criminal aspects of the case.

9.2.6. Timeliness in the conduct of the preliminary inquiry cannot be over-emphasised. Both the courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge sheet. The current instructions of the Government are that the preliminary inquiry should be completed within 3 months. In the State of MP Vs. Bani Singh, 1990 Suppl. S.C.C. 738 it was held that an inordinate and inexplicable delay in finalisation of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge-sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995) (1) 700 S.C. it was held that in the case of inordinate delay the burden of proving that the delay was due to a reasonable cause would be on the department.

Thus, although it may not be desirable to indicate a time limit for staff accountability, the need to ensure that the same is done at the earliest, needs to be reiterated.

10. ACTION ON INVESTIGATION REPORT:

10.1 The disciplinary authority would consider the investigation report and decide, on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning/caution administered or regular departmental proceedings launched. The test to be applied at this juncture is to see as to whether a prima-facie case has been built up on the basis of the evidence collected during the course of preliminary enquiry. Generally, if any of the criteria indicated in the preceding paragraph is satisfied, a prima-facie case for instituting regular departmental proceedings could be said to exist. If on the other hand the evidence on record falls short of establishing such a prima-facie case, the disciplinary authority may either close the matter, or may take recourse to other formal forms of disapproval, such as reprimanding the concerned employee, issuing him an advisory memo or warning, or communicating the Organisation's displeasure. While taking such a decision, the disciplinary authority should bear in mind that a departmental proceeding is not a criminal trial; and that the standard of proof required is based on the principle of 'preponderance of probabilities' rather than 'proof beyond reasonable doubt'. [Union of India Vs. Sardar Bahadur – SLR 1972 p. 352; State of A.P. Vs.Sree Rama Rao – SLR 1974 - p.25; and Nand Kishore Prasad Vs. State of Bihar and others – SLR 1978 – p.46].

10.2. If any of the employees involved in the case falls within the Commission's jurisdiction, the latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as "tentative". Such a reference would be required to be made even in respect of the officer/staff who are not within the Commission's jurisdiction if they are involved along with other officers who are within the jurisdiction of the Commission, as the case has to be considered as a composite one. The matter may be referred to the Commission, through the CVO, for its advice. However, if an administrative authority investigates into an anonymous or pseudonymous complaint under the impression that it is a genuine signed complaint, or for any other reason, the Commission need not be consulted if it is found that the allegations are without any substance. Further action in the matter should be taken on receipt of the Commission's advice, wherever the same has been sought. Certain types of vigilance cases where it is desirable to initiate major penalty proceedings have been mentioned in para 11.4 of Chapter X by way of illustrative guidelines. In addition the following lapses/irregularities in the banking operations could also be considered for such action:

i) Irregularities in opening of accounts leading to the creation of fictitious accounts;

ii) Recurrent instances of sanction of ODs in excess of discretionary powers/sanctioned limits without reporting;

iii) Frequent instances of accommodation granted to a party against norms e.g. : Discounting bills against bogus MTRs; purchase of

CATEGORISATION OF CASES

10.5 Before making references to the Commission, the CVO may classify references into Vigilance A and B. Vigilance-A would comprise cases where the lapses committed/irregularities noticed are serious and a prima-facie case for initiation of RDA for major penalty proceedings has been made out; Vigilance-B, on the other hand, would comprise less serious cases of procedural lapses, which in the opinion of the CVO, do not reflect adversely on the integrity of the official concerned. Vigilance-B cases ordinarily will not invite any administrative disabilities normally associated with the registration of a vigilance case against an official. These cases will continue to be monitored through the Vigilance Complaints Register till their disposal but only because they technically fall within the ambit of the term 'vigilance' and not because the official is accountable for a serious misdemeanor/misconduct or equivalent negligence. It follows then that an official can be proceeded against for a minor penalty but may not suffer any disability by way of posting, training, placement on 'Agreed' list etc., during the pendency of the disciplinary proceedings. If he is found accountable in the disciplinary proceedings, he will be duly punished but for all other purposes (except promotion, for which a separate sealed cover procedure exists) he will be treated at par with other equally/comparably placed employees facing minor penalty proceedings in a non-vigilance case.

11. RECONSIDERATION OF THE COMMISSION'S ADVICE:

If the disciplinary authority, in a case, does not propose to accept the Commission's advice, the case may be referred back to the Commission, with prior approval of the Managing Director/ the Chief Executive, for its reconsideration. The reconsideration of the Commission's advice is necessary regardless of whether the disciplinary authority proposes to take "severer" or "lighter" action than that recommended by the Commission. Decisions taken in a manner, other than that mentioned above, would be treated as cases of non-acceptance of the Commission's advice and reported in the Commission's annual report. As a rule, the Commission entertains only one request for reconsideration.

12. PROCEDURE FOR IMPOSING MAJOR PENALTY

12.1 CHARGE-SHEET

12.1.1 Once the disciplinary authority decides to initiate major penalty proceedings against an employee, on the basis of the Commission's advice or otherwise, it should take immediate steps to issue the charge-sheet. A properly drafted charge sheet is the sheet anchor of a disciplinary case. Therefore, the charge sheet should be drafted with utmost accuracy and precision based on the facts gathered during the investigation (or otherwise) and the misconduct

bills when bills had earlier been returned unpaid; Affording credits against uncleared effects in the absence of limits and opening LCs when perviously opened LCs had devolved.

Where a group of officers are involved in the same set of lapses in a branch/zonal office, having different disciplinary authorities, there could be delay in the processing of the cases and also differences in perception of the lapses. Therefore, the Disciplinary Authority of the senior most officer in that group may institute and complete the disciplinary proceedings in respect of the different officers involved in the same case.

10.3. The Commission has noticed that references made to it both at the first as well as second stage are incomplete, resulting in back references to the banks. It has therefore become necessary for the Commission to reiterate the extant procedure to be followed in this regard.

10.4. On completion of the preliminary investigation of the case, the Disciplinary Authority shall be required to forward:-

(i) The preliminary investigation report on the basis of which the allegations are proposed to be established or dropped

(ii) The documents and records connected with the case.

(iii) A self-contained note clearly indicating the facts on which the Commission's advice is sought.

(iv) The disciplinary authority's own tentative recommendations.

(v) In cases investigated by the Central Bureau of Investigation under the Special Police Establishment Act, 1946, the comments of the disciplinary authority on the recommendations of the aforesaid Bureau.

(vi) A neatly typed tabular statement clearly indicating the allegations against the officer proposed to be included in the charge sheet, his defence in respect thereof, and the disciplinary authority's and CVO's comments.

(vii) The bio-data of the officials concerned.

Since CVOs in banks are also experts in their field, they should invariably provide their own analysis and assessment of the facts of the case so that the Commission can have the benefit of their expertise.

involved. It should be ensured that no relevant material is left out and at the same time, no irrelevant material or witnesses are included.

12.1.2 The charge sheet comprises the memorandum, informing the concerned employee about initiation of proceedings against him and giving him an opportunity to admit or deny the charge(s) within a period not exceeding 15 days. The memorandum is to be signed by the disciplinary authority himself. In case, the disciplinary authority is the President, an officer, who is authorised to authenticate the orders on behalf of the President, may sign the memorandum. The Memorandum should be supported by annexures, namely, Article(s) of charge, statement of imputations of misconduct or misbehaviour in support of each article of charge, and lists of documents and witnesses. Lists of documents and witnesses should form an integral part of the chargesheet even if the disciplinary rules applicable to the concerned employee do not contain such a provision.

12.1.3 Special care has to be taken while drafting a chargesheet. A charge of lack of devotion to duty or integrity or unbecoming conduct should be clearly spelt out and summarised in the Articles of charge. It should be remembered that ultimately the IO would be required to give his specific findings only on the Articles as they appear in the chargesheet. The Courts have struck down chargesheets on account of the charges framed being general or vague (S.K. Raheman Vs State of Orissa 60 CLT 419 .) If the charge is that the employee acted out of an ulterior motive that motive must be specified (Uttar Pradesh Vs Salig Ram AIR 1960 All 543). Equally importantly, while drawing a charge sheet, special care should be taken in the use of language to ensure that the guilt of the charged official is not pre-judged or pronounced upon in categorical terms in advance (Meena Jahan Vs Deputy Director, Tourism 1974 2 SLR 466 Cal). However, the statement merely of a hypothetical or tentative conclusion of guilt in the charge, will not vitiate the charge sheet (Dinabandhu Rath Vs State of Orissa AIR 1960 Orissa 26 cf. also Powari Tea Estate Vs Barkataki (M.K.) 1965: Lab LJ 102).

12.1.4 All relevant details supporting the charges should be separately indicated in the statement of imputations.

12.1.5 The concerned employee is not expected to furnish a detailed reply to the charge sheet. He is required only to state his defence and admit or deny the charge(s). Therefore, the rules do not provide for making available the relevant documents to the concerned employee for submission of his defence statement. However, notwithstanding the legal position, copies of the documents and the statements of witnesses relied upon as far as possible, may be supplied to him alongwith the charge-sheet. If the documents are bulky and copies cannot be given, he may be given an opportunity to inspect those documents and submit his reply in about 15 days' time.

12.2 DEFENCE STATEMENT

12.2.1 ADMISSION OF CHARGE

If the charged employee admits all the charges unconditionally and unambiguously, the disciplinary authority shall record its finding on each charge. Where the advice of the Commission is required, the case may be referred to the Commission, along with the comments of the disciplinary authority, for second stage advice. In other cases, the disciplinary authority should proceed to pass a self-contained and reasoned speaking order of punishment, defining the scope of punishment to be imposed in clear terms, in accordance with the relevant rules.

12.2.2 ACCEPTING DEFENCE STATEMENT OR MODIFYING CHARGES

The disciplinary authority has the inherent power to review and modify the articles of the charge, or drop some or all of the charges, after the receipt and examination of the written statement of defence. It is not bound to appoint an inquiring authority to inquire into such charges as are not admitted by the charged employee but about which the disciplinary authority is satisfied that these do not require to be proceeded with further. However, before the disciplinary authority exercises the aforesaid power, it may consult the CBI in cases arising out of the investigations conducted by them. The Commission should also be consulted where the disciplinary proceedings were initiated on its advice.

12.2.3 CHARGES NOT ADMITTED/DEFENCE STATEMENT NOT SUBMITTED

If the disciplinary authority finds that any or all the charges have not been admitted by the charged employee, or if he has not submitted the written statement of defence by the specified date, it may cause an inquiry to be made to inquire into the charges framed against the charged employee. The procedure for conducting the inquiry is indicated in the succeeding paragraphs.

12.3 PROCEDURE FOR DEPARTMENTAL INQUIRY

The procedure for conducting a departmental inquiry has been given in detail in Chapter XI of the Vigilance Manual Vol.I. The important provisions, however, are summarised below.

12.3.1 APPOINTMENT OF INQUIRING AUTHORITY/OFFICER

(i) Under the disciplinary rules, the disciplinary authority may itself inquire, or appoint an inquiring authority/officer (IO) to inquire into such charges against the charged employee/officer (CO) if the latter does not admit the same or has otherwise not submitted his

defence statement within the specified time. It should, however, be ensured that the officer so appointed has no bias and had no occasion to express an opinion at any stage of the preliminary inquiry. The inquiring authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to at all cost.

(ii) The organisations in which large number of departmental inquiries are pending, may earmark some officers on a full-time basis to complete the inquiries within the specified time limit. The disciplinary authority may also consider appointing retired public servants as the inquiring authorities on payment of honorarium on case to case basis. All such appointments should be made from a panel duly approved by the Board of Directors in accordance with the extant rules. All organisations, however, should ensure that the inquiries are completed within the stipulated time limitation and no inquiry should suffer on account of non-availability of an I.O.

(iii) Generally, the Commission nominates one of the Commissioners for Departmental Inquiries (CDI), borne on its strength, for appointment as inquiring authority to inquire into the charges against such employees against whom it advises initiation of major penalty proceedings. However, because of its limited manpower resources, the Commission cannot nominate a CDI in each and every case in which it tenders advice. It therefore permits the appointment of a departmental inquiring authority in certain cases. Because of similarity in rules, procedures and norms, banks will in future have a common pool of inquiry officers, details of which will be maintained in the Commission. The rationale behind the proposed provision is to ensure removal of bias and expedition in the conduct of the inquiry proceedings. Henceforth, the Commission would also nominate the name of the inquiring authority while tendering its first stage advice.

The disciplinary authority should give the charged officer a period of 15 days time after the service of the charge-sheet to deny or accept the charges. In case no reply is received within this period, the disciplinary authority may proceed to the next stage of the inquiry.

12.3.2 APPOINTMENT OF PRESENTING OFFICER

The disciplinary authority would also appoint an officer, called asPresenting Officer (PO), to present the case on its behalf before the inquiring authority. Unlike in the past, it would not now be necessary to nominate a CBI officer to act as PO in the cases investigated by them.

12.3.3 **DEFENCE ASSISTANT**

The charged employee has also a right to take assistance of a public servant, generally termed as defence assistant (DA), to help him in the presentation of his case in a departmental inquiry. Most rules provide that the CO may not engage a legal practitioner to present the case on its behalf before the IO, unless the PO appointed by the disciplinary authority is also a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits. It is, however, clarified that if the case is being presented on behalf of the disciplinary authority, by a 'Prosecuting Officer' of the CBI or by the Law Officer of the Department, such as a Legal Adviser etc., there would evidently be good and sufficient circumstances for the disciplinary authority to exercise his discretion in favour of the delinquent employee and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the court as arbitrary and prejudicial to the defence of the delinquent employee.

In order to ensure expeditious disposal of inquiry proceedings, a person will not be permitted to act as defence assistant in more than three cases at any given point of time. The IO shall satisfy himself that the aforesaid condition is satisfied.

12.3.4 **PRELIMINARY HEARING**

(i) On the date fixed for the purpose, the inquiring authority (IO) shall ask the CO whether he is guilty or has any defence to make. If the CO pleads guilty to any of the articles of charge, the IO will record the plea, sign the record and obtain the signature of the CO thereon. The IO will then return a finding of guilt in respect of those articles of charge which the delinquent employee admits. In respect of other charges, the IO would ask the PO to prove the articles of charge and adjourn the case to a date within 30 days of the preliminary hearing.

(ii) While adjourning the case, the IO would also record the order permitting inspection of listed documents by the CO. The order should direct the latter to submit a list of witnesses to be examined on his behalf and the list of additional documents needed by him for his defence. For reasons to be recorded by him in writing, the IO may refuse to requisition such documents, or allow such witnesses, as are in his opinion, not relevant to the case. On the other hand, where he is satisfied that the documents required by the defence are relevant, he may requisition the same from their custodian, through the PO or otherwise, by a specified date. The denial of access to documents, which have a relevance to the case, may amount to violation of reasonable opportunity. Therefore, the power to deny access on grounds of public interest, should be exercised only for reasonable and sufficient grounds to be recorded in writing.

12.3.5 **REGULAR HEARINGS**

(i) **General** - Once all the preliminaries are over, the IO would fix the dates and venue of regular hearings. He should, as a rule, hear the case from day to day and not grant any adjournments, save in unavoidable and exceptional circumstances. Admitted documents may be taken on record straight way and admitted facts, if any, be taken note of in the order-sheet.

(ii) **Presentation of Prosecution case** - In the first instance, the PO would be asked to present his case. He should introduce unadmitted/disputed documents through relevant witnesses. He should in the examination-in-chief, examine his witnesses in such a way that brings out the case in a logical manner. The IO should also ensure that the witness understands the question properly. He should protect him against any unfair treatment, disallowing questions which are leading, irrelevant, oppressive or dilatory in nature. As far as possible, all evidence should be recorded in narrative form. Previous statements admitted by the witness should also be taken on record. After the examination of a witness is over, the witness may be cross-examined by the CO or his DA to bring out further facts, remove discrepancies, or throw light on the reliability of the witness. After the cross-examination, the PO may re-examine the witness on any point on which he had been cross-examined but not on any new matter unless specifically allowed by the IO. In the latter case, the CO would have a right to further cross-examine the witness. The IO may also put such questions to a witness as he thinks fit, at any time during the inquiry, to bring out the truth and for the emergence of a fair and clear understanding of the case. With this end in view, he may allow both sides to cross-examine such a witness on any question put by him.

(iii) **Hostile Witness** - If during the examination-in-chief of a prosecution witness, the PO feels that the witness is hostile or that his testimony is likely to affect the prosecution case or that the witness is knowingly not telling the truth, he may seek the permission of the IO to cross-examine that witness after he has been declared hostile. In such situations, the PO may, with the prior permission of the IO, also put leading questions to the witness so as to bring out the truth.

(iv) **Admission of Guilt** - The CO may decide to plead guilty to any of the charges during the inquiry. In that case, the IO may accept the plea and record his findings. He should nonetheless, continue the case to its logical conclusion if, in his opinion, the admission is conditional or only relates to part of the charges.

(v) Before the close of the case on behalf of the disciplinary authority, the IO, in his discretion, may allow the PO to produce evidence not included in the list given to the CO, or may himself call for new evidence, or recall and re-examine any witness. In such situations, the CO would be entitled to have a copy of such evidence, an adjournment of at least three clear days, and an opportunity for inspecting the relevant documents. The IO, however, should not allow such evidence for filling up any gap in the evidence on record but only when there has been an inherent lacuna or defect in the evidence originally produced.

(vi) **Defence Statement** - After closure of the case on behalf of the disciplinary authority, the IO shall ask the CO to state his defence. If the C.O. submits the defence in writing, he should sign every page of it. If he makes an oral statement, the IO should record the same and get it signed by the CO. A copy of the statement of defence should be given to the PO.

(vii) **Presentation of Defence Case** - The CO, thereafter, would be asked to produce evidence in support of his defence. The CO or his DA would proceed to examine his witnesses, who will be cross-examined by the PO, and re-examined by the CO on the basis of the same procedure as indicated in the case of prosecution witnesses.

(viii) **CO Appearing as Witness** - The CO may, in his discretion, offer himself as his own witness.

(ix) **Mandatory Questions to CO** - If the CO does not offer himself as a witness, the IO shall examine him generally to enable him to explain the circumstances appearing against him. The IO may do so, even if the CO has offered himself as a witness.

(x) **Written Briefs by PO/CO** - After the completion of the production of evidence, the IO may hear the PO and the CO, or permit them to file written briefs of their respective case, if they so desire. If they are permitted to submit written briefs, the PO may submit his brief within a week of the last hearing of the case. He should also certify that a copy of the brief has been given to the CO. The CO may thereafter, furnish his brief within such further period of one week.

(xi) **Daily Order Sheets** - The IO would maintain a daily order sheet to record in brief the business transacted on each day of the hearing. Requests and representations by either party should also be dealt with and disposed of in this sheet. Copies of the recorded order-sheets will be given to the PO and CO with their signatures thereon, if they are present. If they are not present, these will be sent by post.

(xii) **Ex-parte Proceedings** - If the CO does not submit his written statement of defence within the specified time, or does not appear before the IO on the dates fixed for the inquiry or refuses to comply with the provisions of the rules, the IO may hold the inquiry ex-parte. In that event the copies of the depositions, daily order sheets etc. may be sent to him at his last known address. A copy of the written briefs submitted by the PO may also be sent to him so as to give him a reasonable opportunity to submit defence briefs. The CO, always has the option to participate in or join the inquiry at any stage.

(xiii) **Alleging Bias against IO** - If the CO alleges bias against the IO the IO should keep the proceedings in abeyance and refer the matter to the disciplinary authority. He should resume the inquiry only after he is advised by the disciplinary authority to go ahead.

(xiv) **Change of IO** - Whenever for any reason the IO is changed and a new IO is appointed to continue the inquiry, he shall take into account the evidence recorded or partly recorded by his predecessor. If he is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may recall, examine, re-examine and cross-examine such witness.

12.4 SUBMISSION OF INQUIRY REPORT

12.4.1. After considering the oral and documentary evidence adduced during the inquiry, the IO may draw his own inferences, as a rational and prudent person, and record his findings on each charge. He should rely only on such facts as the CO had the opportunity to refute. Generally, the CO raises a plea of absence of malafides. It is clarified that the PO is not expected to prove mala-fides in cases where the act itself speaks of a dishonest motive e.g. a person travelling without ticket in a train or a person who has been unable to explain his assets satisfactorily. Malafides, however, are not relevant in proving a misconduct as it does not form an essential ingredient of it. Also, every act of a public servant is expected to be honest, bona-fide and reasonable. An act is not bona fide if it is committed without due care and attention. While assessing the evidence, the IO should also bear in mind that the proceedings are civil rather than criminal or quasi-criminal in nature. Accordingly, the standard of proof required in a disciplinary inquiry is that of "preponderance of probability" and not "proof beyond reasonable doubt". The IO should confine his conclusion only upto the stage of recording whether the charge is proved, or partially proved or not proved. The conclusion should be derived from the facts and circumstances of the case and not on its extenuating aspects. He should not recommend the punishment to be imposed on the CO. Neither is he required to comment on the quality of drafting of the charge-sheet, nor the conduct of the disciplinary authority in framing the charges or that of the PO in arguing the same. The IO becomes functus officio as soon as he submits the report and cannot make any change thereafter.

12.4.2. The initial burden in the inquiry of proving the charge with evidence on record is that of the prosecution. Once the same is discharged, the burden of disproving the same and/or bringing to light special circumstances relating to the innocence of the C.O. will be that of the latter. Otherwise, the proceedings being only of quasi-judicial rather than judicial in nature, the strict rules of evidence stipulated in the Evidence Act would not be applicable except to the extent specifically indicated in the relevant rules.

12.4.3. The report of the IO should contain:

(i) A reference to the order of his appointment as IO;

(ii) Articles of charge in brief, indicating those which are dropped, procedural defe admitted, or have been inquired into;

(iii) For each charge inquired into
(a) the case in support of the charge;
(b) the case of defence;
(c) assessment of evidence; and
(d) the findings;

(iv) A brief summary of the findings.

12.4.4. The report should be accompanied by essential documents, namely, the charge-sheet, depositions of witnesses recorded during the inquiry, daily order-sheets, list of exhibits, exhibits and the correspondence files of the IO. The IO would, in all cases, submit the report to the disciplinary authority, with extra copies, one each for the CO and the CBI, if the case had been investigated/presented by them. However, in cases in which a CDI conducts the inquiry, he would also submit a copy of the report to the Secretary of the Commission.

12.4.5. The IO must complete the inquiry proceedings and submit his report within a period of six months from the date of his appointment.

12.5 ACTION ON INQUIRY REPORT

12.5.1. The IO's report is intended to assist the disciplinary authority in coming to a conclusion about the guilt of the CO. The disciplinary authority has the inherent powers to disagree with the findings of the IO and come to his own conclusions on the basis of his own assessment of the evidence forming part of the inquiry.

12.5.2. In view of the Supreme Court's judgement in Ramzan Khan's case, if the disciplinary authority is different from the inquiring authority, and if the latter has held all or any of the charges against the CO as proved, the disciplinary authority should ask the CO for his representation, if any, within 15 days. In

case the IO has held any or all the charges against the CO as "not proved", the disciplinary authority should consider the IO's report in the first instance. If he disagrees with the IO's findings, he should communicate his reasons for disagreement, to the CO while asking for his representation. The disciplinary authority may take further action on the inquiry report on consideration of the CO's representation or on the failure of the CO to submit the same within the specified time.

12.5.3. The disciplinary authority, in exercise of his quasi-judicial powers, may issue an order imposing a major or a minor penalty on the CO, or exonerate him of the charges, if in its opinion, none of the charge has been proved or what has been proved, is non-actionable. He may remit the case for further inquiry if he considers that there are grave lacunae or procedural defects which vitiate the inquiry. The fact that the inquiry has gone in favour of the CO or the evidence led in the inquiry has gaps, should not be a reason for remitting the case for further inquiry (Dwarka Chand Vs State of Rajasthan – AIR 1959 Raj. 38). In such a case, the disciplinary authority may disagree with the IO's findings. The final order passed by the disciplinary authority should be a well-reasoned speaking order.

12.5.4. The cases requiring the Commission's advice may be referred to it, in the form of a self-contained note, along with the following documents:-

(i) The IO's report and the connected records;
(ii) Disciplinary authority's tentative findings on each article of charge;
(iii) Representation of the CO on the inquiry report; and
(iv) Tentative conclusions of the disciplinary authority and CVO.
(v) Wherever the inquiry proceedings have been delayed, the CVO shall specifically comment on the delay fixing accountability for the delay and the action taken/proposed against those responsible for the same.

12.5.5. While imposing a punishment on the officer, the disciplinary authority should ensure that the punishment imposed is commensurate with the gravity of the misconduct proved against the CO. He may also take into account at this stage the following other criteria:

(a) the extenuating circumstances, as they emerge from the inquiry; and
(b) the track record of the charged officer.

It should also be ensured that the punishment so imposed is not academic or ineffective; for example, there is no point in imposing a penalty of withholding of an increment, if the CO has already been drawing pay at the maximum of the pay scale. Similarly, there is no point in imposing a penalty of withholding of promotion for a specified period if the officer is not due for promotion.

13. PROCEDURE FOR IMPOSING MINOR PENALTIES

13.1. The procedure for imposing a minor penalty is much simpler as compared to the procedure for imposing a major penalty. For the imposition of the latter, the disciplinary authority is only required to serve a Memorandum on the concerned employee, enclosing therewith a statement of imputations of misconduct or misbehaviour and asking for a reply within a specified period, generally 10 days. On receipt of the written statement of defence, if the disciplinary authority is satisfied that the misconduct imputed to the CO has not been established, he may, through a written order, drop the charges. On the other hand, if the disciplinary authority considers the CO guilty of the misconduct in question, he may impose one of the minor penalties. The disciplinary authority, in his discretion, may also decide to conduct an inquiry following the same procedure as stipulated for the imposition of a major penalty, if in his opinion, holding of an inquiry is necessary to come to a definite conclusion about the guilt or innocence of the CO.

13.2. In cases, where minor penalty proceedings were instituted against an employee on the advice of the Commission, the Commission need not be consulted at the second stage if the disciplinary authority, after considering the defence statement, proposes to impose a minor penalty. But in cases where the disciplinary authority proposes to drop the charges, or an inquiry has been conducted, second stage consultation with the Commission is necessary.

14. APPEAL AND REVIEW

If in appeal or review, the appellate/reviewing authority proposes to modify the original order of punishment, the Commission's advice would not be necessary where such modification remains within the parameters of the Commission's original advice. For example, if on the Commission's advice for imposition of a major penalty, the appellate, or reviewing authority proposes to modify the original penalty imposing such a penalty with another major penalty, the Commission's advice at the appellate/review stage would not be necessary. On the other hand, in the instant case, if the modified penalty is not a major penalty, the Commission's advice would be necessary.

14.1. Where the Commission has not advised a specific penalty, the CVO shall scrutinise the final orders passed by the Disciplinary Authority and ascertain whether the penalty is commensurate with the nature and gravity of the lapses. If the punishment imposed is inadequate or inappropriate, he may recommend a modification thereof to the Reviewing Authority. On satisfying himself that a case for review exists, the latter may thereafter, assume jurisdiction over the case as provided for under the rules.

15. ACTION AGAINST PERSONS MAKING FALSE COMPLAINTS

15.1 Section 182 IPC provides for prosecution of a person making a false complaint. Therefore, if a complaint against a public servant is found to be

malicious, vexatious or unfounded, serious action should be considered against the complainant. Section 182 IPC reads as under:

"Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:

(a) to do or omit anything which such public servant ought to do or omit if the true state of facts respecting which such information is given were known by him; and, if the disciplinary authority considers the
(b) to use the lawful power of such public servant to the injury or annoyance of any personity, in his discretion, may also

same procedure as stipulated for the imposition of a m

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

15.2 Under Section 195(1)(e) Cr.P.C., a person making a false complaint can be prosecuted on a complaint lodged with a court of competent jurisdiction by the public servant to whom the false complaint was made or by some other public servant to whom he is subordinate.

15.3. Alternatively, if the complainant is a public servant, it may also be considered whether departmental action should be taken against him as an alternative or in addition to prosecution. When the Commission comes across any such complaint in the normal course of its functioning, it would advise the administrative authority concerned about appropriate action to be taken on its own initiative. However, in respect of cases which do not fall within the Commission's normal jurisdiction, the organisation concerned may decide the matter on its own as it deems fit.

16. DIFFERENCE OF OPINION BETWEEN THE CVO AND THE CMD

Where there is a difference of opinion between the disciplinary authority and the CVO with regard to cases which are not to be referred to the Commission, the CVO may report the matter to the next higher authority/CMD for the resolution of the difference of opinion between the two. However, if the CMD himself is the disciplinary authority in the case and there is an unresolved difference of opinion between him and the CVO, the CVO may report the matter to the Commission for advice.

17. GRANT OF IMMUNITY TO 'APPROVERS' IN DEPARTMENTAL INQUIRIES:

17.1. It is felt that in cases of serious nature, the evidence of "Approvers" may sometimes lead to considerable headway in investigation of cases. This also facilitates booking of offences/misconduct of more serious nature. Therefore,

the following procedure may be followed for grant of immunity/leniency to a public servant in the cases investigated by the CVO:

(a) If during an investigation, the CVO finds that an officer, in whose case the advice of the Commission is necessary, has made a full and true disclosure implicating himself and other public servants or members of the public and further that such statement is free from malice, the CVO may send his recommendation to the CVC regarding grant of immunity/leniency to such officer from departmental action or punishment. The Commission would consider the CVO's recommendation and advise that authority regarding the further course of further action;

(b) In cases pertaining to officials against whom the Commission's advice is not necessary, the recommendation for grant of immunity/leniency may be made to the CVO who would consider and advise the disciplinary authority regarding the further course of action. If there is a difference of opinion between the CVO and the disciplinary authority, the CVO would refer the matter to the Commission for advice.

18. OBSERVANCE OF THE TIME LIMITS IN CONDUCTING INVESTIGATIONS AND DEPARTMENTAL INQUIRIES:

Delays in disposal of disciplinary cases are a matter of serious concern to the Government and the Commission. Such delays also affect the morale of the delinquent employee and others in the organisation. Therefore, in order to ensure that disciplinary cases are disposed of quickly, the CVO should ensure that the following time limits are strictly adhere to:

S.No.	State of Investigation or Inquiry	Time Limit
1.	Decision as to whether the complaint involves a vigilance angle	One month of receipt of the complaint.
2.	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	-do-
3.	Conducting investigation and submission of report.	Three months.
4.	Department's comments on the CBI reports in cases requiring Commission's advice.	One month from the date of receipt of CBI's report by the DA.
5.	Referring departmental investigation reports to the Commission for advice.	One month from the date of receipt of investigation report.

6.	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.
7.	Issue of charge-sheet, if required.	(i) One month from the date of Commission's advice. (ii) Two months from the date of receipt of investigation report.
8.	Time for submission of defence statement.	Ordinarily ten days.
9.	Consideration of defence statement.	15 (Fifteen) days.
10.	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.
11.	Appointment of IO/PO in major penalty cases.	Immediately after receipt and consideration of defence statement.
12.	Conducting departmental inquiry and submission of report.	Six months from the date of appointment of IO/PO.
13.	Sending a copy of the IO's report to the CO for his representation.	(i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; (ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated.
14.	Consideration of IO's representation and forwarding IO's report to the Commission for second stage advice.	One month from the date of receipt of representation.
15.	Issuance of orders on the Inquiry report.	(i) One month from the date of Commission's advice. (ii) Two months from the date of receipt of IO's report if Commission's advice was not required.

19. SUPERVISION OVER VIGILANCE ACTIVITIES

The Commission exercises general superintendence over the vigilance administration and anti-corruption work in the public sector banks. In order to enable the Commission to discharge this function effectively, the Banks would henceforth submit a quarterly report on receipt, disposal and pendency of complaints and vigilance cases to the Commission in the prescribed format. This report would include the list of cases against officers in Scale –III and above as might have been closed/handled by the administrative authorities on their own on the ground that they did not involve a vigilance angle, or were otherwise found to be baseless.

20. INSTITUTIONAL MEETINGS:

The CVC would conduct quarterly meetings with the CVO of the Banking Division and a representative each of the RBI and the CBI with a view to sharing information and discussing matters of common interest. The CVO of a bank may also be coopted as a participant for a particular meeting if any of the matters proposed to be discussed in the meeting pertains to him and it is felt that his presence would be of help in taking an appropriate view in the matter.

21. REPORTING AND CONFIRMATION

In the normal course of discharging their functions, Bank officials may, on occasions, be required to exceed their powers/discretion, in organisational interests. After such a transaction has taken place, it should be immediately reported to the controlling authority for confirmation. The latter will grant or reject such requests for ratification within 15 days of the receipt of the report. In case queries/clarification are necessary for grant of such confirmation, the controlling authority may take another 15 days for taking the final action in this regard. It should, however, in all circumstances, ensure that such decision is taken within a period of one month of the receipt of the original report. Otherwise, the transaction in question shall be deemed to have been ratified by it.

When, however, a transaction has to be ratified under the powers of the Board, the confirmation in respect of such a transaction may be obtained from the latter in its next meeting.

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