

**WORKSHOP PAPER ON DEPARTMENTAL INQUIRIES AND
PROCEDURE LAID DOWN FOR DEPARTMENTAL INQUIRIES.**

(GROUP - A)

'Meaning and Scope of the term Misconduct'

Introduction :

'Discipline' is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behaviour of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servant reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public is safeguard.

Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.

Definition :

Misconduct :- The term misconduct is not defined in any of the conduct rules or any other enactment. The dictionary meaning of the word 'misconduct' is nothing but bad management, malfeasance or culpable neglect of a official in regard to his office. Shortly it can be said that misconduct is nothing but a violation of definite law, a forbidden act.

Misbehaviour:- The term 'misbehaviour' is also no where defined in Civil Services Rules. The term "Misbehaviour" literally means Improper, rude, or uncivil behaviour;

Every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority.

The word 'misconduct' covers any conduct which in any way renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term 'misconduct' usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty can not be excused.

What constitutes misconduct

The Maharashtra Civil Services (conduct) Rules from rule 4 to 28 provides the instances, involvement of a Government servant committing breach of the rules can be termed as "mis-conduct"

- 1) Using the position or influence directly or indirectly to secure employment for any member of his family with any company or firm.
- 2) Taking part in politics and the elections –
- 3) He shall not engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or which involves contempt of Court, defamation or incitement to an offence.
- 4) The government servant shall not join or continue to be a member of an association, the objects or activities of which are prejudicial to the interest of the sovereignty and integrity of India or public order or morality.

- 5) The government servant shall not except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate directly or indirectly any official document or any part thereof or information to any government servant or any other person to whom he is not authorized to communicate such document or information.
- 6) The government servant is prohibited against connection with press or radio.
- 7) The government servant shall not, except with the previous sanction of government, give evidence in connection with any inquiry conducted by any person, committee or authority.
- 8) The government servant shall not except with previous sanction of the government, or authority, ask for or accept contribution or raise any funds or other collections in cash or in kind in pursuance of any object.
- 9) The government servant shall not accept or permit any member of his family or any person acting on his behalf to accept any gift. The explanation says that the gifts include free transport, boarding and lodging or other service or any other pecuniary advantage being provided by any person other than any near relative or personal friend having no official dealings with the government servant, but in case of weddings, anniversaries or funerals or religious functions when making of a gift in conformity with the prevailing religious or social practice then the government servant may accept gifts from his near relatives, but he shall make a report to the government if the value of such gifts exceed to the criteria given in rule 12(2) of the conduct rules.
- 10) Public demonstrations in honour of government servants - The government servant shall not, except with previous sanction of the government, receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in his honour or in the honour of any other government servant.

- 11) Nothing in rule 12 and 13 prevent any government servant from sitting at the request of any public body for a portrait, bust or other statute not intended for presentation to him.
- 12) The government servant shall not enter into any pecuniary arrangement for the resignation by one of them of any office for the benefit of any other person and any nomination or appointment made consequent upon such resignation shall be cancelled and parties to the arrangement as are still in service shall be suspended pending the orders of the government.
- 13) The government servant shall not except with previous sanction of the government, engage directly or indirectly in any trade or business or undertake any other employment.
- 14) The government servant shall not speculate in any stock, share or other investment and he shall not permit any member of his family or any person acting on his behalf to take any investment which is likely to embarrass or influence him in the discharge of his official duties.
- 15) When a government servant is adjudged or declared as insolvent or when a moiety of his salary is constantly being attached or has been continuously under the attachment for a period exceeding two years or which is attached for sum which in ordinary circumstances cannot be repaid within the period of two years, then, he shall be liable to be dismissed.
- 16) The government servant shall not except with previous knowledge of the prescribed authority acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either for his own name or any name of any family member. Every government servant shall report to the prescribed authority, every transaction entered into by him either in his own name or in the name of member of his family in respect of movable property if the value of such property exceeds Rs. 10,000/- in the case of government servant holding any class I or class II

post or Rs. 5,000/- in case of government servant holding any class III or class IV post.

17) No government servant holding any office in the Revenue or Land Records department shall except with the previous permission in writing of the government or of the Commissioner, or Collector, Settlement Commissioner or Director of Land Records or as the case may be, the Superintendent of Land Records to whom he is sub-ordinate -

a) purchase or bid for either in person or by agent or in his name or in name of another or jointly or in share with others and hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district.

18) The government servant shall not act as arbitrator in any private case which is likely to come before him in any shape by virtue of any judicial or executive post held by him.

19) The government servant shall not except with previous sanction of government have recourse to any court or to the press for the vindication of any official act which has been a subject matter of adverse criticism or an attack of defamatory character.

20) The government servant shall not indulge in any act of sexual harassment of any woman at her work place.

21) The government servant shall not bring or attempt to bring any political or other outside influence to bear upon any superior authority in relation to any matter pertaining to his service under the government.

22) The government servant shall not be by writing, speech or deed or otherwise indulge in any activity which is likely to incite and create feelings of hatred or ill will between different communities in India or religious, racial, regional, communal or other grounds.

23) The government servant shall not except with previous sanction of the government associate his name or allow it to be associated with any

public institution such as libraries, hospitals, schools or roads and the like, or with such objects as shields, trophies, prizes, medals and cups and the like or allow any member of his family living with or wholly dependent on him to associate his name with any such institution or object.

24) The government servant shall not enter into or contract the marriage with a person having a spouse living and the government servant having a spouse living shall not enter into or contract a marriage with any person provided the government may permit him, if such marriage is permissible under the personal law applicable to such government servant and if there are other grounds for so doing but if the government servant who is married or marries a person other than of Indian nationality shall forthwith intimate the fact to the government.

25) Prohibition against dowry -

26) The government servant shall not employ or permit any member of his family or any person acting on his behalf to employ and child below age of 14 years for domestic or any other work.

27) No Consumption of intoxicating drinks and drugs

If any of the above instances are violated or there is breach then that amounts to misconduct. Similarly, the disobedience of the order of the superior and the disrespectful behaviour also amounts to misconduct.

Kinds of inquiry :-

1. **Discrete enquiry**
2. **Preliminary enquiry**
3. **Departmental enquiry**

Discrete enquiry :- A discrete enquiry is exploratory in nature and can be ordered where it is necessary to verify the allegations but, there is no sufficient material to take up a regular enquiry. In case of complaint regarding sensitive issue a discrete enquiry has to be conducted by contacting witness and perusing the documents on record. In the case of **[Rangnath Salve Vs State of Maharashtra 1992 (3) BCR 142]**, it is held that “discrete enquiry is in the nature of preliminary enquiry to find out

suitability of the petitioner with regard to being continue him as a judicial officer or not. In t he circumstances there is no question of violation of article 311(2) of Indian Constitution.

2) **Preliminary Enquiry,**

The word Preliminary Inquiry is defined in section 3(c-i) of The Maharashtra Departmental" inquiries (*Enforcement of attendance of witnesses and production of documents*) Act, 1986 "Preliminary Inquiry" means an inquiry held to collect the material facts and evidence to ascertain the truthfulness or otherwise of the allegations made against any person referred to in Section 2 of the Act so as to enable the authority concerned to decide whether or not there exists a prima facie case to order holding of a departmental inquiry against such person.

3) **Procedure of Departmental Inquiries**

1. Before initiating disciplinary proceedings, it is necessary that disciplinary authority to satisfy itself about the existence of *prima-facie* case to order the departmental inquiry. The preliminary inquiry is generally held to collect the material of facts and evidence to ascertain the truthfulness or otherwise of allegation made against the government servant, so as to enable the authority to decide whether there is need to hold departmental inquiry. The word 'preliminary inquiry' is defined in Sec. 3(c-i) of Maharashtra Departmental Inquiry (Enforcement of attendance of witnesses and production of documents) Act 1986.

2. The departmental inquiry is ordered to inquire into the truth of any imputation of misconduct or mis-behaviour against the Government servant. Rule 5 prescribes imposition of minor and major penalties and Rule 8 is procedure to be followed before imposing such major penalty whereas rule 10 prescribe the procedure for imposing minor penalty. The

beginning words in both the rules makes it mandatory for the disciplinary authority to hold an inquiry as per the procedure prescribed before imposing any penalty. This mandate is given by the word "No order imposing any of the major or minor penalty shall be made except after the inquiry".

Procedure for major panalty

3. It is within the discretion of disciplinary authority either to hold inquiry itself or order such inquiry to be hold by Inquiry Authority and it shall draw-up 1) the substance of imputation of misconduct or mis-behaviour in to definite and distinct article of charge, 2) statement of imputation of misconduct in support of each article of charge, which shall contain i) the statement of all relevant facts,admission, confession and ii) list of documents and list of witnesses. This material is required to be served on government servant with a notice to submit a written statement of defence and to state whether he desires to be heard in person.

4) On receipt of such written statement where all charges are admitted then disciplinary authority shall records finding on each charge. The authority may take evidence if thinks fit. Then it may impose penalty by taking recourse to Rule 9.

5) Whenever the government servant does not submit the written statement or denies the charges, the authority may inquire itself or appoint inquiry authority for that purpose and then forward him all the papers of inquiry along with the copy of order appointing Presenting Officer.

6) The inquiry authority may fix a day for appearance of the government servant within 10 working days from the receipt of papers of inquiry and issue a notice to the government servant in writing. The government servant shall then appear in person and may take assistance

of any other government servant or retired government servant but may not engage legal practitioner, unless the Presenting Officer appointed by disciplinary authority is a legal practitioner or disciplinary authority has permitted him to appoint legal practitioner having regard to circumstances of the case.

7) The Inquiring authority can ask the government servant whether he is guilty to the charge leveled against him or has any defence to make. If he pleads guilty the inquiring authority shall record the plea and obtain his signature and also sign the same. Then a finding of guilt is to be recorded and return the same to disciplinary authority with his report.

8) The government servant can be supplied copies of statement of witnesses on application. When a notice is given for discovery or production of document, the inquiring authority shall forward the same to the authority having custody of that document with a requisition for production. It is obligatory on the part of that authority having custody of the document to produce the same before inquiring authority.

9) Thereafter the inquiry shall commence on the date so fixed and shall continue on the dates fixed from time to time. The presenting officer then produce the evidence by examination of the witnesses and the government servant may cross examine and the presenting officer may re-examine the witness on any point on which they have been cross examined but not on new matter. The inquiring authority may put such questions to the witness as it thinks fit.

10) If the government servant has not examined himself, the inquiring authority may generally question him on the circumstances appearing

against him in evidence to enable him to explain the circumstances.

11) Thereafter, the inquiring authority may hear the presenting officer as well a government servant or permit them to file written briefs of their case.

12) If the government servant served with the charge does not appear before the inquiring authority or otherwise fails to comply the provisions of these rules, the inquiry may be hold *ex-parte*.

13) After conclusion of the inquiry a report shall be prepared by the inquiring authority which contains i) article of charge and the statement of imputation of mis-conduct or mis-behaviour, ii) the defence of government servant in the state of each article of charge, iii) the assessment of evidence on each article of charge, iv) findings on each article of charge and the reasons therefor. The report shall not contain any suggestion as to penalty.

14) On receipt of report, from the inquiring authority, the disciplinary authority may after recording reasons remit the case to inquiring authority for further inquiry. There the disciplinary authority disagrees with the findings of inquiring authority, it shall record its reasons for such disagreement.

15) When the disciplinary authority is of the opinion that any minor penalty to be imposed on government servant, it can determine such penalty on the basis of evidence recorded during inquiry for major penalty.

16) When the disciplinary authority is of opinion that the major penalty

is to be imposed on the government servant, then it shall make an order imposing such penalty and it shall not be necessary to give the government servant any opportunity of making representation on the penalty proposed to be imposed.

Procedure for Minor Penalty

17) Rule 10 of The Maharashtra Civil Services (Discipline and Appeal) Rules 1979 contemplates information to be given in writing to the government servant of the proposal of taking action against him on the imputation of mis-conduct or mis-behaviour and giving him reasonable opportunity of making representation before imposing minor penalty. Holding of a detail inquiry as per rule 8 is within discretion of the disciplinary authority.

18) Whenever the disciplinary authority after considering the representation wants to, impose minor penalty of, with-hold increments of pay and such with-holding of increment is likely to adversely affect the amount of pension payable to government servant or to with-hold increment of pay for a period exceeding 3 years or with-hold increments of pay with cumulative effect for any period or wants to impose penalty of reduction to lower stage in time scale of pay. As per Cl. (1)(v)(vi) of Rule 5 then it is mandatory to hold an inquiry as per the provisions of Rule 8, meant for imposition of major penalty.

19) The orders made by disciplinary authority shall be communicated to the government servant with a copy of report of the inquiry and copy of findings on each articles of charge. The report of inquiring authority and statement of findings of the disciplinary authority together with brief reasons for disagreement shall be supplied to the government servant.

20) Rule 12 provides for taking common proceedings where two or more government servants are concerned with the case and the where two different disciplinary authority are competent to impose the penalty of dismissal then action can be taken in a common proceeding by the highest of such authorities with the consent of other and the order in such case shall specify the authority which lay function as disciplinary authority and which may impose the penalty. and the procedure to be followed in imposing penalty.

21) Sub Rule (iv) of Rule 13 provides that disciplinary proceeding come to an end immediately on the death of delinquent government servant. No disciplinary proceedings under these rules can therefore, be continued after his death.

STANDARD OF PROOF IN DEPARTMENTAL INQUIRY

1) The standard of proof required in departmental inquiry is lighter than criminal case. The degree of proof is necessary to record an order of conviction is different from the degree of the proof which is necessary to record the penalty on delinquent employee. The technicalities of criminal court cannot be invoked and strict mode of proof prescribed by the evidence Act may not be applied with equal vigour. However in disciplinary proceeding the charge framed against the public servant must be held to be proved before any penalty is imposed.

2) All materials which are logically probating for a prudent mind, are admissible in departmental inquiry. The hear-say evidence is also permissible, provided it has reasonable nexus and credibility.

3) The standard of proof required in disciplinary proceeding is that of

preponderance of probabilities and not a proof beyond reasonable doubt.

Right of Delinquents in Departmental Enquiry

Under the Maharashtra Civil Services (Disciplinary and Appeal) Rules 1979 rights of the delinquent are prescribed as under--

1. Right to Enquiry before imposition of penalty. (Rule 3,4,8),
2. Right to receive a copy of articles of charge, the statement of the imputations of misconduct or misbehavior, and a list of documents and of the witnesses by which each article of charge is proposed to be sustained.
3. Right of personal hearing.
4. Right to appear before inquiry authority or disciplinary authority (Rule 8 Sub clause 4, 5)

After receipt of article of charge and the statements of imputation of misconduct delinquent/government servant has right to appear before the inquiring authority within 10 working days. Government servant/ delinquent may file written statements of defence before inquiring authority.

5. Right to engage legal practitioner or Government servant (Rule 8 sub clause 8)

The Government servant/ delinquent to defend himself may take assistance of any other Government servant or retired government servant. But he may not engage a legal practitioner to defend himself unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner or disciplinary authority permits the assistance of legal practitioner to delinquent.

Contents of report of Inquiry Officer.

Contents of inquiry Report :-

Under Rule 8 (25) of THE MAHARASHTRA CIVIL SERVICES (Discipline and Appeal) Rules, 1979 prescribed that after conclusion of the

inquiry, a report shall be prepared by the inquiring authority, such report shall contain-

- (a) the articles of the charge and the statement of the imputations of misconduct or misbehaviour; :-
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefore;

Procedure when different charge is established in inquiry than original charge -

Under Rule 8 (26) Maharashtra Civil Services Rules, it is prescribed that where, in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge, different from the original article of the charge and it may record its finding on such article of charge provided that, the findings on such article of charge shall not be recorded unless the Government servant has admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

Criteria for imposing minor and major penalties

As per Rule 5, there are two types of penalties. (1) Minor Penalties, (2) Major Penalties. Sec. 5 provides that without prejudice to the provisions of any law for the time being in force the following penalties may, for good and sufficient, reasons and as hereinafter provided, be imposed on government servant, namely

Minor penalties :

- i) Censure;
- ii) Withholding of his promotion;
- iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to government, by negligence or breach of orders;
- iv) withholding of increments of pay ;
- v) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period , the reduction will or will not have the effect of postponing the future increments of his pay ;
- vi) reduction to a lower time scale of pay , grade, post, or service which shall ordinarily be a bar to the promotion of a government servant to the time scale of pay , grade, post or service from which he was reduced, with or without further directions regarding conditions or restoration to the time scale of pay, grade, post or service from which the government servant was reduced and his seniority and pay on such restoration to that time scale of pay, grade, of services.

Major Penalties :

- 1] Compulsory retirement;
- 2) Removal from Service which shall not be a disqualification for future employment under Government.
- 3] Dismissal from Service which shall ordinarily be a disqualification for future employment under Government;

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned removal from Service or dismissal from Service shall be imposed;

Provided further that, in any exceptional case and for special reasons recorded in writing any other penalty may be imposed.

Criteria for imposing minor and major penalties :-

Misconduct, or non-conforming behaviour, as it is sometimes called, can be tackled in many ways such as counseling, warning, etc. In extreme cases such as, criminal breach of trust, theft, fraud, etc., the employer is also at liberty to initiate action against the employee, if the misconduct of the latter falls within the purview of the penal provisions of the law of the land. However such proceeding generally conducted by the State agencies, are time consuming and call for a high degree of proof. In addition to the above option, the employer also has an option to deal with the erring employee within the terms of employment. In such an eventuality, the employee may be awarded any penalty which may vary from the communication of displeasure, to the severance of the employer-employee relationship i.e. dismissal from service. Disciplinary authorities play a vital role in this context.

Conclusion :-

When we speak about our government and system, a public servant plays a very vital role in governing our country, because they are one of the most important organ of our system. So, the burden of executing every act of the system depends upon them. So, considering the importance of the role they play in our system, it is very much necessary that public servant should in-calculate the spirit of commitment within them and do excellence at the grass-root level, without which it will be impossible to create an environment of positive growth and development in true sense.

List of authorities discussed in workshop dt. 22.03.2015.

1. **[Shraddha Vinod Deo Vs State of Maharashtra, 2015(1) Mh.L.J. 62],**
2. **Arundhati Ashok Walavalkar Vs. State of Maharashtra (2004(6) Bom.C.R. 335)**
3. **[Sheshrao Daulatrao Raut Vs. State of Maharashtra reported in 1989 Mh.L.J. 476]**
4. **[In Chandrakant Venkatesh Mohalkar Vs. State of Maharashtra 2000(4) Mh.L.J. 793]**
5. **[Sadashiv Sakharam Navaghane V Add. Director General, 2015(1) Mh L J 243],**
6. **[Ram Padarth Tiwari Vs. Union of India and others. (2014 (6) Mh. L.J. 85)],**
7. **Bharat Petroleum Group Ltd. Vs. Maharashtra General Kamgar Union – AIR 1999 S.C. 401),**
8. **M.V. Bijlani Vs. Union of India and others – (2005) 5 Supreme Court Cases 88.**