
DISCIPLINARY PROCEEDINGS AGAINST GOVERNMENT EMPLOYEES AND NATURAL JUSTICE

Raushan, Research Scholar, Chanakya National Law University, Patna, Bihar

ABSTRACT

The relationship of an employer and an employee is that of master and servant. In such a relationship, the power of master to exercise disciplinary control over the servant is a term to be necessarily implied. Although “discipline” is a term susceptible of being understood in diverse senses. In the relationship of master and servant it implies the obligation of the servant to obey and act in accordance with the code of conduct formulated by the master. When an employee is found of misconduct or misbehaviour, the employer can impose a suitable punishment within the ambit of law. It is necessary to ensure that the principles of natural justice are observed during enquiry and imposition of penalty. Present article investigates the relationship between Disciplinary proceedings and natural justice.

Keywords: Disciplinary control, disciplinary proceedings, procedural fairness, natural justice.

Introduction

Disciplinary proceedings are held in exercise of the domestic jurisdiction of the employer. The proceedings that are held as part of employee's misconduct (known as departmental enquiry) is the most important characteristic feature of a disciplinary proceeding that is a precondition for imposing any punishment on a Government employee. This universality of this code in the law relating to public services in India is substantiated by the fact that all the public servants, employees of statutory bodies or Government companies are governed by rules that stipulate the standard operating procedures in such proceedings which are to be followed prior to imposition of any punishment.

A departmental proceeding is a quasi-judicial proceeding which is conducted by an enquiry officer as a quasi-judicial function. The charges leveled against the delinquent officer must have been proved to be true. The enquiry officer must determine whether the employee is guilty based upon the materials brought on record by the parties.

The characteristic features and elements of disciplinary proceedings have been elaborately summed up in the matter of *Union of India v. Gyan Chand Chattar*.¹ The Court stated that an enquiry against any person ought to be conducted in strict accordance with the statutory provisions and the principles of natural justice. The charges should be specific, definite and describing the specifics of the incident upon which the charges have been based. A vague charge cannot form the basis of departmental enquiry. The enquiry must be conducted fairly and objectively without any prejudice. Conclusion must not be based upon conjectures and surmises, nor should it be irrational or willfully partial. The Court further stated that there is a difference between proof and suspicion. Every act or omission on the part of delinquent cannot be a misconduct. The enquiry officer must state his reasons for validating the charges levelled. The evidence cited must not be complacent. Even if the accused does not take defence or raise any protest saying that the charges are vague, that does not absolve the enquiring authority from being vitiated for the reason that there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.

Natural justice is an important topic in the field of administrative law. In the present context its application is confined in relation to disciplinary proceedings. It is not concerned with the origin and development of the principle or to consider the various critical problems which have

¹ (2009) 12 SCC 78.

arisen from time to time before the courts in relation to its definition, content and areas of application. In relation to disciplinary proceedings, the attempt is to concentrate and highlight the areas and issues which frequently arise in litigative controversies in courts.

The traditional concept of natural justice comprises of two rules:

- a) No Person is to be condemned without hearing.
- b) No person shall be a judge of his own cause.

The above mentioned rules are the basic features; however, many auxiliary rules have been evolved by the Judges.² Its application has been extended to areas which are no longer labeled as “Judicial” or “quasi-judicial”. Its character has been freed from technical procedural shackles and emphasis has perhaps shifted from a duty to act judicially to a duty to act fairly.³

The duty to act fairly also applies on Tribunals wishing to proceed on a point not put before it to alert a party of its intention to so proceed and hear him before taking a decision. There will be denial of opportunity where 15 days notice was computed from the date of issue instead of the date of service.⁴

Disciplinary Matters, Disciplinary Control And Disciplinary Action

Under the article 309 of the Constitution of India, the state has the power to prescribe conditions for service. These powers also include the power to conduct enquiry against an employee in case of misconduct, misbehavior, corruption, negligence or inefficiency and also to prescribe suitable punishment. The rules incorporate provisions for fair trail to the employees against whom departmental enquiry has been instituted. Therefore, the rules of disciplinary proceedings have established standard procedure to be followed for conducting departmental enquiry.

The power of disciplinary control is an indication of the relationship between master and servant. In the relationship of master and servant the term discipline implies that the every action of servant must comply with the code of conduct formulated by the master. In the matter of *State of Assam v. Kanak Chandra Dutta*,⁵ the Supreme Court held that under Art. 235 of the Constitution of India High Court have disciplinary jurisdiction and that High Court can hold

² *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262.

³ *Re: H.K. (An Infant)*, (1967) 2 QB 617.

⁴ *R.V. Mental Health Review Tribunal*, (1985) 3 All ER 699.

⁵ AIR 1967 SC 884 at 886 : (1967) 1 SCR 679 : (1968) I LLJ 288.

enquiries and impose punishments in such cases. It was further observed in the matter of *State of Bengal v. Nripendra Nath Bagchi*⁶ that “control is useless if it is not accompanied by disciplinary powers.” The Court also stated that although as per Articles 233 and 234 read with Article 311, the Governor has the power of appointing District Judge, it does not infringe the control of High Court except while imposing the punishment of dismissal or removal.

The term “disciplinary matters” has a much wider ambit. Any kind of disciplinary action taken against an employee is a question of disciplinary matters.⁷ In the matter of *R.P. Kapur v. Union of India*⁸ it was argued that suspension pending departmental enquiry, is not disciplinary matter. This argument was rejected by Court and it was stated that the term “disciplinary matters” must be given a wider meaning regarding what might be reasonable included. It was also observed that suspension, pending departmental enquiry can be held within the ambit of departmental matters, as it is aimed at ensuring that for the period while the said enquiry is going on, the employee is not in position of misusing his authority for prejudicing the enquiry.

Disciplinary action is the punishment which is imposed on an employee for any misconduct committed while carrying out his duties. It is the action taken by employer for enforcing discipline. Such disciplinary action can only be taken if the employer has conducted a proper enquiry.

Natural Justice in Disciplinary Proceedings

Enquiry procedure is violative of principles of natural justice where the officer himself acts as the investigator, prosecutor and judge. For instance, non-payment of subsistence allowance which results in the employee not being able to travel from Kanpur to Gorakhpur to participate in departmental enquiry, would amount to violation of principles of natural justice, particularly where he has in his reply to show cause notice stated that even if he was allowed to appear in the enquiry against medical advice, he would be unable to appear for want of funds because of such non-payment.

Natural justice in context of disciplinary proceedings means that proper and fair procedure be followed before a public servant could be held guilty of misconduct and a punishment is

⁶ AIR 1966 SC 447 : (1966) 1 SCR 771 : (1968) 1 LLJ 270.

⁷ *Pradyut Kumar Bose v. Chief Justice, Calcutta High Court*, AIR 1956 SC 285 at 292 : (1955) 2 SCR 1331.

⁸ AIR 1964 SV 787 : 5 SCR 431 : (1966) II LLJ 164.

imposed upon him. The aspects of natural justice are incorporated in rules pertaining to disciplinary proceedings. The rules of natural justice supplement the law and not supplant it.

“Civil Consequences” not only include the violation of property and personal rights but also the civil liberties, material deprivations and non-monetary damages; it also has adverse effect on civil reputation.⁹ In its comprehensive sense, everything that affects the civil life of a citizen is civil consequences.

The ambit and application of the principle of natural justice cannot be defined with a strait-jacket of a rigid formula. It is the specific facts and circumstances of a given case, the scaffold of law under which enquiry is being conducted and the Tribunal or body or person appointed for such cause upon which the particulars of natural justice depends.¹⁰ Sometimes, the particulars of natural justice have to be modified to safeguard public interest. For instance, information of sensitive nature must not be disclosed.¹¹ Therefore, the doctrine can be modified as the prevailing situations. Justice, sometimes, must require harsh penalties. Hence, in an enquiry of prima facie nature in order to decide if disciplinary proceedings must be initiated, the body relies upon the counter-statement submitted by the Government without disclosing it to the citizen. In such case, there is no violation of the principle of natural justice.¹² In this context, Lord Wilberforce, in the House of Lords observed that:

“The system intended to be fair, might be or might not be made to appear fairer still, but the roughness in justice does not, in my view, reach the point where the courts ought to intervene.”

The ambit of this situational variation has been expanded to include the effects and consequences of non-compliance with the principles of natural justice and that such non-compliance must not result in mechanical invalidation. This flexibility of doctrine is applicable in departmental proceedings as well.

The doctrine of natural justice is aimed at ensuring substantial justice. They are not supposed to be rigidly employed irrespective of the demands of fairness in a particular case. In 2006, the Supreme Court observed that a radical transformation in the principles of natural justice has

⁹ *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851 at 876.

¹⁰ *Supra* (AK Kraipak)

¹¹ *Jamat-e-Islami Hind v. Union of India*, (1995) 1 SCC 428 : JT 1995 (1) SC 31.

¹² *Wiseman v. Borneman*, 1971 AC 297 : (1969) 3 WLR 706.

taken place. The Court had reviewed its earlier stand that a minor violation would nullify the order. Therefore, the consequences of such violation must be decided on case by case basis. Incongruity in departmental proceedings would not lead to automatic reinstatement of the delinquent employee. In such cases fresh proceedings must be initiated from the point where alleged incongruity had taken place.

Conclusion

The power of the relationship of master and servant was also noted by the Supreme Court when it observed that, amongst other things, the State's right to suspend and dismiss is an important factor in establishing the relationship of master and servant which also signifies the obligation of the servant to obey and act in accordance with the code of conduct formulated by the master but unfortunately in most of the cases it is seen that the code of conduct is not followed by the master itself and merely on surmises and conjectures without application of mind, disciplinary proceedings are being conducted, more so principles of natural justice are also not being followed in letter and spirits by the disciplinary authority. The proceedings that are held as part of employee's misconduct (known as departmental enquiry) is the most important characteristic feature of a disciplinary proceeding that is a precondition for imposing any punishment on a Government employee. This universality of this code in the law relating to public services in India is substantiated by the fact that all the public servants, employees of statutory bodies or Government companies are governed by rules that stipulate the standard operating procedures in such proceedings which are to be followed prior to imposition of any punishment. In such matters, principles of natural justice are not followed in many cases. High Courts and the Supreme Courts interfere in such matters when the employees appeal against the orders issued after proceedings. Violation of natural justice and not following the proper procedure in conducting enquiry are the ground of such interference.