CHAPTER - VIII

DISCIPLINARY MATTERS

Every institution or organisation, whether private, public, semi-government or government should have its code of discipline in order to regulate the conduct and efficient functioning of its employees. As Heimann remarks: "It is a condition in an enterprise in which there is orderliness and in which the members of the enterprise conduct themselves within the standards of acceptable behaviour as expressed by the needs of the organisation."¹ It is all the more so in the case of a public servant because the public expect higher standards of conduct from him than his counterpart in the private enterprise. As Herbert Emmerich says: "we are shocked not because we have a low regard for public officials but because we expect them to have so high a standard of integrity." So any breach of the code can not be tolerated. On the other hand, the natural justice demand that the person who is a defaulter should be given a chance to defend his case. Discipline follows conduct rule but it does not precede. In case of a breach of

conduct, the disciplinary action ensues.

Disciplinary action means punishment to be given to the public officials for the violation of rules and conduct. Prof. L.D. White mentions certain occasions when the disciplinary action against the public official takes place. They are:

1. Inattention to duty expressing itself as laziness, carelessness, tardiness, breakage or loss of property etc.
2. Insubordination, that is violation of laws or rules.
3. Inefficiency
4. Immorality
5. Lack of integrity which means bribery or corruption etc.
6. Violation of the recognised code of ethics.


The Constitution of India has made certain provisions safeguarding the interests of the public servants. Article 310(1) of the Constitution of India provides that "Except as expressly provided by this Constitution, every person who is a member of a defence service or of
a civil service of the Union or of an All-India Service or holds any post connected with defence of any civil post under the union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State. Under this Article, Government officials enjoy the posts at the pleasure of the Government and are terminable at its will. But this right of the Government is subject to the restrictions imposed by Article 310(2) and Article 311(1)(2). Moreover these powers can be delegated in terms of Rules of Business framed under Article 77(3) or 166(3) or by rules made under Article 309. It is not necessary that the authority competent to dismiss an employee must initiate the disciplinary proceedings. The power to dismiss under Article 310 can be delegated by the President or the Governor under Article 311(1) as well.

Article 311 provides that "(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he
was appointed. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;

(c) Where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.
(3) If, in respect of such person as aforesaid a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

This article does not affect the principle that a civil posts are held at the pleasure of the President or Governor. It only subjects the exercise of that pleasure to the two conditions. They are -

(i) that an employee can not be dismissed or removed by an authority subordinate to that by which he was appointed;

(ii) that an employee can not be dismissed or removed or reduced in rank without any inquiry into the charges made and without giving him an opportunity to represent against the action proposed to be taken.

It also does not apply to persons serving in military services and in the statutory corporation and in cases of penalties other than dismissal, removal or reduction in rank.

However in the interest of the civil servants, the Constitution of India has made provision for the
consultation with the Public Service Commission in the disciplinary matters. Article 320 (3)(c) provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted "on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters."

Now the phrase "all disciplinary matters affecting a person" is very comprehensive and so include any kind of disciplinary action proposed to be taken. However it is not necessary to consult the Public Service Commission when an officer is suspended in order to facilitate proper investigation of a case against him or to start the departmental proceedings against him or for making an order of dismissal by the competent authority. The Supreme Court while giving decision has held that the Public Service Commission, being a consultative body and not an appellate authority in disciplinary matters, cannot sit on judgement over the findings of the enquiry officer. The Commission at the most can point out the procedural irregularities of the enquiry and the quantum of punishment proposed. The Commission's scope is to see whether a reasonable opportunity as provided in the
Article 311 (2) has been given to the public servant concerned or not. The Commission cannot take evidence of witnesses to determine the guilt of the civil servant. In this regard Mr. N. Narayanan Nair has expressed that "Nevertheless it would be better if the Commission is also permitted to examine the findings of the enquiry officer in the light of the evidence adduced as the Commission is a body specially designed by the Constitution to analyse the civil service problems and to arrive at a dispassionate conclusion."

In this regard, Sixth Report of the Union Public Service Commission has observed that "The provision for consultation with the Public Service Commission is a valuable right as far as the civil servant is concerned. It gives him the right of his case being examined by an impartial tribunal free from political influences and thus, instils a sense of confidence in him with regard to his security of service. He can expect the Commission to take a balanced view of his case both regarding the procedural as well as the substantive part of the enquiry; and also the quantum of punishment proposed to be inflicted on him will be reviewed by the Commission after assessing the gravity of the offence committed by him. This
expectation is not a mere illusion as is illustrated by some of the cases in which the Commission have tendered their advice. The Union and State Public Service Commissions in a number of cases have pointed out the irregularities committed by Government in disciplinary actions against Government servants and have made proper suggestions.\textsuperscript{1} The very association of the Commission with the service matters assures the civil servants that the justice will be done to them. However, it has been established that such consultations is not necessary in the case of a person belonging to the staff of the High Court.

The Constitution of India has burdened the Commission with manifold activities. But instances may arise when it may not be expedient to consult the Commission. So the Constitution of India empowers the President or Governor to "make regulations specifying the matters in which either generally or in any particular class of cases or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

2. **Provisions Regarding Disciplinary Matters in Gujarat.**

Under the powers given by the Constitution of India, the Governor of Gujarat has made regulations called the Gujarat Public Service Commission (Consultation) Regulations, 1960, now known as exemption from Consultation Regulations (hereafter referred as regulations). Moreover, the Government of Gujarat has made rules called The Gujarat Civil Services (Conduct) Rules 1971 and The Gujarat Civil Services (Discipline and Appeal) Rules 1971.

Under the Rule 12 of the Exemption from Consultation Regulations, it is provided that "It shall not be necessary for the Commission to be consulted (i) before Government passes an original order (a) of censure (b) withholding an increment or promotion, including stoppage at an efficiency bar, or (c) placing an officer under suspension; or (ii) if it is proposed to impose any other penalty until the case is ready for final decision. Rule 13 provides "It shall not be necessary for the Commission to be consulted by Government on an appeal from, or a memorial against, an order of suspension pending enquiry into charges against the person suspended. At the same time, Rule 14 provides "It shall not be necessary for the Commission to be consulted before an order is passed"
rejecting a memorial or petition in a disciplinary case where the memorialist or petitioner has or had a right of appeal against the order which is the subject of the memorial or petition."

However the Government has exempted certain cases from the Consultation of the Commission. Under the Rule 15 of the Regulations, it is mentioned that "It shall not be necessary for Commission to be consulted in any case -

(a) relating to the termination of the services of an officer on probation if the termination is on grounds arising out of the specific conditions laid down by the appointing authority such as want of a vacancy, failure to acquire prescribed special qualifications or to pass prescribed test; (b) relating to the discharge or reversion of an officer otherwise than as penalty; (c) relating to the termination of the employment of an officer in accordance with the terms of his contract of employment, save when employment is terminated for misconduct, (d) relating to the imposition of any penalty laid down in any rule or order for failure to pass any test or examination within specified time, or; (e) in which the Commission has at any stage, given advice as to the order to be passed and no fresh question has
thereafter arisen for determination. In addition, Rule 16 provides that the Commission is not required to be consulted "in disciplinary matter relating to the posts of supervisors, Inspectors and Assistant Inspectors in the Motor Vehicles Department, the Subordinate Secretariat Service (Ministerial Branch) including the subordinate staff in the Directorate of information, Junior Translators, Supervisors, Scrutinizers (English Branch) and the posts and services specified in the schedule."

Apart from other Acts, The Gujarat Civil Services (Discipline and Appeal) Rules 1971 deals comprehensively with the various aspects of the disciplinary actions to be taken against the misconduct on the part of the public servants. It provides for the specific penalties to be imposed, the competent disciplinary authority and the procedure etc. to be followed in such cases. Under the rules, the penalties are classified into minor and major types of penalties. They are -

I Minor Penalties

(1) Censure

(2) Withholding of promotion or increments of pay

(3) Recovery from pay of the whole or part of any pecuniary loss caused by a Government servant to the
Government by negligence or breach of orders.

II Major Penalties:

(4) Reduction to a lower stage of pay for a specified period, with special instructions as to whether or not, the Government servant will earn increments of pay during the period of such reduction and whether on the completion of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(5) Reduction to a lower grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without additional instructions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(6) Compulsory retirement

(7) Removal from service which shall not be a disqualification for further employment under the Government;

(8) Dismissal from service which shall ordinarily be a
disqualification for future employment under the Government.

3. Disciplinary Authorities

Under Article 310 of the Constitution of India, the tenure of all the civil servants of a State are at the pleasure of the Governor of the State. Unless the Constitution provides otherwise, Governor is the ultimate dismissing authority or the disciplinary authority over the State Civil Servants. The Governor delegates his powers to his subordinates through rules. The rule provides that the enquiry may be conducted either by the disciplinary authority, or by a board of inquiry or by an enquiry officer.

In respect of subordinate service, the disciplinary authority is the Head of the Department or the authority specially empowered by the Head of the Department with the consent of the Government. For Ministerial Services and class IV services, the Head of the office is authorised to take the disciplinary action. The officer making inquiry in the case need not be the appointing authority or a higher authority. An authority subordinate to the appointing authority can make an investigation and submit the report. The disciplinary action is
taken only after a specified procedure, giving reasonable opportunity to the incumbent to explain his behaviour. The reasonable opportunity is provided at three stages. They are: (1) The first stage is of the communication of charges to the Government servant and taking his explanation.

(2) The second stage comes when after taking explanation, the punishing authority forms a provisional judgement as to the punishment to be imposed. If the punishment is that of dismissal, removal or reduction in rank, the Government servants are asked to show cause why the punishment should not be awarded to him for the charges levelled against him. At this stage, he is provided with a copy of the report of the inquiry officer.

(3) The third stage is when, after having the explanation of the public servant, the punishing authority makes up his mind as to the punishment to be awarded.

The Appeal Rules demand that an enquiry has to be conducted in all the cases of offence but in exceptional circumstances the enquiry may not take place if -

(a) a person is given penalty on the ground of conduct

(b) the disciplinary authority is of the view that such an enquiry is not practicable or is unreasonable.
(c) The Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such an inquiry.

Some of the offences for which the disciplinary actions are taken are -

(1) Criminal, dishonest, immoral or condemnable conduct

(2) Inefficiency

(3) Negligence or carelessness in discharge of duties

(4) Deliberate disregard or disobedience of any lawful order

(5) Participation in any strike against the Government

(6) Association with any political party or movement

(7) Receiving emoluments from other sources than Government

(8) Habitual intoxication

(9) Presenting gifts to the superiors.

4. Disciplinary Procedure

When there is a case of alleged breach of misconduct, there are certain set procedures to prove the
misconduct. First of all the department tries to find out the veracity of alleged allegation. For this, preliminary inquiry takes place and the department from this tries to find out whether there is substance in the allegation or not. In some cases, it may not be necessary to have the preliminary inquiry. While in some cases, there could be straightway an open inquiry. After the inquiry, the department comes to the conclusion whether or not there is some substance in the allegations. If there is a substance, it goes ahead with the matter.

At the second stage, the department frames a charge sheet including the statement of allegations, documents relied upon and statement of witnesses etc. Then the charge sheet is furnished to the delinquent calling for his explanation. If the misconduct is of minor nature, then the provisions of Article 311 of the Constitution of India are not attracted and the matter is not required to be referred to the Commission.

At the third stage, if the misconduct is such that it is likely to result into the imposition of a major penalty or if the explanation is not satisfactory, then the Disciplinary Authority or the Inquiry Officer
appointed under The Public Servants (Inquiries) Act 1950, examine the case. The case may be referred to the vigilance commission as well. The proceeding before this Authority is more or less analogous to that followed in a court of law. After the inquiry, the Inquiry Authority will report the findings to the Disciplinary Authority and the latter would examine the findings and draw conclusion as may be warranted on the basis of the findings.

At the fourth stage, the department ascertains whether the charge is proved or not and what should be the punishment. Even at this stage the Disciplinary Authority may give minor penalty and the Commission does not come in the picture. But if it is a major one, then the Disciplinary Authority issues show cause notice to the defaulter and asks why he should not be dismissed? It also decides whether the defaulter should be suspended or not. Generally the man concerned gets transfer. However in the criminal cases, immediate suspension takes place. In the cases of major penalty, the matter is referred to the Commission. The Commission has to be provided with the report of the Inquiry Officer, the statement of the witnesses, the explanation given by the
On this, the Commission gives its advice on the case. At last the "speaking order" is issued by the department imposing the penalty if the Commission agrees with the findings of the Inquiry Officer. The 'speaking order' is a legal terminology of the document giving full particulars of the defaulter's case.

5. Consultation With the Commission

In the disciplinary matters, the Commission is required to be consulted only when there are cases of major penalties to be imposed on the gazetted officers coming under the purview. The Commission is also to be consulted in the cases of minor penalty if there is a review. When the officer concerned appeals against the minor penalty, the case has to be referred to the Commission. The Government in December 1970 has directed all Departments that "the Commission should be consulted before awarding punishment even in the case of non-gazetted Government servant, when the enquiry against him is held jointly with that of a gazetted officer, whose disciplinary matter is within the purview of the Commission."

1 UPSC: Public Service Commissions in India, (Golden Jubilee Souvenir, 1926-1976); Nov. 1976 p. 177.
When the case comes to the Commission, the Secretary goes through it and makes certain remarks on it. Then the members of the Commission examine the case. If there is a disagreement among the Members, then the meeting of the Commission takes place and the case is disposed of. Generally the Commission takes two to three months for its consideration. The number of disciplinary cases which the Commission receives every year for its perusal is given in the Appendix XXX.

6. Summary

This is a quasi-judicial function which the Commission is called upon to perform. But it is a negative function in the sense that the Commission has to either agree or disagree with the Government proposal. Sometimes it suggests the reduction in the penalties as well but it is upto the Government to accept it or not. However the association of the impartial body like the Commission in disciplinary matters, instills the sense of relief in the minds of the public servant.

But one gets the impression that the Commission has not been able to perform this function properly. It is noticeable from the Appendix XXX that the Commission rarely disagrees with the Government proposal in the
disciplinary matters. Very often, the case remains 'under consideration' or 'under the correspondence'. This practice does not allow us to know the outcome of the cases. Such tactics on the part of the Government was severely criticised by Ex-MLA Shri Manmohan Desai, on 3rd September 1963, while discussing the Report of the Commission in the Legislative Assembly. The various stands that the Government takes is also not favoured by the Commission. It is remarked in its fourth Report that "The Commission feel that it is not correct to inflict any punishment directly or indirectly based on an incident, the enquiry proceedings in respect of which are dropped. It is also not correct not to consult the Commission on a matter in which Commission's advice is sought and obtained, and the Government subsequently decides to ignore the enquiry proceedings." ¹

At the same time, it is to be noted that the Members of the Commission are required to sit for the judgement on the cases of disciplinary matters. This expectation from the Members of the Commission is of a very tall order because the disciplinary proceedings have now

become very juristic and legalistic. In this respect, the Report of the Study Team of the Administrative Reforms Commission has pointed out that "Discipline has become so juristic and legalistic in concept and procedure that it is difficult for the immediate supervisory authority without adequate training to direct or to handle matters of discipline in a proper way."\(^1\)

The present position of the Commission in the disciplinary matters and the complexities involved in the procedural aspects leads us to suggest that the Commission should be relieved from this duty. The Study Team of the Administrative Reforms Commission has also pointed out in its Report that "It was suggested to us by some of the witnesses that Public Service Commission should not be burdened with consultation on disciplinary matters and that this should be squarely the responsibility of the personnel agencies at various level. In addition, it was suggested that Administrative Tribunals should be established for deciding appeals of civil servants against disciplinary action and the decisions of such

Tribunals should be accepted as mandatory. The Study Team after discussing the matter, has recommended that "If Appellate Tribunals are created for hearing appeals in disciplinary matters, the present functions of the Public Service Commission in such matters should cease. We do not agree with the recommendation of the Study Team on Administrative Tribunals that only appeals against three major penalties should go to the Tribunals and in the case of the other penalties the Public Service Commissions should continue to be consulted."

For this purpose, the amendment of the Constitution of India will be required. By bringing the amendment in the Constitution, such a change should be effected so that the Commission can play its proper role.

1 Administrative Reforms Commission: Report of the Study Team on Recruitment, Selection, UPSC/State PSCs and Training; June 1967, para 2,8,2 p.37.

2 Ibid p.38