Protection to Civil Servants Under Constitution & Other Legislations

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1(A). Laws governing services of civil servants of Uttar Pradesh : Various laws governing the services of civil servants are as under :

(i) Articles 309, 310 & 311 of the Constitution of India
(ii) UP Government Servants Conduct Rules, 1956
(iii) Public Servants (Inquiries) Act, 1850
(iv) Uttar Pradesh Class II services (Imposition of Minor Punishments) Rules, 1973
(v) UP Government Servant (Discipline & Appeal) Rules, 1999
(vi) Uttar Pradesh Public Services (Tribunals) Act, 1976
(vii) Uttar Pradesh Public Services (Tribunals) Rules, 1976
(viii) Uttar Pradesh Public service Tribunal (Procedure) Rules, 1992
(ix) UP Government Servants Seniority Rules, 1991
(x) UP Government Servants Resignation Rules, 2000
(xi) UP Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974
(xii) Uttar Pradesh Government servant (Petition for Adverse ACR and Disposal of Matters Relating Thereto) Rules, 1995
(xiii) UP Temporary Government Servants (Termination of Service) Rules, 1975
(xiv) CCA Rules i.e. Civil Services (Classification, Control & Appeal) Rules, 1930
(xv) G.Os. & Government Notifications
(xvi) Judicial Pronouncements.

1(B). All India Services including All India Judicial Service (Article 312): The Parliament in exercise of its powers under Article 312 of the Constitution can make laws for creation of All India Services including the All India Judicial Services. Article 312-A (w.e.f 03.01.1977) of the Constitution further empowers the Parliament to vary or revoke the conditions of All India Services. Certain important Acts & Rules concerning All India Services are as under :

(i.a) Articles 312, 312-A of the Constitution of India

(i) The All India Services Act, 1951

(ii) The All India Services (Leave) Rules, 1955

(iii) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955

(iv) The Indian Administrative Service (Appointment by Selection) Regulations, 1956

(v) The Indian Administrative Service (Probation) Rules, 1954

(vi) All India Services (Conduct) Rules, 1968

(vii) The Indian Administrative Service (Pay) Rules, 1954

(viii) The Indian Administrative Service (Regulation of Seniority) Rules, 1987

(ix) The Indian Revenue Service Rules, 1988

(x) The Indian Police Service (Cadre) Rules, 1954

(xi) The Indian Police Service (Fixation of Cadre Strength) Regulations, 1955

(xii) The Indian Police Service (Recruitment) Rules, 1954

(xiii) The Indian Police Service (Appointment by Competitive Examination) Regulation, 1955

(xiv) The Indian Police Service (Probationers' Final Examination) Regulations, 1987

(xv) The Indian Police Service (Pay) Rules, 1954

(xvi) The Indian Forest Service (Cadre) Rules, 1966

(xvii) The Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

2(A). <u>Civil Servant—Who is?</u> The expression "civil post", prima facie means an appointment or office on the civil side of the administration as distinguished from a post under the Defence Forces. Thus the members of the Defence Services and persons holding any post with Defence are not included in the expression "civil servants". But the police officers are covered in the expression "civil servants". See:

(i) State of Gujarat vs Raman Lal, AIR 1984 SC 161.

(ii) Jagannath Prasad Sharma vs. State of U.P., AIR 1961 SC 1245.

2(B). "<u>Public Servant"--who is ?</u> : The words 'public servant' have been defined **u/s 21 of the IPC** and also **u/s 2(c) of the Prevention of Corruption Act, 1988**. Out of

many definitions of the words 'public servant', one popular definition is that 'public servant' means any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty.

3(A-1).<u>Legislature & President and Governor may make Acts & Rules to regulate services of 'public servants':</u> Article 309 of the Constitution of India provides that the President and the Governor may make Acts & Rules for regulation of the services of public servants connected with the affairs of the Union or the State.

3(A-2).<u>No service Rule framed under Article 309 can take away the rights of civil servants guaranteed by Article 311(2)</u>: It is necessary to emphasise that the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311(2) of the Constitution. Once the scope of Article 311(1) and 311(2) are duly determined, it must be held that no Rule framed under Article 58 can trespass on the rights guaranteed by Article 311. See: ***Moti Ram Deka* v. *General Manager, North East Frontier Railway*, AIR 1964 SC 600 (Seven-Judge Bench).**

3(A-3).<u>Service rules can be unilaterally altered by the Government</u>: Employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by the statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by the rule making authority, namely, the Government. See: ***Union Public Service Commission* v. *Girish Jayanti Lal Vaghela*, AIR 2006 SC 1165.**

3(B). <u>Civil servant holds his post during the pleasure of the President or the Governor</u> : Article 310 of the Constitution of India provides that a civil servant holds his post during the pleasure of the President or the Governor of the State.

3(C). <u>Doctrine of pleasure & constitutional safeguards</u> : The 'doctrine of pleasure' is a constitutional necessity, for the reasons that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State would, in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public service. Article 309 of the Constitution is subject to the provisions of the Constitution. Hence, the rules and regulations made relating to the conditions of services under Article 309 are subject to Articles 310 and 311 of the Constitution. See: **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

3(D). <u>Applicability of doctrine of pleasure is subject to rule of law</u>: There is distinction between the doctrine of pleasure as it existed in a feudal set up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set up unfettered power and discretion of the crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good. See : **B.P. Singhal Vs. Union of India (2010) 6 SCC 331(Five-Judge Bench).**

3(E). <u>Doctrine of pleasure is a constitutional necessity</u> : The "pleasure doctrine" is a constitutional necessity for the reason that the difficulty in dismissing those public servants whose continuance in office is detrimental to the State, would in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public services**.** See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351 (Three-Judge Bench).**

3(F). <u>Clauses (1) & (2) of Article 311 impose restrictions upon the President or the Governor on exercise of his power of pleasure under Article 310(1)</u> : Article 309 of the Constitution is subject to the provisions of the Constitution. Hence,

the rules and regulations made relating to the conditions of service under Article 309 are subject to Articles 310 and 311 of the Constitution. It is worth mentioning that the opening words of Article 310 "Except as expressly provided by this Constitution" make it clear that a government servant holds the office during the pleasure of the President or the Governor except as expressly provided by the Constitution. From a bare perusal of the provisions contained in Article 311 of the Constitution, it is manifestly clear that clauses (1) and (2) of Article 311 impose restrictions upon the exercise of powers by the President or the Governor of the State of his pleasure under Article 310(1) of the Constitution. However, proviso to Article 311(2) makes it clear that Article 311(2) shall not apply inter alia 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 an enquiry before termination of service. See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

3(G). Scope of Article 310 vis- a- vis Article 311 of the Constitution: The rule of English law pithily expressed in the *Latin* phrase *'durante bene placito'* which means 'during pleasure' had not been adopted in India either by Section 240 of the Government of India Act, 1935 or by Article 310 (1) of the Constitution of India. The pleasure of the President is clearly controlled by the provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that Article would be excluded from the operation of the absolute doctrine of pleasure. The pleasure of the President would still be there but it has to be exercised in accordance with the requirements of Article 311 of the Constitution. Therefore, the true position is that Articles 310 and 311 must no doubt be read together but once the true scope and effect of Article 311 is determined, the scope and effect of Article 310(1) must be limited in the sense that in regard to cases falling under Article 311(2), the pleasure mentioned in Article 310(1) must be exercised in accordance with the requirements of Article 311. The Court will no doubt have to decide what

cases of termination of services of permanent civil servants amount to removal but once that question is determined, wherever it is shown that a permanent civil servant is removed from his service, Article 311(2) will apply and Article 310(1) cannot be invoked independently with the object of justifying the contravention of the provisions of Article 311(2).See: ***Moti Ram Deka* v. *General Manager, North East Frontier Railway*, AIR 1964 SC 600 (Seven- Judge Bench).**

3(H). <u>Withdrawal of pleasure cannot be at the sweet will, whim & fancy of the authority</u>: In a democracy governed by the rule of law, where arbitrariness in any form is eschewed, no government or authority has the right to do what it pleases. Where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons. The doctrine of pleasure is not a licence to act with unfettered discretion, to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of pleasure. See : **B.P. Singhal Vs. Union of India, (2010) 6 SCC 331(Five-Judge Bench).**

3(I). <u>Conditions of service of civil servants:</u> Generally speaking, subject to the rules governing the services of the civil servants, following are the conditions of service applicable to them:

(i) Salary or wages
(ii) Subsistence allowance during suspension
(iii) Periodical increments
(iv) Leave
(v) Provident fund
(vi) Gratuity
(vii) Promotion
(viii) Seniority
(ix) Tenure or termination of service

(x) Superannuation

(xi) Pension

(xii) Transfer

(xiii) Deputation

(xiv) Disciplinary proceedings

3(J). <u>Civil servants issuing orders on verbal instructions of superiors must record it on file</u>: Civil Servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and they must also be protected against wrongful and arbitrary pressure exerted by the administrative superiors, political executive, business and other vested interests. Further, civil servants shall also not have any vested interests. Resultantly, there must be some records to demonstrate how the civil servant has acted if the decision is not his but if he is acting on the oral directions, instructions, **he should record such directions in the file**. If the civil servant is acting on oral directions or dictation of anybody, he will be taking a risk because he cannot later take up the stand that the decision was in fact not his own. Recording of instructions, directions is, therefore, necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity. By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, 2005 could be defeated. The practice of giving oral directions/ instructions by the administrative superiors, political executive etc. would defeat the object and purpose of the RTI Act and would give room for favouritism and corruption. The Supreme Court, therefore, directed all the State Governments and Union Territories to issue directions like Rule 3(3) of the All India Services (Conduct) Rules, 1968 in their respective States and Union Territories. See: ***T.S.R. Subramanian* v. *Union of India & Others*, AIR 2014 SC 263.**

4(A). <u>Public servant cannot be dismissed, removed or reduced in rank by an authority subordinate to that by which he was appointed</u>: Article 311 of the Constitution of India provides that a civil servant cannot be dismissed or

removed from his post by an authority subordinate to that by which he was appointed**.** Dismissal or removal or reduction in rank can be ordered only after an enquiry and after informing the delinquent public servant of the charges against him and after giving him reasonable opportunity of being heard. See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

4(B). **Dismissal, removal or reduction in rank can be ordered only after inquiry and after informing the delinquent public servant of the charges and giving him opportunity of being heard:** As per the safeguards provided by Article 311 of the Constitution, a public servant cannot be dismissed or removed or reduced in rank unless an inquiry is conducted against him and he is informed of the charges leveled against him and reasonable opportunity of being heard is given to him. See: **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

4(C). **Dismissal under sub-clause(c) to second Proviso to Article 311(2) even without inquiry:** Sub-clause (c) to second Proviso to Article 311(2) of the Constitution makes it clear that Article 311(2) shall not apply inter alia 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 an enquiry before termination of service. See : **Union of India Vs. Major S.P. Sharma, (2014) 6 SCC 351(Three-Judge Bench).**

5. **Public servant not to be prosecuted for an act done by him in connection with his official duty** : A public servant cannot be prosecuted for acts done by him in connection with his official duty. See : **Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC).**

6(A). **"Good faith" & its definition : (Section 52 IPC) :** Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention**."**

6(B). <u>Protection to Judges u/s 77 IPC</u> : Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith, he believes to be, given to him by law.

7(A). <u>Protection of Section 197 of the Code of Criminal Procedure, 1973 against prosecution of public servant</u> : Section 197 of the CrPC provides that a public servant cannot be prosecuted for an offence done by him in connection with the discharge of his official duty unless sanction for the same has been granted by the Government or by the authority competent to remove him from his office.

7(B-1).<u>Protection of Article 311(2) not available to dishonest, corrupt or inefficient public servants</u>: For the efficient administration of the State, it is absolutely essential that permanent public servants should enjoy a sense of security of tenure. The safeguard which Article 311(2) of the Constitution affords to the permanent public servants is no more than this that in case it is intended to dismiss, remove or reduce them in rank, a reasonable opportunity should be given to them of showing cause against the action proposed to be taken in regard to them. A claim for security to tenure does not mean security of tenure for dishonest, corrupt or inefficient public servants. The claim merely insists that before they are removed, the permanent public servants should be given an opportunity to meet the charge on which they are sought to be removed. Therefore, it seems that only two exceptions can be treated as valid in dealing with the scope and effect of the protection afforded by Article 311(2). If a permanent public servant is asked to retire on the ground that he has reached the age of superannuation which has been reasonably fixed, Article 311(2) does not apply because such retirement is neither dismissal nor removal of the public servant. If a permanent public servant is compulsorily retired under the rules which prescribe the normal age of superannuation and provide for a reasonably long period of qualified service after which alone compulsory retirement can be ordered, that again may not amount to dismissal or removal under Article 311(2) mainly because that is the effect of a long series of decisions of the Supreme

Court. But where while reserving the power to the State to compulsorily retire a permanent public servant, a rule is framed prescribing a proper age of superannuation and another rule is added giving the power to the State to compulsorily retire a permanent public servant at the end of 10 years of his service, that cannot be treated as falling outside Article 311(2). The termination of the service of a permanent public servant under such a rule, though called compulsory retirement, is in substance, removal under Article 311(2). It is because it was apprehended that rules of compulsory retirement may purport to reduce the prescribed minimum period of service beyond which compulsory retirement can be forced against a public servant that the majority judgment in the case to Moti Ram Deka reported in AIR 1964 SC 600 clearly indicated that if such a situation arose, the validity of the rule may have to be examined and in doing so, the impugned rule may not be permitted to seek the protection of the earlier decisions of the Supreme Court in which the minimum qualifying period of service was prescribed as high as 25 years or the age of the public servant at 50 years. See: ***Gurdev Singh Sidhu* v. *The State of Punjab*, AIR 1964 SC 1585 (Five- Judge Bench).**

7(B-2).<u>Protection of Section 19 of the Prevention of Corruption Act, 1988 for prosecution of public servant</u> : Section 19 of the P.C. Act, 1988 provides that no court shall take cognizance of an offence against a public servant accused of an offence under the said Act unless sanction for the same has been granted by the competent Government or by the authority competent to remove him from his office.

7(C). <u>Who can grant sanction for prosecution u/s 19 of the PC Act, 1988 ?</u> : As per Section 19(2) of the PC Act, 1988 : "Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other Authority, such sanction shall be given by that Government or Authority which would have been competent to remove the public servant from his office at the

time when the offence was alleged to have been committed". See : **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185** *(para 16)*

7(D). <u>Deemed Sanction u/s 19 after three or four months time limit</u> : The directions issued by the Hon'ble Supreme Court (in para 56) in **Dr. Subramanaan Swamy Vs. Dr. Manmohan Singh and another, AIR 2012 SC 1185** are as under **:**

"(a) All proposals for sanction placed before any sanctioning authority, empowered to grant sanction for the prosecution of a public servant under Section 19 of the PC Act, 1988 must be decided within a period of three months of the receipt of the proposal by the concerned authority.

(b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months period mentioned in clause (a) above, an extension of one month period may be allowed. But the request for consultation is to be sent in writing within the three months mentioned in (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time limit.

(c) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the charge-sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit." See **:**

(i) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185

(ii) Vineet Narain Vs. Union of India, (1998) 1 SCC 226, (Three-Judge Bench)

Note : *Vineet Narain's case has been followed in Dr. Subramanian Swamy*.

7(E). <u>Deemed Sanction u/s 19 after three or four months time limit</u> : *Whether trial court is competent to proceed with the case on the basis of deemed sanction to prosecute the accused, a prosecution sanction is not accorded by the competent authority/State within the period of four months in terms of the direction issued by the Apex Court in Vineet Narayan & Another Vs. Union of India & Another,*

(1998) 1 SCC 226---Three-Judge Bench ? In the case noted below where CBI had submitted a charge-sheet to the competent authority in the food-grain scam of UP for grant of prosecution sanction u/s 19 of the P.C. Act, 1988 for offences u/s 409, 420, 467. 468., 120-B IPC and u/s 13(2) of the P.C. Act, 1988 but the sanction for prosecution was not granted by the competent authority within a period of four months, then relying on two Supreme Court decisions reported in (i) Vineet Narayan Vs. Union of India & Another, (1998) 1 SCC 226 and (ii) Dr. Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that since the State Government had not taken any decision in regard to sanction of prosecution of the accused on the charge-sheet submitted by the CBI and the four months period fixed for grant of sanction by the Apex Court had already expired, hence the trial court was right in presuming the "Deemed Sanction" and had rightly issued process to the accused persons by taking cognizance of the offences. See : **Shashikant Prasad Vs. State, 2013 (83) ACC 215 (All)(LB).**

7(F). **Relevant considerations for grant of sanction & duty of sanctioning Authority :** The only thing which the competent authority is required to see is whether the material placed by the complainant or the investigating agency prima facie discloses commission of an offence. The Competent Authority cannot undertake a detailed inquiry to decide whether or not the allegations made against the public servant are true. See: **Dr. Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185** *(para 31)*

7(G). **Duty of prosecution and sanctioning authority :** In the case noted below, the Hon'ble Supreme Court has summarized the role of the prosecution and the sanctioning authority before according sanction u/s 19 of the P.C. Act, 1988 as under **:**

(a). The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent

should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b). The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction**.**

(c). The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d). The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material**.**

(e). In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law**.**

See : **CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252** (para 8).

7(H). **Satisfaction of the sanctioning authority should be based on material produced before him** : Grant or refusal of sanction is not a quasi judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter. What is required to be seen by the Competent Authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by the public servant. If the competent authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he

feels aggrieved by such decision, then he can avail appropriate legal remedy. See **:Dr. Subramanian Swamy Vs. Dr. Manmohan Singh, AIR 2012 SC 1185** *(para 27)*

7(I). **Only prima facie satisfaction of sanctioning authority is required for grant of sanction u/s 19 (1) of the P.C. Act, 1988** : Grant of sanction u/s 19(1) of the P.C. Act, 1988 for prosecution is administrative function. Only prima facie satisfaction of the sanctioning authority is needed. See : **State of Maharashtra Vs Mahesh G. Jain, (2013) 8 SCC 199.**

7(J). **Sanction u/s 197 CrPC not required when sanction u/s 19 of the P.C. Act, 1988 has already been granted :** A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under P.C. Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the P.C. Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the P.C. Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official duty". See : **Full Bench** Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004**, Smt. Neera Yadav Vs. CBI (Bharat Sangh).**

8(A)."Misconduct" & its meaning ? : In the case of **Institute of Chartered Financial Analysts of India Vs. Council of Institute of Chartered Accountants of India, AIR 2007 SC 2091,** the Hon'ble Supreme Court has defined the expression "misconduct" thus : *"misconduct" inter alia, envisages breach of discipline, all though it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, wide enough to include wrongful omission or commission whether done or omitted to be done*

intentionally or unintentionally. It means ***"improper behaviour, intentional wrong doing or deliberate violation of a rule of standard or behaviour".*** *Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law or a forbidden act. It differs from carelessness. Misconduct, even if it is an offence under the Indian Penal Code, is equally misconduct."*

8(B)."<u>Misconduct" & its definition</u> : Interpreting the word "misconduct", the Hon'ble Supreme Court in the case of **State of Punjab Vs. Ram Singh, Ex-Constable, AIR 1992 SC 2188 (Three-Judge Bench)** and the Hon'ble Allahabad High Court in **Rinku alias Hakku Vs. State of UP, 2000(2) AWC 1446 (Allahabad High Court : Full Bench)** have observed thus : "*the word `misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty, the act complained of bears forbidden quality or character. It's ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."*

8(C). <u>Misconduct in previous employment can be considered in subsequent employment</u> : Disciplinary proceeding against an employee can be initiated by the parent department in regard to acts purportedly done by him in his previous employment. If the act or omission concerned reflects on the delinquent employee's reputation for integrity or devotion to duty as member of the service, then there is necessarily a link between his previous and subsequent employment and acts of delinquency/misconduct in the previous employment and on proof of such misconduct in previous service, the delinquent can be dismissed from

service in his subsequent or parent employment. See : **Burdwan Central Co-operative Bank Limited & Another Vs. Asim Chatterjee & Others, (2012) 2 SCC 641.**

8(D). "<u>Integrity" & its meaning</u> : As regards the meaning of the word "integrity", the Hon'ble Supreme Court in the case of **Vijay Singh Vs. State of UP, (2012) 5 SCC 242** has defined the said word thus : *"integrity means soundness of moral principle or character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity."*

8(E). "<u>Moral turpitude": meaning of?</u>: The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore, the individual charged with a certain conduct owes a duty either to another individual or to the society in general to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man. For example, an offence under Section182 of the Indian Penal Code can take two shapes, one falling under (a) in which case it is unnecessary that the intention is that the public servant should act on the false information to the injury or annoyance of any person and the other falling under (b) where the intention is that he should so act. A case falling under clause (b) will doubtlessly involve moral turpitude but there may be cases where although the false information is given with the intention to cause a public servant to do or omit to do anything there is no intention that the public servant should use his power to the injury or annoyance of any person. Such cases will fall under clause (a) where it is unnecessary that the act or omission should effect or cause injury

to some third person. Clause (a) of Section 182 IPC enjoins a duty on persons to abstain from giving such information etc. to a public servant. A duty has been cast on individuals not to act in a certain manner and detract public servants from their normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant every public servant obviously is. An individual's conduct in giving false information to a public servant in the circumstances stated in Section 182(a) IPC too is therefore contrary to justice, honesty and good morals and shows depravity of character and wickedness. Therefore, an offence under Section 182 IPC whether falling under clause (a) or clause (b) is an offence involving moral turpitude. See: ***Baleshwar Singh*** **v.** ***District Magistrate and Collector*****,** ***Banaras*****, AIR 1959 Allahabad 71**

9. **<u>Laws governing disciplinary proceedings against civil servants</u> :** Laws governing the disciplinary proceedings against the public servants are as under:

(i) Articles 309, 310, 311 of the Constitution of India
(ii) Rules providing for the conditions of service of the delinquent public servant.
(iii) The Public Servants (Inquiries) Act, 1850
(iv) The Uttar Pradesh Government Servants Conduct Rules, 1956
(v) The Uttar Pradesh Government Servants (Discipline & Appeal) Rules, 1999
(vi) Section 4 of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witnesses & Production of Documents) Act, 1976
(vii) Orders XVI & XVI-A of the Code of Civil Procedure, 1908
(viii) Uttar Pradesh Class II Services (Imposition of Minor Punishment) Rules, 1973
(ix) U.P. Temporary Government Servants (Termination of Service) Rules, 1975
(x) Rules 53 & 54 etc. of the Financial Hand Book, Volume II, Parts II to IV
(xi) Certain Provisions like Rules 16 etc. of the U.P. General Clauses Act, 1904
(xii) Rule 27 etc of the Central General Clauses Act, 1897
(xiii) The Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985
(xiv) Regulation 351-A of Civil Services Regulations
(xv) Judicial Pronouncements
(xvi) Principles of Natural Justice
(xvii) Govt. Notifications & G.Os. etc
(xviii) Departmental Circulars

10. **<u>Disciplinary proceeding when deemed to commence or start</u> ?** : There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued. See :

(i) **Coal India Ltd. Vs. Saroj Kumar Mishra, (2011) 5 SCC 142** *(para 18)*
(ii) **Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109**
(iii) **UCO Bank Vs. Rajinder Lal Capoor, (2007) 6 SCC 694**
(iv) **Union of India Vs. Anil Kumar Sarkar, (2013) 4 SCC 161** *(para 20)*

11(A). **<u>Who can order institution of disciplinary enquiry</u> ?** : Normally the appointing authority can only order institution of disciplinary enquiry. But any other authority other than the appointing authority can also institute disciplinary enquiry but in view of the provisions of Article 311 of the Constitution such authority shall not be competent to award any penalty against the delinquent. See :

(i) AIR 1996 SC 2289
(ii) AIR 2012 SC 2250.

11(B). **<u>Supreme Court's direction for constituting CSB to guide and advise Governments on administrative and disciplinary matters of civil servants</u>:** Considering the various lacunae highlighted by various administrative reforms committees in present days public administration, the Supreme Court though expressed its inability to issue positive direction to constitute an independent Civil Service Board (CSB) of statutory nature, directed the States and the Central Government and the Union Territories to constitute within three months CSB consisting of high ranking in- service officers who are experts in their respective fields with the Cabinet Secretary at the Centre and the Chief Secretary at the State level as a better alternative (till the Parliament enacts a law) to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc. The views of the CSB could be overruled by the political executive but by recording reasons which would ensure good

governance, transparency and accountability in governmental functions. Parliament can also under Article 309 of the Constitution enact a Civil Service Act, setting up a CSB, which can guide and advise the political executive on matters of transfer and postings, disciplinary action, etc. CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning. Fixed minimum tenure would not only enable the civil servants to achieve their professional targets but also help them to function as effective instruments of public policy. Repeated shuffling/ transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. They can also prioritize various social and economic measures intended to be implemented for the poor and marginalized sections of the society. Considering the fact that at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently at the whims and fancies of the executive head for political and other considerations and not in public interest, the Supreme Court directed the Central and the State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants within a period of three months. See: ***T.S.R. Subramanian* v. *Union of India & Others*, AIR 2014 SC 263.**

12(A). <u>Nature of Departmental proceedings 'quasi-judicial'</u> : Holding departmental proceedings and recording finding of guilt against any delinquent and imposing punishment for same is a quasi-judicial function and not administrative function. Hence, authorities have to strictly adhere to statutory rules while imposing punishment. See :

(i) **Vijay Singh Vs. State of Uttar Pradesh & others (2012) 5 SCC 242**
(ii) **State of UP and Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142**
(iii) **Mohd. Yunus Khan Vs. State of UP, (2010) 10 SCC 539**

(iv) Union of India & Others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (Three-Judge Bench).

12(B). <u>Nature of departmental enquiry when quasi-criminal/quasi-judicial in nature</u> ? : …Disciplinary proceedings, however, being *quasi-criminal in nature,* there should be some evidence to prove the charge. 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 analyzing 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. See :

(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 *(paras 10 , 11, 12 & 13).*

(ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 *(Para 25)*

12(C). <u>Departmental enquiry & criminal proceedings distinguished</u> : Scope of disciplinary proceedings and scope of criminal proceedings are quite distinct, exclusive and independent of each other. Standards of proof in the two proceedings are also different. See : **T.N.C.S. Corpn. Ltd. vs. K. Meerabai, (2006) 2 SCC 255**

12(D). <u>Standard of proof in a departmental enquiry which is quasi-criminal/quasi-judicial in nature</u> : Disciplinary proceedings, however, being *quasi-criminal in nature,* there should be some evidence to prove the charge. 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 analyzing 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. See :

(i) Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513 *(paras 10 , 11, 12 & 13).*

(ii) M.V. Bijlani Vs. Union of India, (2006) 5 SCC 88 *(Para 25)*

12(E). <u>Difference between disciplinary & criminal proceedings</u> : In the cases noted below, it has been repeatedly ruled by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the same set of facts gives rise to both civil and criminal liability, both the proceedings i.e. civil and criminal, may go on simultaneously. See:

(i) Medchi Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd., 2000 (2) JIC 13 (SC)
(ii) Lalmani Devi vs. State of Bihar, 2001 (1) JIC 717 (SC)
(iii) Amar Pal Singh vs. State of U.P., 2002 (1) JIC 798 (All)
(iv) Atique Ahmad vs. State of U.P., 2002 (2) JIC 844 (All)
(v) Ajeet Singh vs. State of U.P., 2006 (6) ALJ 110 (All-F.B.)

12(F). <u>Difference between disciplinary & criminal proceedings</u> : In the cases of (i) NOIDA Entrepreneurs Association Vs NOIDA & others, AIR 2007 SC 1161 (i4i) State Bank of India Vs. R.B. Sharma, (2004) 7 SCC 27 (iii) Kendriya Vidyalaya Sangathan Vs. T. Srinivas, (2004) 7 SCC 442 (iv) Depot Manager, APSRTC Vs. Mohd. Yousuf Miya, (1997) 2 SCC 699 (v) Captain M. Paul Anthony Vs. Bharat Gold Mines Limited (1999) 3 SCC 679 and (vi) State of Rajasthan Vs. B.K. Meena, (1996) 6 SCC 417 (vi) Pratap Singh Vs. State of Punjab, AIR 1964 SC 72 (vii) Jang Bahadur Singh Vs. Baij Nath, AIR 1969 SC 30, it has been laid down by the Hon'ble Supreme Court that "the purpose of departmental enquiry and of prosecution are two different and distinct aspects. Departmental Enquiry is to maintain discipline in the service and efficiency of public service. Crime is an act of commission in violation of law or of omission of public duty. The enquiry in a departmental proceeding relates to the conduct

or breach of duty by the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. It is the settled legal position that the strict standard of proof or applicability of the Evidence Act stands excluded in a departmental proceeding. Criminal Proceedings and the departmental proceeding under enquiry can go on simultaneously."

12(G). **Acquittal in criminal case not to have any impact on disciplinary proceedings in the absence of any service Rules** : Mere acquittal of an employee by a criminal Court has no impact on the disciplinary proceeding initiated by the Department. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal Court acquits an employee honorably, he could be reinstated. The issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Acquittal of delinquent even if honorable as such does not in absence of any provision in service rules for reinstatement, confer right on delinquent to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal Court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceeding and preponderance of probabilities is sufficient. See: **Deputy Inspector General of Police Vs. S. Samuthiram, AIR 2013 SC 14** *(paras 20, 23 & 24)*

13(A). **Supplying copy of document to the delinquent relied upon by the Enquiry Officer must :** Where reliance was placed by the Enquiry Officer on the previous statement of the witness without supplying a copy thereof to the delinquent and without affording an opportunity to cross examine the witness, it has been held by the Hon'ble Supreme Court that reasonable opportunity

contemplated by Article 311(2) of the Constitution means hearing in accordance with principles of natural justice. Ascribing the non-production of the witnesses, which was fault of the department, to the delinquent showed that the Enquiry Officer was biased in favour of the department and found the delinquent guilty in so arbitrary manner which showed that he was carrying out the command of some superior officer. See : **Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10.**

13(B). <u>Document not mentioned in the charge-sheet not to be relied on</u> : A document which was not mentioned in the charge-sheet could not be relied on or even referred to by the disciplinary authority. More so, when the document (a voucher in this case) mentioned the date of payment in question different from that mentioned in the chart. See : **Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10.**

14(A). <u>Observance of principles of natural justice in disciplinary proceedings mandatory</u> : Observance of principles of natural justice in disciplinary proceedings against the public servants is always mandatory. The principles of natural justice are as under:

(i) Right of being heard

(ii) Rule against bias

(iii) No one can sit as judge in his own cause

14(B). <u>Protection of principles of natural justice</u> : When a departmental enquiry is conducted against a government servant, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. See : **State of UP & Others Vs. Saroj Kumar Sinha, AIR 2010 SC 3131.**

14(C). <u>Observance of Principles of Natural Justice must even when Rules are silent</u> **:** Even where the rules require action without notice or opportunity of explanation and defence to the delinquent, the principles of natural justice must be read into the rules. See :

(i) **Maneka Gandhi Vs. Union of India, (1978) SCC 248** (Section 10 passports Act-rule of natural justice may be followed by giving post decisional opportunity) AIR 1978 SC 579(1), *(Seven-Judge Bench).*

(ii) **Vinay Kumar Tripathi Vs. State of UP 1995 Suppl (1) SCC 552 (**Censure-Rule 55B of erstwhile CCA Rules; rule 6(2)(a) of the U.P. Subordinate Courts Staff (Punishment and Appeal Rules, 1976).

14(D). <u>Issuing notice for hearing and to submit objections by the person likely to be affected by the order mandatory</u> : In the case of **Suresh Chandra Nanhorya vs. Rajendra Rajak, 2006 (65) ALR 323 (SC),** it has been ruled by the Hon'ble Supreme Court that *"non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat".*

14(E-1).<u>Opportunity to the delinquent to make representation against the enquiry report before awarding penalty is mandatory</u> : After the submission of enquiry report by the Sub-Committee and before the order of dismissal passed by Executive Council petitioner was not given any opportunity of hearing. Sub-Committee submitted its enquiry report on 27.06.2009 and recommended the dismissal of petitioner on the same day. Obviously, no opportunity was given to petitioner to make any explanation. Thus, the manner in which punishment was inflicted is totally illegal. Inquiry Report as submitted by Sub-Committee is also vitiated and liable to be quashed. Impugned order quashed. See : **Vinay Kumar Pandey (Dr.) Vs. Chancellor, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur 2013 (1) ESC 484 (All)(DB)(LB).**

14(E-2). Amendment in Article 311 in 1976 eliminates second opportunity of representation before imposing punishment: Prior to 1976, opportunity to be heard or to make representation had to be offered to the delinquent at two stages- (i) at the time of inquiry into the charges and (ii) at the conclusion of the charges, before imposing punishment on the basis of the findings at the inquiry. But the **amendments made in Article 311 of the Constitution in the year 1976 eliminate the second opportunity i.e. opportunity of representation before imposing punishment.** However, the said amendment retains the safeguard that the punishment must be founded on the basis of the findings at the inquiry and not any thing extraneous thereto.

15(A). Opportunity for cross-examination of witnesses by delinquent mandatory--- Where a Manager in the United Commercial Bank (Chandigarh) was dismissed from service and during the departmental enquiry the presenting officer had submitted several exhibits, most of which were in the form of certificates, inspection-cum-investigation report prepared by two senior officers of the then division office and although they were examined by the Bank to prove those documents but opportunity to cross-examine those senior officers/witnesses was not given to the delinquent, it has been held that such omission amounted to denial of reasonable opportunity of defence. Natural justice says that reasonable opportunity to cross-examine such witnesses by the delinquent ought to have been granted. The enquiry was directed by the Supreme Court to be conducted afresh from the stage of enquiry report after opportunity of cross-examination of witnesses to the delinquent. See : **S.C. Girotra vs. UCO Bank, 1995 Supp (3) SCC 212**

15(B). Denial of opportunity for cross-examination of complainant as witness by the delinquent & its effect : Where a police-sub-inspector was dismissed from service on the charges of in-efficiency and dis-honesty based on adverse reports of superior officers and such superior officers, though available, were not examined to enable the police-sub-inspector to cross-examine them, it has been held that refusal of the right of the delinquent to examine such witnesses

amounted to denial of reasonable opportunity of showing cause against the action of dismissal and the dismissal was held as not legal. It has further been held that the reports against the delinquent police-sub-inspector relating to period earlier than the year in which he was allowed to cross efficiency bar should not have been considered in the departmental enquiry. See : **State of Punjab vs. Dewan Chunni Lal, AIR 1970 SC 2086**

15(C). **Denial of opportunity for cross-examination of complainant as witness by the delinquent & its effect** : Where a police-sub-inspector was dismissed from service on the charges of in-efficiency and dis-honesty based on adverse reports of superior officers and such superior officers, though available, were not examined to enable the police-sub-inspector to cross-examine them, it has been held that refusal of the right of the delinquent to examine such witnesses amounted to denial of reasonable opportunity of showing cause against the action of dismissal and the dismissal was held as not legal. It has further been held that the reports against the delinquent police-sub-inspector relating to period earlier than the year in which he was allowed to cross efficiency bar should not have been considered in the departmental enquiry. See : **State of Punjab vs. Dewan Chunni Lal, AIR 1970 SC 2086**

16(A). **Evidence of witness recorded in preliminary enquiry not to be used in regular departmental enquiry unless cross examined by the delinquent** : The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** ***(paras 23 & 25).***

16(B). <u>Supply of enquiry report to delinquent must</u> : where 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, if he so desires, and non-furnishing of the enquiry report would amount to Violation of rules of natural justice and make the final order liable to challenge hereafter. There is, however, no question of furnishing copy of any report to the delinquent where the disciplinary authority is himself the Enquiry Officer as in such case there is no report and the disciplinary authority becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the Enquire which are directly handled by the disciplinary authority and those which are allowed to be handled by the Enquiry Officer can easily be classified into to separate groups-one, where there is no enquiry report on account of the fact that the disciplinary authority is the Enquiry Officer and enquiries where there is a report on account of the fact that an Officer other than the disciplinary authority has been constituted as the Enquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution. See :

(i) **Union of India & Others Vs. Mohd. Ramzan Khan, (1991) 1 SCC 588 (three-Judge Bench).**

(ii) **Managing Director, ECIL, Hyderabad & Others Vs. B. Karunakar & Others, (1993) 4 SCC 727 (Five-Judge Bench) (***decision in Mohd. Ramzan Khan's case affirmed***).**

16(C). <u>Failure of delinquent to ask for the enquiry report not to be construed as waiver</u> : Supplying copy of enquiry report to the delinquent is imperative. Failure of delinquent to ask for the enquiry report cannot be construed as waiver. See….**Managing Director, ECIL, Hyderabad & Others Vs. B. Karunakar & Others, (1993) 4 SCC 727 (Five-Judge Bench) (***decision in Mohd. Ramzan Khan's case affirmed***).**

16(D).<u>Non-supply of enquiry report to the delinquent when not to vitiate the enquiry</u> ? : If no prejudice is caused to the employee due to non-supply of copy of the enquiry report to him, it cannot be held that the enquiry had vitiated. The order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee. See….

(i) Burdwan Central Co-operative Bank Limited & Another Vs. Asim Chatterjee & Others, (2012) 2 SCC 641 *(paras 19 & 20)*

(ii) ECIL Vs. B. Karunakar, (1993) 4 SCC 727.

17(A).<u>Penalty not prescribed under statutory rules cannot be imposed</u> : In a civilized society governed by the rule of law, the punishment not prescribed under the statutory rules cannot be imposed. See… **Vijay Singh Vs. State of Uttar Pradesh & others, (2012) 5 SCC 242**

17(B).<u>Proportionality of punishment in departmental enquiries</u> : Where the employee had submitted his resignation due to personal reasons but the same was not accepted by the employer company, the order of removal cannot be justified in such case as the award of penalty of removal from service is not proportionate to the misconduct of the employee in tendering his resignation. See--- **Chairman-cum-Managing Director, Coal India Ltd. Vs. Mukul Kumar Choudhuri, AIR 2010 SC 75.**

17(C). <u>Choice of punishment in the discretion of disciplinary authority</u> : It is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed on delinquent. This discretion has to be exercised objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating

circumstances, if any exist. See **: Deputy Commissioner, KVS & Others Vs. J. Hussain, AIR 2014 SC 766 (DB)** *(para 6)***.**

18(A).Nature & necessity of preliminary enquiry: The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** ***(paras 23 & 25).***

18(B).Nature & necessity of preliminary enquiry : A preliminary enquiry is only a fact finding enquiry for the satisfaction of the authority as to whether the allegations noticed against the employee concerned deserve any merit and as to whether a departmental enquiry be initiated against the employee or not. There is no requirement under any statutory provision or otherwise which requires opportunity of participation to delinquent employee in the preliminary enquiry. See : **Gopal Ji Rai Vs. State of UP, 2006 (63) ALR 616 (All)**

18(C).No punishment can be awarded to a delinquent merely on the basis of preliminary enquiry : Government servant cannot be punished on the findings of a preliminary enquiry without holding a disciplinary enquiry after serving a charge-sheet. See : **Cf. Amalendu Ghosh Vs. N.E. Rly. District Traffic Superintendent AIR 1960 SC 992.**

18(D).Evidence recorded in preliminary enquiry not to be used in regular departmental enquiry : The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental in enquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence

would be violative of the principles of natural justice. See : **Nirmala J. Jhala Vs. State of Gujarat & Another, AIR 2013 SC 1513** ***(paras 23 & 25).***

19(A).<u>Use of uncommunicated adverse entries</u>: Uncommunicated adverse entries can be taken into account for the purpose of assessing an officer for compulsory retirement. Law requires the authority to consider the entire service record of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse had not been communicated to him and that he had been promoted in spite of those adverse entries. See--- **PyareMohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17.**

19(B).<u>A single adverse entry relating to integrity sufficient for compulsory retirement</u> : A single adverse entry relating to integrity of an officer (judicial officer) even in remote past is sufficient to award compulsory retirement. See--- **PyareMohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17.**

19(C).<u>Adverse entries continue to be relevant despite promotion</u>: Uncommunicated adverse entries can be taken into account for the purpose of assessing an officer (judicial officer) for compulsory retirement. Law requires the Authority to consider the entire service record of the employee while assessing whether he can be given compulsory retirement irrespective of the fact that the adverse had not been communicated to him and that he had been promoted in spite of those adverse entries. See--- **Pyare Mohan Lal vs. State of Jharkhand, 2010 (7) SCJ 1 at page 17.**

20(A). <u>Rules 16 of UP General Clauses Act, 1904</u> : "Power to appoint to include power to suspend, dismiss or otherwise terminate the tenure of office : *Where, by any Uttar Pradesh Act, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power."*

20(B).<u>Dismissal or termination of employee only by appointing authority</u> : Interpreting the word "appointing authority", it has been held by the Hon'ble Supreme Court that the word "appointing authority" means the authority which appointed the government employee. It is settled law that the appointment of the government employee cannot be terminated by the authority other than the appointing authority. See :

(i) Om Prakash Gupta Swadheen Vs. State of UP, AIR 1975 SC 1265
(ii) Ramakant Gupta Vs. State of UP, 1988 LCD 411 (All-LB)(DB)
(iii) Jawahar Lal Vs. Project Officer, Intensive Sheep and Wool Development Project, Mirzapur, (2003) 3 UPLBEC 2276 (All.)

20(C). <u>Distinction between Dismissal and removal :</u> Removal unlike 'dismissal' may not under the Service Rules disqualify the person 'removed' from re-employment under Government. Further from the stand-point of the Service Rules, there can be a difference between 'removal' and 'dismissal' as to the extent of consequences that respectively flow therefrom. But for the purpose of Article 311(2) of the Constitution both stand on an equal footing as major penalties. Both entail penal consequences. See : **State of Assam Vs. Ashkya Kumar Deb. (1975) 2 SLR 430 (SC).**

20(D).<u>Dismissal disqualifies from future employment</u> : In the case of **Satish Chandra Anand Vs. Union of India, AIR 1953 SC 250 (Five-Judge Bench),** a **Constitution Bench** of the Hon'ble Supreme Court had ruled in the year 1953 that dismissal of a person from government service disqualifies him for future employment. The same view has also been taken by the Hon'ble Supreme Court in subsequent years as reported in the cases of Dr. Dattatraya M. Nadkarni Vs. Municipal Corporation of Greater Bombay, AIR 1992 SC 786 & Union of India & others Vs. Gulam Mohd. Bhat, AIR 2005 SC 4289.

20(E). <u>Drinking liquor may lead to dismissal :</u> The question whether the single act of heavy drinking of alcohol by an employee while on duty is a gravest misconduct ? It may be stated that taking to drink by itself may not be a misconduct but being on duty in the disciplined service like police service and having heavy drink, then seen roaming or wandering in the market with service

revolver and even abusing the medical officer when sent for medical examination shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. See : **State of Punjab and others Vs. Ramsingh, Ex-constable, AIR 1992 SC 2188 (Three-Judge Bench).**

20(F). <u>A single misconduct sufficient for dismissal</u> : According to Section 13(2) of the UP General Clauses Act, 1904, words in the singular shall include the plural, and vice versa. Under the General Clauses Act, singular includes plural, act includes acts. The contention is that there must be plurality of acts of misconduct to award dismissal fastidious. The words 'acts' would include singular act as well, it is not repetition of the acts complained of but it is quality insidious effect and gravity of situation that ensues from the offending 'act'. See:

(i) State of Punjab Vs. Ramsingh, Ex-Constable, AIR 1992 SC 2188.

(ii) (Rinku alias Hukku Vs. State of UP., 2000 (2) AWC 1446 (FB).

20(G-1).<u>Termination of services of temporary/ad-hoc employee</u> : In the case of **State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411**, where the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct, interpreting the provisions of the 'UP Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Hon'ble Supreme Court that : *"if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of*

appointment." In the case of **Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790**, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry and then it has been held by the Hon'ble Supreme Court that "*the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside."* Similarly in the case of **Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588**, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law and then setting aside the termination order, the Hon'ble Supreme Court has held thus : *"Once an employee attains the temporary status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained.*"

20(G-2). <u>Probationer—Who is?</u> A probationer is a person who has been appointed on trial and has no right to the post held by him. See: **Union Territory of Tripura vs. Gopal Chander Dutta Chodhury, AIR 1963 SC 601**.

20(H).<u>No termination of services of probationer/dismissal on stigmatic grounds without enquiry</u> : Where the services of Probationary Officers were terminated on the ground of using unfair means in test/examination, it has been held by the Supreme Court that since their services were terminated not on account of any deficiency in their performance during probation period or failure to secure qualifying marks in confirmation test but on the ground of their misconduct as to use of unfair means in the test and no enquiry was conducted and no opportunity of hearing was granted to them and they were condemned unheard despite stigmatic allegations as above, therefore, termination of their services was declared unsustainable. See : **State Bank of India Vs. Palak Modi, (2013) 3 SCC 607.**

20(I). <u>Termination of services of temporary/ad-hoc employee</u> : In the case of **State of UP & Another Vs. Km. Premlata Mishra & Others, AIR 1994 SC 2411**, where the services of a temporary Assistant Project Officer appointed under the National Adult Education Scheme in UP were terminated by the competent authority on the ground of her irregular presence on duty by giving one month's pay to her without conducting an enquiry into the alleged misconduct, interpreting the provisions of the 'UP Temporary Government Servant's (Termination of Service) Rules, 1975', it has been ruled by the Hon'ble Supreme Court that : *"if misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is not the motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment.*" In the case of **Smt. Rajinder Kaur Vs. Punjab State & Another, AIR 1986 SC 1790**, a lady constable was temporarily appointed and during probation period, she committed misconduct by staying in nights with a

male constable and on her aforesaid misconduct, she was dismissed from service by the competent authority without a proper enquiry and then it has been held by the Hon'ble Supreme Court that "*the order of dismissal from service was bad in law in as much as no charge-sheet was supplied to her, no explanation was called from her, no opportunity to cross examine the witnesses examined was given to her, no opportunity to show cause against the proposed dismissal from service was given to her and all that was made in total contravention of the provisions of Article 311(2) of the Constitution and her dismissal order was set aside."* Similarly in the case of **Nar Singh Pal Vs. Union of India & Others, (2000) 3 SCC 588**, a casual labour of the Telecom Department had acquired the status of a temporary employee and his services were terminated for certain misconduct like assaulting and threatening the gateman without conducting a regular departmental enquiry as per law and then setting aside the termination order, the Hon'ble Supreme Court has held thus : *"Once an employee attains the temporary status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault by the delinquent employee. The order of termination cannot be treated to be a simple order of retrenchment. it was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary enquiry and without holding a regular departmental enquiry, cannot be sustained.*"

21(A). <u>Ordering suspension of government servant by the disciplinary authority in a routine manner disapproved by the Supreme Court</u> : Disapproving the placing of government servants under suspension by their appointing authorities even when there is no such justifiable necessity, the Hon'ble Supreme Court has, in the case noted below, observed thus : *"Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however,*

are not rare where officers have been found to be afflicted by a ***"suspension syndrome"*** *and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension."* See : **M. Paul Anthony Vs Bharat Gold Mines Ltd and another (1999) 3 SCC 679**.

21(B).<u>Subsistence allowance during suspension</u> : The option of not receiving any work from the employee may be exercised by the employer by placing the employee under suspension making payment to the employee at the usual rate or subsistence allowance at a reduced rate if there exists any provision in the service rule or regulations or standing order applicable to the employee concern. See :

(i) Ram Lakhan Vs. Presiding Officer & Others, (2001) 3 SCC 161

(ii) Hotel Imperial Vs. Hotel Workers Union, AIR 1959 SC 1342 (relied on in Ram Lakhan)

21(C). Before furnishing the legal opinion on the twin queries mentioned above, it has to be noticed that **FR 53 of the FHB, Volume II, Parts II to IV**, provides for the law relating to subsistence allowance of a suspended or deemed suspended government servant. A **Constitution Bench** of the Hon'ble Supreme Court in the case of **Khem Chand Vs Union of India, AIR 1963 SC 687** has ruled that : "*An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of the suspension is that though he continues to be a member of the government servant, he is not permitted to work and further during the period of his suspension he is paid only some allowance, generally called "subsistence allowance" which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended.*" In the case of **Jagadamba Prasad Shukla Vs State of UP, (2000) 7 SCC 90**, the Hon'ble Supreme Court, while interpreting the provisions of FR 53 (2) of the Financial Hand Book, has declared that : *"the payment of subsistence allowance, in accordance with the Rules, to an employee*

under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance." In the case of **Ram Lakhan Vs Presiding Officer, (2000) 10 SCC 201** (*para 16*), a Three-Judge Bench of the Hon'ble Supreme Court has held that : *"the very expression "subsistence allowance"* has an undeniable penal significance. The dictionary meaning of the word "*subsist"* as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "*to remain alive as on food, to continue to exist." 'Subsistence*' means--"*means of supporting life, especially a minimum livelihood*."

21(D). **<u>FR 53 (1)(b) of the FHB, Volume II, Parts II to IV</u>**, provides thus : *"Any other compensatory allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension : Provided that the government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the government servant continues to meet the expenditure for which they are granted.*"

21(E). **<u>Kinds of payments to be paid to a suspended officer</u>**: At page 638 of his famous Text Book known as "सेवा विधि : Service Laws", the learned author Shri V.K. Singh, a Judge, while expressing his opinion on FR 53 of the FHB, has observed thus :

''नियम–53 के पूर्वोक्त उपबन्धों के अनुसार निलम्बित सेवक को जीवन निर्वाह भत्ता के रूप में निम्नलिखित धनराशि दी जाएगी :–

(1) उसके मूल वेतन की आधी धनराशि,

(2) उस पर अनुमन्य मंहगाई भत्ता,

(3) प्रतिकर भत्ता, जो अनुमन्य हो ।

निलम्बित सेवक जब यह प्रमाण–पत्र प्रस्तुत करेगा कि वह किसी अन्य सेवायोजन, व्यापार, वृत्ति या व्यवसाय में नहीं लगा है तभी जीवन निर्वाह भत्ता का भुगतान आरम्भ किया जायेगा ।

यदि सरकारी सेवक को मकान किराया भत्ता, नगर प्रतिकर भत्ता, वाहन–भत्ता, वर्दी भत्ता आदि प्राप्त हो रहा हो तो उसके निलम्बन के दौरान इस भत्तों की पूर्ण धनराशि उसे मिलेगी, किन्तु इन प्रतिकर भत्तों में से सिर्फ उन्हीं भत्तों को पाने का वह हकदार होगा जिसे वह व्यय कर रहा हो । चूँकि निलम्बन की अवधि में कार्यालय में उपस्थित होना अपेक्षित नहीं है अतः कार्यालय आने–जाने हेतु अनुमन्य वाहन भत्ता उसे अनुमन्य नहीं होगा । इसी कारणवश वर्दी–भत्ता भी अनुमन्य नहीं होगा ।''

21(F). <u>Subsistence & subsistance allowance</u> : Before furnishing the legal opinion on the twin queries made at page 148 of the file, it has to be noticed that the FR 53 of the FHB, Volume II to IV, provides for the law relating to subsistence allowance of a suspended or deemed suspended government servant. A **Constitution Bench** of the Hon'ble Supreme Court in the case of **Khem Chand Vs Union of India, AIR 1963 SC 687** has ruled that : "*An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. The real effect of the order of the suspension is that though he continues to be a member of the government servant, he is not permitted to work and further during the period of his suspension he is paid only some allowance, generally called "subsistence allowance" which is normally less than his salary, instead of the pay and allowances he would have been entitled to if he had not been suspended.*" In the case of **Jagadamba Prasad Shukla Vs State of UP, (2000) 7 SCC 90**, the Hon'ble Supreme Court, while interpreting the provisions of FR 53 (2) of the Financial Hand Book, has declared that : *"the payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance."* In the case of **Ram Lakhan Vs Presiding Officer, (2000) 10 SCC 201** (*para 16*), a Three-Judge Bench of the Hon'ble Supreme Court has held that : *"the very expression "subsistence allowance"* has an undeniable penal significance. The dictionary meaning of the word "*subsist"* as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "*to remain alive as on food, to continue to exist." "Subsistence*" means--"*means of supporting life, especially a minimum livelihood*."

21(G).<u>Second suspension order during the pendency of first enquiry proceedings not to be ordered</u> : Second suspension order during the pendency of first enquiry proceedings cannot be ordered. See : **Dr. Surendra Nath Verma Vs. State of UP, 2014 (103) ALR 336 (All)(DB)**

22. **Entries in ACR of a pubic servant must be communicated to him whether poor, fair, average, good or very good etc.** : Overruling its two earlier Division Bench rulings reported in the cases of (i) Satya Narain Shukla Vs. Union of India, (2006) 9 SCC 69 and (ii) K.M. Mishra Vs. Central Bank of India, (2008) 9 SCC 120 and giving approval to its earlier Division Bench ruling reported in the case of Dev Dutt Vs. Union of India, (2008) 8 SCC 725, a Three-Judge Bench of the Hon'ble Supreme Court, in the case noted below has ruled thus : *"In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving three-fold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR - Poor, fair, average, good or very good - must be communicated to him/her within a reasonable period."* **See : Sukhdev Singh Vs Union of India & Others, (2013) 9 SCC 566 (Three-Judge Bench)** ***(para 8)***.

23. **Remedies of civil servants in the event of disciplinary actions & penalties etc:**

The remedies of civil servants in the event of award of penalty after disciplinary proceedings are as under:

(i) Writ petition to High Court under Article 226
(ii) Writ petition to Supreme Court under Article 32
(iii) Petition before the CAT constituted under the Administrative Tribunals Act, 1985
(iv) Petition before SAT constituted under the Uttar Pradesh Public Services (Tribunals) Act, 1976
(v) Appeal or representation to the authority provided in the service rules

24. **<u>Remedies of civil servants against strictures</u> :** A civil servant has following remedies for expunction of strictures recorded against him :

(i) Invoking inherent powers of the same court u/s 151CPC if the strictures have been passed in a civil case.

(ii) Invoking inherent powers of the High Court u/s 482CrPC if the strictures have been passed by the High Court in a criminal case.

(iii) Review Petition before the court recording the strictures in the cases other than criminal ones where Section 362CrPC operates as bar against review or recall of orders.

(iv) Writ Petition before the High Court under Article 226 of the Constitution.

(v) Petition under Article 136 and/or 142 of the Constitution before the Supreme Court.

Note : **(a).** While seeking expunction of strictures through any of the above modes, the civil servants should not challenge the merits or the decision of the Court concerned and instead should keep his prayer confined to the expunction of the critical remarks. The civil servant can, however, cite the relevant provisions of law, rulings and Circular Orders etc., if any, in support of the validity of the order passed by him but he must not show any interest in the parties and the subject matter of the case and the decision made therein.

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