DISCIPLINARY AND OTHER FUNCTIONS

In addition to the selection on the basis of merit, the efficiency and morale of the public service require an assurance of permanent tenure. The spoils system, as experience has shown, affects not only the selection but also other service matters. Once the personnel are recruited they are completely under the control of the executive and the evil hands of the patronage, if unchecked, may become more active inside the service.

Management and control of the personnel in public administration is undoubtedly a responsibility of the head of the administrative department. But a complete concentration of these powers in the head of the department may lead to the abuse of the same. Therefore, some check from outside is necessary. The Public Service Commissions in India act as a check on the patronage of the governments. This role of the Public Service Commissions as protectors of the civil servants from the possible abuse of the power was first emphasized by the Lee Commission in India. The Commission felt the need for protection of the civil service from political and personal influences and for giving it a position of stability and security which is necessary for its successful working. So, the Commission assigned to the Public Service

Commission some quasi-judicial functions connected with the disciplinary control and protection of the services. Since then the Public Service Commissions in India have been associated with the disciplinary functions of the governments. Article 320(3) (c) of the Constitution of India requires the executive to consult the Commission "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".

The association of the Public Service Commission with the disciplinary matters is a check from outside against the arbitrary actions of the government. The efficiency and morale of the public service demand that impartiality and fairness should prevail in the service. For this purpose safeguards have been provided against the arbitrary exercise of executive power through the prescription of certain rights and obligations for staff members and through the establishment of certain procedural requirements. The disciplinary measures are considered as in the nature of negative incentives to efficient performance. "Thus the disciplinary methods in the public service", as it has been observed by L.D. White, "have gradually evolved from rough and ready policy of 'hire and fire' without restriction or supervision, for any

2 ibid., para 27.
or no reason, into more formal procedures”.

The Authors of the constitution of India were also not unaware of the necessity of safeguarding the safety and security of the civil servants against the arbitrary removals, dismissals or reduction in rank. Therefore, article 311 prescribes that (1) no member of the civil service of the Union or an all-India service or a state service can be removed or dismissed from service by an authority subordinate to that by whom he was appointed; and that (2) no such member shall be removed or dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The civil service in India and in West Bengal as well, being a disciplined body, has developed disciplinary codes dealing with both substantive rights and duties of civil servants and procedural matters.

The public servants, by virtue of their occupation as government employees are bound by a code of conduct which is not applicable to the private citizens. Failure to observe this code of conduct leads to a number of offences for which the need for disciplinary action may arise. Some of these offences are: (1) criminal, dishonest, immoral or notoriously disgraceful conduct, (2) inefficiency, (3) insubordination, violation of law or regulation, (4) participating in any strike against government.

participating in or associating with any political movement or party, (6) inattention to duty, laziness and carelessness, (7) receiving emoluments from sources other than the government, (8) intoxication and (9) soliciting or accepting a bribe.

Penalties in West Bengal

If a government employee commits any of these offences mentioned above, he is subject to appropriate disciplinary actions and penalties are imposed. The principal penalties in West Bengal are:

(i) censure;

(ii) withholding of increment or promotions;

(iii) recovery from the pay of the whole or part of any pecuniary loss caused to the government by negligence or breach of order.

(iv) reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the government servant will earn increment 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;

(v) reduction to a lower time-scale of pay-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 further directions regarding conditions of the restoration to the grade post or service from which the government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vi) compulsory retirement;

Vide rule 8 of the West Bengal Classification, Control and Appeal Rules, 1971, Government of West Bengal, Calcutta Gazette, April 29, 1971.
(vii) removal from service which shall not be a disqualification for future employment; and

(viii) dismissal from service which shall ordinarily be a disqualification for future employment under the government.

Apart from all these penalties the authorities concerned may place the employee committing an offence under suspension (a) where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or (b) where the authority is satisfied that the employee has engaged himself in activities prejudicial to the interest of the security of the State; or (c) where a case against him in respect of any criminal offence is under investigation or trial in a court.

Limitation of the Commission

In imposing any of these penalties the Government of West Bengal is under the constitutional obligation to consult the Public Service Commission of West Bengal. But at the same time the government is authorised by the Constitution to exclude matters from its purview through regulation. Thus the West Bengal Public Service Commission (Consultation by Governor) Regulations, 1955 limit the Commission's functions regarding disciplinary matters. The Commission is not consulted on any disciplinary order passed by any authority subordinate to the government. The Commission is consulted if the government passes the original order even in respect of members of subordinate service if it intends to impose a major penalty on the officer concerned. In West Bengal
the Regulations also exclude all the penalties from the Commission's purview which are imposed for failure to pass any test or examination within the specified time.

In addition to the matters mentioned above, the Regulations have excluded the following for reasons of defence and national security:

(a) any disciplinary matter affecting a person who belongs to the Indian Armed Forces appointed to the civil post under the government on deputation; and

(b) in any case where any action has been taken or any order has been passed with a view to safeguarding national security.

Procedure Followed in Imposing Penalties

Reasons of efficiency and morale of the public service, as it has been shown earlier, dictate some restrictions upon the unlimited freedom of the head of the department to remove personnel. As it has been envisaged in article 311 (2) of the Constitution of India, no order imposing any of the penalties can be passed except after an enquiry has been held, giving "reasonable opportunity" to the accused officer and after consultation with the Public Service Commission where such consultation is necessary. In imposing penalties in West Bengal the procedure described below is followed by the disciplinary authority concerned.

The disciplinary authority first frames charges against

6 ibid., rule 10.
the officer. The charge contains (a) a statement of relevant facts including any admission or confession made by the government servant and (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. A copy of the charge is then delivered to the accused government servant who is required to submit to the enquiring authority, within such time as may be specified, a written statement of his defence and also to state whether he desires to be heard in person.

For the purpose of enquiry the disciplinary authority appoints enquiring authority. The enquiring authority, in the course of enquiry, considers relevant documentary evidence. The accused government servant appears in person before the enquiring authority to give evidence. After the completion of the enquiry, a report is prepared. The report includes:

(i) the article of charge and the statement of imputations of misconduct or misbehaviour;
(ii) the defence of the government servant in respect of each article of charge;
(iii) an assessment of the evidence in respect of each article of charge;
(vi) the findings on each article of charge and the reason therefor.

At the end of the enquiry, the disciplinary authority

7 ibid., rule 10(2)(3).
8 ibid., rule 10(4) to (9).
considers the records of enquiry and notes its findings on each charge. If the disciplinary authority is of opinion that the penalties like censure, withholding of increments or promotion including stoppage at an efficiency bar, or recovery from pay of the whole or part of any pecuniary loss caused to the government by negligence or breach of order, should be imposed, it passes an appropriate order. But where consultation with the Public Service Commission is necessary it sends the entire case to the Public Service Commission for its advice before passing the orders.\(^9\)

If the disciplinary authority decides to impose any of the major penalties like compulsory retirement or removal and dismissal from the service or reduction to lower service, grade or post it (i) sends to the government servant a copy of the report of the enquiring authority and a statement of its findings together with brief statement of reasons for disagreement, if any, with the findings of the enquiring authority and (ii) gives him a notice stating the punishment proposed. It also calls upon the government servant to submit a representation on the punishment proposed. Where consultation with the Public Service Commission is necessary it sends the entire case to the Commission\(^10\).

The records sent to the Commission include (i) records of the enquiry; (ii) a copy of the notice given to the accused

\(^9\) *ibid.*, rule 10(10) and (11).

\(^10\) *ibid.*, rule 10(12).
officer; and a copy of the representation made in response to such notice, if any. On the basis of these records, the Commission examines the cases and gives advice to the government. On receipt of the advice of the Commission the disciplinary authority considers the representation, if any, made by the government servant and also the advice of the Commission, and determines what penalty should be imposed on the government servant and passes appropriate orders. The Commission's advice is accepted in most of the cases.

The judicial opinion varied regarding the question whether article 320 (3)(c) was mandatory and whether the procedural requirement under article 311 before taking any disciplinary action includes consultation with the Public Service Commission. But in State of U.P. v. Manbodhanal Srivastava the Supreme Court resolved that conflict and held that article 320(3)(c) was directory. The Court emphasized the fact that article 320 did not come under Chapter I, headed "Services", of Part XIV. It occurred in Chapter II of that Part headed "Public Service Commission". Chapter I dealt with the services and article 311 in that Chapter conferred rights on the public servants. Chapter II dealt with the relation between the government and the Commission; not between the government and the public servants. The Court held that Chapter II containing article 320,

11 Ibid., rule 10(13).
did not, in terms, confer any right or privilege on an individual public servant, nor any constitutional guarantee of the nature contained in Chapter I of that Part particularly article 311. Article 311, therefore, was not in any way controlled by the provisions of Chapter II of Part XIII with particular reference to article 320.

It may thus be inferred that in the opinion of the Supreme Court article 320(3)(c) of the Constitution does not confer any right on a public servant and the absence of consultation, and any irregularities in consultation, cannot afford him a cause of action in a court of law. It is not a right which could be recognised and enforced by a writ, order or direction. On the other hand article 311 of the Constitution has been construed as conferring a justiciable right on a civil servant of the Union or a State. It may be noted in this connection that the proviso to article 311 recently added by the 42nd Amendment states that where it is proposed after inquiry to impose upon a government servant a 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." 

Appeal System

Under the present system in West Bengal the head of the department

13 Vide Chapter 9, infra.
is ultimately responsible for disciplinary action taken against a government servant. Though the Public Service Commission is consulted, the advice tendered is not binding upon the executive. In dealing with the disciplinary cases the Commission has to depend solely on the records and documents sent to it. As the Commission itself does not investigate the matter, if any personal prejudice or interest is involved in the disciplinary proceedings that remains outside its grasp. Under the circumstances cases are not unlikely where the hearing offers only a shadow of protection against an arbitrary action. Therefore, in West Bengal as in any other State or at the Centre the government employees have been provided an opportunity to appeal against any drastic action which adversely affects their interests. Appeal rights, as it has been rightly observed by O. Glenn Stahl, in a well-run merit system, are meaningful and act as a brake on hasty, ill-conceived decisions.\textsuperscript{14} Under the appeal system the individuals are entitled to submit memorials or petitions against any such order to the government concerned.

In West Bengal a government servant may appeal against an order of suspension to the authority superior to the authority by which he is suspended or is deemed to have been suspended.\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{15} Rule 14 of the \textit{West Bengal Classification Control and Appeal Rules}, 1971.
\end{itemize}
In case of penalties like removal or dismissal from service, compulsory retirement, reduction to lower service, recovery from pay of the whole or part of any pecuniary loss caused to the government by negligence or breach of order, or censure, a member of the West Bengal State Service Class I and Class II may appeal to the Governor as a *persona designata*.

When an appeal is made to the State Government against an order imposing any disciplinary penalty made by a subordinate authority, the Commission is required to be consulted. The appeals which lie to the authorities subordinate to the government are not referred to the Commission. Thus appeals made to the divisional commissioner against orders of the collector are not referred to the Commission. Rule 18 of the West Bengal Public Service Commission (Consultation by Governor) Regulations, 1955, provides that the Commission should be consulted only when appeals lie to the government, or when on receipt of memorials or petitions the government proposes to modify the original penalty. If the government rejects any appeal, petition or memorial, it is not necessary to consult the Commission.

In dealing with the appeal cases the Commission arrives at its conclusions on the basis of records of disciplinary proceedings of the officers concerned and their records of service. The purpose of the Commission in this respect is to protect the civil servants from injustice. Therefore, in the cases of appeal...

16 *ibid.* rule 15.
the Commission examines whether the punishment was proportionate to the offence and not disproportionate to the punishment inflicted on the other officers for similar offences and whether the punishment is awarded only in the interest of justice to protect the efficiency of the public service.

Table 8.1 shows the bulk of the Commission's work regarding disciplinary matters. The data given in this Table show that the number of cases which the Commission considered relating to disciplinary matters went up to 26 in 1953-54. But this number came down to only 7 in 1962-63. In the subsequent years the number varied between 8 and 23.

Claims for Compensation

The judicial function of the Commission does not end with the disciplinary matters. As a quasi-judicial authority the Commission is also associated with the cases of claims made by the civil servants for compensation. Article 320(e) and (d) of the Constitution specifies the cases when the Commission shall be consulted for the payment of compensation.\(^1\)

\(^1\) Article 320(d) and (e) provide that the Commission will be consulted "on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or as the case may be out of the Consolidated Fund of the State; and "on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State,"
<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases</th>
</tr>
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<tbody>
<tr>
<td>1951-52</td>
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<tr>
<td>1952-53</td>
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<tr>
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</tr>
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<td>1960-61</td>
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<td>1961-62</td>
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</tr>
<tr>
<td>1963-64</td>
<td>10</td>
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<td>1967-68</td>
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<tr>
<td>1968-69</td>
<td>23</td>
</tr>
<tr>
<td>1969-70</td>
<td>11</td>
</tr>
</tbody>
</table>

NA: Not available in the Annual Reports

Source: Annual Report of the Public Service Commission, West Bengal.
Reimbursement of Legal Expenses  The idea of referring the cases of claims for reimbursement of legal expenses incurred by a government servant to the Commission is no innovation of the Constitution of India. As early as in 1924 the Lee Commission, which contemplated the idea of assigning some quasi-judicial function to the Public Service Commission to be established in India, proposed for the association of the Commission with the cases of reimbursement of legal expenses. But this was applicable in the event of a breach of legal covenant between the officer and the authority which appointed him. The Lee Commission recommended that the aggrieved officer should in the specified circumstances be indemnified for legal expenses in prosecuting his claim in the civil courts. The aggrieved officer was allowed to appeal to the Public Service Commission for a certificate that his case was fit for adjudication by a civil court. If the officer's claim was sustained by the court the whole cost of the legal proceedings should be defrayed by the government concerned.

The Government of India Act 1935 for the first time provided that the cases of reimbursement of legal expenses should be referred to the Federal Public Service Commission. The

\[\text{or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award.}\]

18 Lee Commission, op.cit., paras. 28 and 85.
Constitution of India, however, has retained this provision and required that the governments should consult their respective Commissions on claims for legal reimbursement. But under the present Constitution the payment of the legal expenses cannot be claimed as a matter of right. Award of reasonable reimbursement must be of a discretionary nature depending on the facts of the case as brought out in the course of trial. It may also be noted in this connection that the provision for reimbursement does not cover the cases where the government servant himself went to a court to clear his position or conduct. Such claims can be made only where the government servant was required to defend his conduct before a court of law. In West Bengal, Public Service Commission is consulted before any payment of cost on claims for legal reimbursement. It is evident from the annual reports of the Commission that its advice is accepted almost in every case.

**Extraordinary Pensions** Extraordinary pensions are granted where the government servants are injured or killed in course of their duties. But where the death or injury is caused by a government servant's own negligence no question of extraordinary pensions can be raised.

Extraordinary pension is granted in addition to the ordinary pension to which a government servant is normally entitled. The payment may be in the form of pension or gratuity. In the case of the death of the employee the pension is generally payable to his family.
The amount of extraordinary pension or gratuity varies according to the pay, status and rank of the government servant. The Government of India Act 1935 for the first time provided that the government should consult the Public Service Commission concerned on all claims for the award of injury pensions and on the amounts of such award. Article 320(3)(e) of the present Constitution of India also lays down that the Public Service Commission concerned should be consulted by the government on any claim for the award of extraordinary pensions. In consequence the Government of West Bengal refers all cases of extraordinary pensions to the Public Service Commission and the Commission's recommendation, as it is evident from the annual reports of the Commission, is accepted in most of the cases.

It is evident from Table 8.2 that the Commission's work regarding the claims for extraordinary pension and reimbursement of cost does not take up much of its time because the number of cases referred to the Commission is insignificant.

The importance of the role performed by the administrative recruitment structures cannot, however, be properly assessed simply by counting the number of different types of cases handled by such bodies. The volume of work may not be very large. Still in a modern political system having expanding horizons the recruitment structures should be vested with the power of dealing with numerous functions so that they may efficiently perform the
Table 8.2

The Commission's Work Regarding the Claims for Extraordinary Pension and Reimbursement of Cost, 1956-57 to 1969-70

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases of extraordinary pensions and gratuity</th>
<th>No. of cases for reimbursement of cost</th>
</tr>
</thead>
<tbody>
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<tr>
<td>1968-69</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>1969-70</td>
<td>2</td>
<td>3</td>
</tr>
</tbody>
</table>

§ includes 1 case shown pending with the Commission in the last year's Report

Source: Annual Reports of the Public Service Commission, West Bengal.
role consistent with the norms of the system. Judged from this standpoint one must admit that the framework existing in India is a scientific one.