“Disciplinary Proceedings in Government – Legal Requirements”

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1) Our ancient culture: Statecraft.

a) Sama Dana Beda Danda

(Kautilya)
1. **Our modern Culture (Constitutional Morality)**

*All India Service Officers take oath on the Constitution.*

*Our goals:

- Social
- Economic
- Political
- Liberty
- Equality
- Fraternity

Justice
* “The service must be above party and we should ensure that political considerations either in its recruitment or in its discipline and control are reduced to the minimum, if not eliminated, all together”

(Sardar Vallabhbhai Patel’s letter to Jawaharlal Nehru, dated 27.4.1948)
* Reality: 1057 AIS officers did not submit immovable property returns.

* 139 CBI cases (from 2014 to 2017) against AIS officers
“Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic” --- K.C. Sareen Vs CBI, Chandigarh (2001(6) SCC 584

* Chairman, NOIDA → Loss of Rs. 4721 crores to government by forging documents and sale of Commercial land at Industrial sector rates.
* Secretary, Agriculture, Govt of Chattishgarh – Rs. 500 crores and 446 benami accounts.

* Husband and wife, both Principal Secretaries to Govt of Madhya Pradesh – disproportionate assets worth Rs.360/- crores.
“Where the mind is without fear and the head is held high
Where knowledge is free

Where the world has not been broken up into fragments by narrow domestic walls
Where words come out from the depth of truth
Where tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by Thee
Into ever widening thought and action
Into that heaven of freedom, my father,
let my country awake”

(Rabindranath Tagore)
2) Disciplinary Procedures: – Basic tools

a) Constitution of India. (Articles 310 & 311 of Constitution of India)

b) Act of the Department or Ministry / The Service Rules of the Department / Central Civil Services (Conduct) Rules, 1964/and other rules made thereunder.

c) Permanent executive Instructions of the Department / Ministry as issued from time to time.
d) Oral Instructions of the higher ups – to be reduced to writing (Shah Commission Recommendations (1975-77)).

e) Business Rule of the Secretariat (Example: AMVIs Vs. Govt. of AP).
f) Prevention of Corruption (Amendment) Act 2018
   “Undue advantage”
   i) Seeking and accepting sexual favour
   ii) Exclusive club membership and hospitality.
   iii) Providing employment to close friends/relatives
   iv) Any gratification other than legal remuneration.
g) **Rule of Law**: It is an “aspect of the doctrine of basic structure of the Constitution, which even the plenary power of Parliament cannot reach to amend”.

(Kesavanand Bharati Vs. State of Kerala)

h) The doctrine of pleasure.

(Cannot be resorted to too freely, unfairly, capriciously)
Step - 2
Broad Principles of Disciplinary Proceedings

3) a) Disciplinary authority / Competent authority – as defined in the Act / Service Rule.

b) Difference between Prosecution and Departmental action (1990(1) SLR AP 21). (S. Sree Ram Murthy Vs CWC)

c) A Delegated person cannot delegate his powers (Delegatus non potest delegare) – Supreme Court ruling in Barium Chemicals Ltd. Vs The Company Law Board:

“Prima facie, a discretion conferred by a statute or any authority is intended to be exercised by that authority and by no other... The construction that would best achieve the purpose and object of the statute should be adopted”.
d) Preliminary inquiry / fact finding inquiry – slightly different from Disciplinary inquiry – D.I is highly methodical / Procedural.

e) Do not pre-judge the matter. *Audi alteram partem* (Listen to the other side) Knowledge speaks but wisdom listens: Better the P.I.O is not made the I.O

f) Free from bias – act fairly and consistently. (AIR 1959 SC 308). Opt for a person with high integrity as I.O.

h) No legal bar to Departmental Inquiry even in a case FIR is lodged u/s 154 Cr.P.C. (B. Balaiah Vs DTO Karnataka STC (1982 (3) SL KAR 675).
i) Advisable to await the Orders of trial court in a grave matter to proceed with Departmental action.

j) Criminal action if necessary after Departmental action. (old village officers’ cases).

k) Honorable acquittal (acquittal on technical grounds) (AIR 1959 MP 46 Q.W. Ali Vs State of MP) Mere Acquittal (Ashutosh Pawar Vs High court of MP: Decision of a criminal court on the basis of compromise or on acquittal cannot be treated that a person possesses good character. Disciplinary Action may be continued. {1981 (2) SLR 274 SC}
l) "Nemo index in causa sua" - No man is permitted to be a judge in his own case.

m) The Inquiry Officer should always be senior to the Delinquent/Charged officer.
Step - 3
Necessity of Suspension or otherwise

4) a) May tamper with / destroy the records.

   b) May influence / threaten the witnesses.

   c) May tarnish the fair image of the Govt. / Public Sector Undertakings.

   d) Warranting circumstances:
       Moral turpitude (Sexual harassment / corrupt motives / unbecoming of a Government servant).

   e) Charged official is mentally / physically unfit.
       (Proddutur case)
f) Suspension is not punishment. If charges not established, the C.O. is eligible for full salary. Suspension period treated as duty.

g) **Provide Subsistence Allowance**, as per rules, otherwise it shall be a Human Rights violation. It may weaken the case (?)

h) **Review of Suspension cases** periodically. Terminate the suspension, if not required.

The Inquiry

5) Appointment of a regular departmental / disciplinary inquiry officer —

i) Frame clear charges — Quote the relevant rule / regulation violated by the Charged Officer.

ii) Specify whether the charges come under major penalty or minor penalty.

iii) Whether a lawyer is permitted? (See the rule position.) Permissible in certain circumstances.
iv) Appointment of a Presenting Officer – knowledgeable and experienced employee thorough with rules and regulations.

v) Provide all necessary opportunities to the Charged Officer to co-operate with the Inquiry. All reports in connection with the Inquiry – Supply them to the Charged Officer.

vi) Cross-examination of witnesses – permissible. If not requested – Record it so.

vii) Inquiry Officer should not give room for complaint from the C.O. (Maternity Rights / Human Rights / Extreme poverty – unable to produce defense witnesses)
viii) Follow the time frame (Premnath bali Vs Registrar of High Court of Delhi) given by the Disciplinary authority.

ix) No recommendation of the Inquiry Officer needed. Whether a particular misconduct is proved or not.

x) Copy of the Inquiry Report to be provided to the D.O. with proper acknowledgement.

xi) Request of the Physically Handicapped C.O. Needs due consideration. Provide a seat, for instance.
xii) No physical contact / sign language – it can be misinterpreted.

xiii) Keep records in your safe custody – (Araku BDO case).

xiv) **Golden Rule:** Adhere to Principles of Natural justice:

    (Article 14 & 21 of the Constitution)

    - Fairness
    - Reasonableness
    - Equity
    - Equality
Minor Penalties

a) Censure
b) Withholding the promotion
c) Whole or part recovery of the loss.
d) Reduction to a lower stage in the time scale
   – No adverse effect in pension – Normally less than three years.
Major Penalties

a) Reduction to a lower stage in the time scale > above three years – adverse pensionary effect.
b) Compulsory retirement
c) Removal from Service – can opt for Govt service
d) Dismissal from Service – Cannot opt for Govt. Service.

(Order should specify: whether reduction in time scale is temporary or otherwise)
STEP - 5

6) How to deal with the Inquiry Report? 4 ways.

(1) a) I.O. Indicts  D.A. Need not indict  
b) I.O. Does not indict  D.A. may indict  
c) I.O. Indicts  D.A. Indicts.  
d) I.O. does not indict.  D.A. does not indict.
2) Disciplinary authority to come to definite conclusions.

3) Past conduct need not become the basis for current conclusions.

4) Recommendations of the Vigilance / higher ups – Should not be quoted in the Proceedings.

5) Punishment – neither more nor less, but adequate. (Sukhbir Singh Vs Deputy Commissioner of Police, New Delhi 1984).
6) Consult State Public Service Commission / Union Public Service Commission – Wherever necessary as per Rules.

7) Prescribe Appeal period as per rules.

8) Last and final opportunity to C.O.: explanation sought indicating the punishment
7) 1) Read the directions of the Court / Administrative Tribunal and take suitable action. (State of Rajasthan Vs. B.K. Meena & Ors.)

2) Convicted, but appeal pending – Disciplinary action need not wait. (AIR 1995 SC 1362)
3) If the court prescribes a time frame to implement an order and that is not possible, write to Govt/Government Pleader to obtain permission of the court seeking time (case of MPDOs in 1998).

4) Govt. of India can interfere in disciplinary action by State (Govt. of India affidavit to the P&H HC)?
Not reasonably practicable to hold inquiry (Article 311 2 (c))

The President or the Governor – Inquiry not possible in the interest of the security of the State

-Thanks -