

“Disciplinary Proceedings in Government – Legal Requirements”

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Disciplinary Proceedings in Government –Legal Requirements

1) Our Culture : Our Administration.

Our Culture > Our Action > Our goal: Justice 

{>Liberty

{>Equality

{>Fraternity

GOAL OF INDIA

- “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)

Our Administration: Disciplinary Procedures

- Constitution of India. (Article 311 of Constitution of India)
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- Act of the Department or Ministry / The Service Rules
- of the Department / Central Civil Services (Conduct) Rules, 1964.
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- Permanent executive Instructions of the Department / Ministry
- as issued from time to time.
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- Oral Instructions of the higher ups – to be reduced to writing
- (Shah Commission Recommendations).
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- Business Rule of the Secretariat (Example: AMVIs Vs. Govt. of AP).
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- The doctrine of pleasure.

Disciplinary Proceedings in Government –Legal Requirements

- a) Disciplinary authority / Competent authority – as defined in the Act / Service Rule.
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- b) Difference between Prosecution and Departmental action (1990(1) SLR AP 21).(S. Sree Ram Murthy Vs CWC)
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- 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”.
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- Preliminary inquiry / fact finding inquiry – slightly different from Disciplinary inquiry - highly methodical / Procedural.
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Disciplinary Proceedings in Government –Legal Requirements

- Do not pre-judge the matter.
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- Be free from bias – act fairly and consistently.
- Re-enquiry permissible on technical grounds (AIR 1962 SC 1334 and AIR 1979 SC 1923).
- No legal bar to Departmental Enquiry even in a case in which FIR is lodged (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 after Departmental action and vice-versa (Example : old village officers' cases).
- k) Honorable acquittal (AIR 1959 MP 46 Q.W. Ali Vs State of MP)
Mere Acquittal > Disc. Action may be continued. {1981 (2) SLR 274 SC}
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Suspension – Grounds

- May tamper with / destroy the records.
- May influence / threaten the witnesses.
- May tarnish the fair image of the Govt. / Public Sector Undertakings.
- Grave moral turpitude
- Delinquent official is mentally / physically unfit.
- i) Review of Suspension cases periodically.
- ii) Provide Subsistence Allowance, as per rules/Human Rights violation.

Disciplinary Proceedings in Government –Legal Requirements

- Appointment of regular departmental / disciplinary inquiry officer –
- Principles of Natural justice under Article.14 of the Constitution of India –
- The Inquiry Officer should always be senior to the Delinquent/Charged Official –
- Different from the Preliminary Inquiry Officer.
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- i) Frame clear charges – Quote the relevant rule / regulation violated by the Charged Officer/ Grounds of charges.
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- ii) Whether a lawyer is permitted? See the rule position. Permissible in certain circumstances.
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- iii) Appointment of a Presenting Officer.
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- iv) Provide all necessary opportunities to the D.O. to co-operate with the Inquiry. All reports in connection with the Inquiry – Supply them to the Charged Officer.
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- v) Inquiry Officer should not give room for complaint from the D.O. (Maternity Rights / Human Rights)
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Disciplinary Proceedings in Government –Legal Requirements

- Follow the time frame given by the Disciplinary authority.
- vii) No recommendation of the Inquiry Officer needed. His duty: whether a particular misconduct is proved or not
- viii) Copy of the Inquiry Report to be provided to the D.O. with proper acknowledgement.
- ix) Request of Physically Handicapped D.O.- needs due consideration. Provide a seat, for instance.
- x) No physical contact / sign language – it can be misinterpreted.
- xi) Keep records in your safe custody – (Araku BDO case).
- 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.

Disciplinary Proceedings in Government –Legal Requirements

- Disciplinary authority. to come to definite conclusions.
- b) Past conduct need not become the basis for current conclusions.
- c) Recommendations of the Vigilance / higher ups – Should not be quoted in the Proceedings.
- d) Punishment – neither more nor less, but adequate. (Sukhbir Singh Vs Deputy Commissioner of Police, New Delhi 1984).

Disciplinary Proceedings in Government –Legal Requirements

Consult State Public Service Commission / Union Public Service Commission – Wherever necessary as per Rules.

f) Read the directions of the Court / Administrative Tribunal and take suitable action. (State of Rajasthan Vs. B.K. Meena & Ors.)

g) Prescribe Appeal period as per rules.

h) Convicted, but appeal pending – Disciplinary action need not wait. (AIR 1995 SC 1362)

THANKS



Dr.S.Chellappa.