

Overview of Disciplinary Proceedings,  
Principles of Natural Justice &  
Evidence in  
**DISCIPLINARY PROCEEDINGS**

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# Rules Governing Administrators

- Follow procedure where procedure is prescribed  
(Cannot follow reasonable procedure when procedure is prescribed)
- Adopt reasonable procedure where procedure is absent
- Comply with the *Principles of Natural Justice*
- Notice and Hearing only when action has civil consequences (Affects any individual)
- ***DECISION CANNOT BE QUESTIONED***

# Powers of Administrators

- Administrators exercise *administrative, quasi-judicial and quasi-legislative powers.*

- **Quasi-judicial decisions** = on basis of evidence

Administrative= not on evidence and **DISCRETIONARY**

[DISCRETION=best assessment and understanding of a situation = KNOWLEDGE/WISDOM/EXPERIENCE]

- **Quasi-judicial (Specific/Relates to a Past incident)**

- *Quasi-legislative (General/Relates to the future)*

**98-99 % FUNCTIONS/ ACTIONS ARE ADMINISTRATIVE**

# Quasi-judicial function/action

- Cancellation, suspension, revocation or refusal to renew licence or permit by licensing authority
- **Imposition of fine**
- Dismissal of an employee on the ground of misconduct.
- Disciplinary proceedings against probationers /students.
- Determination of citizenship

# Quasi-legislative function/action

- Imposition of tax
- Imposition of fee
- CCS (Conduct) Rules, 1964
- CCS (CCA) Rules, 1965
- **Prescribing dress code from time to time**
- **Fixing Physical Training type, venue & timings**

## Quasi-Judicial

- **Consider submissions & arguments**
- **Collate Evidence**
- **DECISION ON EVIDENCE**
- **PNJ=Applicable**

## Administrative

- **Need not** Consider submissions & arguments
- **Need not** Collate Evidence
- **MAY or MAY NOT BE**
- Decision on the basis of his **knowledge, experience and wisdom. (DISCRETION)**
- **PNJ=Applicable**

## Quasi-Legislative

- **NEED NOT BE**
- **GENERAL**
- **RELATES TO FUTURE**
- PNJ = **Not** Applicable

- Quasi-Judicial
- **DECISION ON EVIDENCE**
- **SPECIFIC**
- **RELATES TO A PAST INCIDENT**
- **PNJ= Applicable**

## Quasi-Legislative

- GENERAL
- FUTURE
  
- **PUBLISHED**  
**(Communicated)**
  
- PNJ = **Not** Applicable

## Administrative

- GENERAL /SPECIFIC
- PAST /PRESENT/FUTURE
  
- **MAY or MAY NOT BE**  
**PUBLISHED**
  
- PNJ= Applicable



# Principles of Natural Justice=Introduction

- PNJ denote fairness in procedure or *Procedural Fairness*
- Justice- **Simple & elementary**
- NJ=branch of public law
- Rules of NJ=**not embodied rules**
- They **do not supplant the law only supplement it**
- PNJ **are flexible** and whether they were observed in a given case or not depends upon the facts and circumstances of each case

## 2+1 Basic Principles

1. *Nemo debet esse iudex in propria causa*:- **NO BIAS**

**{No man shall be a judge in his own cause}**

LIKELIHOOD OF BIAS (JUSTICE MUST BE SEEN / B  
DONE [Judges= Recuse (potential conflict of interest)]

2. *Audi alteram partem* :- HEAR THE OTHER SIDE

**{Both sides must be heard}** [**No man should be  
condemned unheard**]

**NOTICE & HEARING**

**3. Reasoned Decisions= Giving Reasons (DECISIONS)**

# PRINCIPLES OF NATURAL JUSTICE for **Disciplinary Proceeding**

- No one can be punished without being given reasonable opportunity of being heard.
- No one can be the judge of his own cause &
- Justice is not only done but also seen to have been done.
- Reasoned Decision
- Punishment shall not be Disproportionate

# PRINCIPLES OF NATURAL JUSTICE TO BE FOLLOWED IN DEPARTMENTAL INQUIRY

- That a *party should have the opportunity of adducing all relevant evidence* on which he relies.
- That the *evidence of the opponent should be taken in his presence.*/PE not part of enquiry
- That he should be given the opportunity of *cross examining the witnesses* examined by the party.
- That *no materials should be relied on* against him without his being *given an opportunity of explaining them.*

# **DOCTRINE OF PLEASURE**

- **Art. 310** - It relates to the **tenure of office of the members of the defence services and of civil services** and **accords constitutional sanction to the doctrine of pleasure.**
- **CONTINUE AS LONG AS PRESIDENT IS PLEASED**

# Doctrine of pleasure in the Indian context

- The Civil Services in India are modelled upon the British pattern, though there are important differences between the two. **The doctrine of pleasure has been adopted in India subject to certain exceptions, that is, in a modified form.** The rigour of the British concept of “Doctrine of Pleasure” has been toned down in India.
- Here, in India, a **Govt. servant holds his office during the pleasure of the President or the Governor,** as the case may be - President if he is an employee under the Central Government and Governor, if he is an employee of any State Government. **There are restrictions imposed upon the doctrine of pleasure in India.**

# Restrictions on the Doctrine of Pleasure

The *doctrine of pleasure is subject to the safeguards provided by Article 311. In other words, Art. 311 is a proviso to Art.310* (1).

*The doctrine of pleasure is controlled by the Fundamental Rights.*

There are certain constitutional functionaries who do not hold their offices during the pleasure of the President or the Governor, such as Judges of the Supreme Court and High Courts, the Chief Election Commissioner, Election Commissioners and Regional Commissioners and the CAG.

# Safeguards of Article 311- an outline

(1) No dismissal or Removal by authority subordinate to appointing authority.

(2) No dismissal or removal or reduction in rank.

without inquiry in which :-

(i) charge should be communicated to the Government Servant concerned.

(ii) he and she should be given reasonable opportunity of being heard in respect of charges, and

(iii) penalty may be imposed on the basis of evidence adduced during such inquiry.



# INFORMATION OF THE CHARGES

- Here information of the charges would mean and include the requirement of delivery of a written charge sheet in the language and composition that the suspected public servant can understand, specificity of the charges proposed to be leveled, i.e. clearly indicating the “Who” “What” “When” and “How” about the charges. A vague charge-sheet giving general information such as “always” “never” etc. does not convey the “information” as mandated under the Constitution.

## TEMPORARY EMPLOYEE

- Thus, *if a temporary employee is discharged from service by giving him one month notice, without assigning any reason, the same may be permissible.* If the order of discharge mentions any reasons having a bearing on the *conduct or the competence of the employees, in such cases an inquiry will be necessary.* In short, *even probationers will be entitled to the protection of inquiry, if the order of discharge contains a stigma*

# REASONABLE OPPORTUNITY

- The phrase 'reasonable opportunity' has not been defined in the Constitution; but the courts have clarified through a number of decisions that this includes, **opportunity to know the charge, know the evidence led by the Disciplinary Authority in support of the charge, inspection of documents, leading evidence in defence**, etc.

- **Article 311 to whom it applies:-**

- (a) a member of an All India Service.
- (b) a member of a civil service of the Union.
- (c) a member of a civil service of a State.
- (d) **a person who holds a civil post under the Union or a State.**

### **Article 311 does not apply to**

- (a) a civilian employed in a defence department.
- (b) an employee of a statutory corporation like LIC, Food Corporation of India etc. or of a Government Company./ Local Bodies (Municipal Corporation)
- (c) Defence Personnel.

# Exceptions where inquiry as enjoined under Article 311(2) may be dispensed with

1. Where a person is dismissed or reduced in rank on the ground of **Misconduct which has led to conviction or criminal charges** {clause(a) of Article 311(2)}
2. Where in the **interest of the security of state, it is not expedient** to give such an opportunity to the civil servant {clause(b) of Article 311(2)}
3. Where it is **impracticable to give the civil servant an opportunity to defend himself** but the authority taking action against him shall **record the reasons for such action**{clause(c) of Article 311(2)}

# **EVIDENCE ACT NOT STRICTLY APPLICABLE TO DISCIPLINARY PROCEEDINGS**

- THE RULES OF EVIDENCE AS FOLLOWED IN JUDICIAL PROCEEDINGS ARE NOT STRICTLY APPLICABLE TO DEPARTMENTAL INQUIRY BEFORE AN INQUIRY OFFICER.
- THE NATURE OF THESE INQUIRIES **IS QUASI-JUDICIAL** AND THESE ARE **NOT GUIDED BY THE LAW OF EVIDENCE AS CONTAINED** UNDER THE EVIDENCE ACT.
- **GUIDANCE TO BE TAKEN ONLY FROM EVIDENCE ACT**

# WHAT DOES EVIDENCE ACT ESSENTIALLY CONVEY?

- The only law (enactment) that touches every other law
  - What is and What is not (Relevancy/ Admissibility)  
NOT =(Evidence from *Narco/Polygraph/Brain Map*)
  - 25/26/112/122/126/
  - What is substantive and What is corroborative
- Substantive: one item is enough for a judgment**
- Corroborative: Even 10 items not enough**

# NARCO

- **NARCO-ANALYSIS/BRAIN MAPPING/POLYGRAPH**
- CONSENT FOR CONDUCTING THE TEST REQUIRED
- Not admissible
- Tools of Investigation
- **MAY BE ADMISSIBLE IN DPS**



# Corroborative Evidence

**Substantive: one item is enough for a judgment**

**Corroborative: Even 10 items not enough**

1. FIR/9.Expert's opinion/10.Confessio of Co-accused
2. (Dying Declaration) Statement by a person who survived
3. Statements recorded by Police in the course of investigation
4. Test Identification Parade Evidence
5. Sniffer dog's evidence
6. Admissions in criminal cases
7. Inquest Report by PO/JM/EM/8.SeizurePanchnama

# Relevancy of character

- The word 'character' includes both reputation and disposition. Reputation means the general credit of the person among the public but disposition means the inherent qualities of a person.
- ***In criminal cases, previous good character relevant***  
**(Section 53)**
- ***Previous bad character not relevant, except in reply***  
**(S.54)**

## Relevancy of character in civil proceedings **irrelevant**(S 52)

- › In civil cases, the fact that the character of any person concerned is such as to render probable or improbable any character imputed to him, is *irrelevant*.
- › *Character evidence admissible if character itself is in issue: In a suit for libel, if the libel consisted in attributing bad qualities*, to the plaintiff and the defendant justifies the existence of these qualities, this would be a fact in issue and evidence of character may be led. *The character of a female chastity has been received in evidence in action for breach of promise for marriage.* (Divorce-cruelty)

# Burden of Proof in Disciplinary

## Proceedings//Civil & Criminal cases

1. In criminal cases, the guilt must be proved beyond reasonable doubt. In civil cases proof is enough.

2. In civil cases, the matter is decided by preponderance of probabilities. But in criminal cases proof beyond reasonable doubt

3. Disciplinary Proceedings= preponderance of probabilities

4. Burden of Proof in criminal cases is on prosecution// in civil cases on both parties

# Examination-in-Chief

- It means examination of a witness by the party calling him. In chief examination, the witness generally *speaks in favour of the party examining him as he is called by the party.* In the same way the party or his advocate conducting chief examination *asks plain questions and avoids tricky questions, because it is through such witness he tries to establish the case in his favour.*
- In this examination *only relevant questions can be asked and leading questions cannot be asked.*

# Ambit of Examination-in-Chief

- a. It must relate to **relevant facts of the case.**
- b. It is not ordinarily permissible to ask **leading questions** during examination-in-chief. However, leading questions may be asked with the **permission of the court** during examination-in-chief if the leading question is **introductory in nature or relates to undisputed facts** or relates to facts, which in the opinion of the court, are sufficiently proved (Sec.142 of I.E. Act).

## Objects of cross examination

- I) to **destroy the general value of the evidence** given by the witness in chief examination
- II) to **bring to light facts suppressed** by the witness, and
- III) to **establish evidence in his favour by means of his opponent's witness**. (to obtain from such witness statements and admissions favourable to the party)
- IV) to **destroy or weaken the case of the opponent by discrediting the witness.**

# Ambit of Cross-examination

– following questions may be asked during cross examination:

- a. Any question to test the veracity of the witness (i.e. to test the truthfulness of the testimony);
- b. Any question to know the status of the witness (i.e. to discover who the witness is and what is his position in life);
- c. Any question to check the credibility of the witness **even by injuring his character or exposing him to criminal liability** (i.e. to destroy or weaken the case of the opponent by discrediting the witness (Sec.146 of I.E. Act).
- d. Leading questions



# Disallowing certain questions in cross-examination

- The court can use its discretion judiciously to control the cross examination by disallowing the questions on the following issues:
  - a. Indecent and scandalous questions may be disallowed unless those relate to facts-in-issue (Sec.151 of I.E. Act).
  - b. Questions intended to insult or annoy shall be disallowed (Sec.152 of I.E. Act).

## Re-examination

- The party who calls the witness may re-examine him after cross-examination in order to **reconcile the discrepancies that have arisen during cross-examination.** The object of re-examination is to seek **explanation or clarification from the witnesses on matters,** which arose during cross-examination and may be **unfavourably construed against the party calling the witness.**
- I may make the statement in one sense but the advocate cross-examining me may show that the statement was made in another sense.
- Witness = **novice and a stranger** (may be nervous)
- Advocate = **veteran & seasoned**

# Hostile Witness

## WHO DOES NOT APPEAR TO BE SPEAKING THE TRUTH

- The term “Hostile Witness” does not appear in the Indian Evidence Act. *When any witness is permitted by the court to be cross examined by the party who called him*, the witness is popularly called hostile witness.
- If the court thinks from the evidence, *demeanour, temper, attitude, tenor and tendency of answering the questions, from perusal of previous inconsistent statements* of the witness that grant of permission is expedient to extract the truth and to do justice, the court can do so u/s. 154 of I.E. Act.

# Hostile Witness-Credibility

- Simply because a witness has been declared hostile, his testimony **does not become totally unreliable on that count.** The evidence given by such witness remains admissible and there is no legal bar to pass a conviction upon his testimony, if corroborated by other reliable evidence. It is held by the Supreme Court that the evidence of hostile witness should not be totally rejected if spoken in favour of the prosecution or accused, but it **can be subjected to close scrutiny and that portion of the evidence which is consistent** with the case of the prosecution or defence may be accepted.

# Appreciation of Evidence=

## Ocular Testimony:

- **Ocular testimony of a witness** may be classified into the following three categories, namely
  1. **Wholly reliable-----**
  2. **Wholly unreliable.**
  3. **Neither wholly reliable nor wholly unreliable.**
- In respect of first and second category, the court should have no difficulty in coming to conclusion either way - **It is only in the 3rd case that corroboration is required.**

# Disciplinary Proceedings=Introduction

- Disciplinary proceedings in India form an integral component of the administrative machinery, essential for ***maintaining the integrity, efficiency, and discipline within the government services.***

Rooted in the principles of justice and fairness, these proceedings are employed to ***address issues related to misconduct, negligence, malpractice, and other infringements by government servants.***

In this article, we delve into the fundamental aspects of disciplinary proceedings, their ***procedural intricacies, and the legal underpinnings that govern them.***

- **DOMESTIC ENQUIRY**

# DP= Important Functionaries

- Appointing Authority
- Disciplinary Authority
- Inquiry Officer
- Presenting Officer
- Defence Assistant

## ***Minor Penalties –***

- ***censure***;
- withholding of his ***promotion***;
- ***recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders***;
- ***reduction to a lower stage*** in the time-scale of pay by one stage for a period ***not exceeding three years, without cumulative effect*** and not adversely affecting his pension.
- ***withholding of increments of pay***



# Major Penalties

- *reduction to lower time-scale of pay, grade, post or Service*
- *compulsory retirement*;
- *removal* from service which shall not be a disqualification for future employment under the Government;
- *dismissal* from service which shall ordinarily be a disqualification for future employment under the Government.

## Preliminary Enquiry - its nature:-

- P.E. is not a must in each and every case
- It is fact-finding/It is informal/
- Generally, it is ex-parte/May be held confidentially
- It is for the satisfaction of the Authority Competent to initiate D.P
- There is no prescribed form or procedure for P.E
- The person complained against need not be called to take part in P.E.
- Preliminary enquiry may be made to ascertain prima-facie truth or otherwise of the allegations/for determining whether a D.P. should be started.

## After P.E. - what?

- a) The Disciplinary Authority should examine whether the P.E. has been properly done.
- b) **If done properly, what misconduct/offence/fault, if any, has been made out prima facie?**
- c) If so, should he lodge an FIR ( in case of cognizable offence) with the Police as a **step towards Criminal Prosecution?**
- d) **Should he file a complaint before the Competent Judicial Magistrate ( non-cognizable offence) for launching Criminal Prosecution?**
- e) Should he **set the Criminal Law in motion as per (c) or (d) above or embark on a departmental proceeding or take recourse to both simultaneously?**
- f) If Disciplinary Proceeding is called for, should he draw up a proceeding for major penalty or minor penalty?

# MINOR/MAJOR PENALTY PROCEEDINGS

- MINOR

- A. Complaint
- B. Preliminary Enquiry
- C. Statement of Imputations of misconduct/Document
- D. Reply of Charged Officer
- E. DECISION

- MAJOR

- A. Complaint
- B. Preliminary Enquiry
- C. Charge Sheet
- D. INQUIRY
  - 1. Preliminary Hearing
  - 2. INQUIRY (MAIN)
- E. DECISION

## Detailed Oral Hearing= Optional

- **Optional:** Cases wherein the disciplinary authority may *feel that in the circumstances* of the case *it is appropriate to hold an oral inquiry*. The disciplinary authority *may suo motto decide* that in a particular case, oral inquiry may be held to ascertain as to whether the charges are proved. Alternatively, the decision may be taken *based on the request of the concerned official*. In any case, the final decision will be as per the discretion of the disciplinary authority. *Cases involving oral evidence will normally call for oral hearing.*

## Detailed Oral Hearing=**Obligatory**

- **Obligatory:** Where, the disciplinary authority, after considering the reply of the Government servant, proposes to impose the penalty of withholding of increment, under any one of the following circumstances, an oral inquiry shall invariably be held:

i) *withholding of increment for a period exceeding three years,*

ii) *withholding of increment for any period with cumulative effect*

iii) *withholding of increment which is likely to adversely affect the pension of the Government servant,*

# MINOR PENALTY PROCEEDINGS

- **Rule 16** of CCS(CCA) Rules 1965
- The authority competent to impose these penalties may be lower than the Appointing Authority. Besides, ordinarily Minor penalties can be imposed without conducting an oral inquiry.
- Once a decision has been taken by the disciplinary authority to initiate minor penalty proceedings against an employee, a memorandum is issued to the employee communicating the proposal to take action against him. This memorandum is accompanied by a statement of imputations of misconduct or misbehaviour, giving him about 10 days' time for submitting his reply. In case the Government Servant desires to peruse some documents for preparing his reply, the same may be considered on merit.

MINOR P P =On receipt of his reply

- **On receipt of his reply**, or if **no** reply is received on expiry of the prescribed date, **the competent authority will take a decision on the basis of available information**. The **findings of the disciplinary authority will be recorded** in file and an appropriate order will be served on the Government servant concerned. If it is decided, as a **result of such examination**, to **exonerate** the Government servant, an order to that effect will be issued.



# Tendency To Initiate The Proceedings For Major Penalty

- This tendency should be avoided for two reasons. Firstly, if the gravity of the misconduct indicates that the **ends of justice will be met through a minor penalty**, initiation of major penalty proceedings will **create unnecessary tension for the employee concerned** and hence it will be unfair to him. Secondly, minor penalty proceedings can be **completed expeditiously**. Imposition of the penalty soon after the misconduct **is always effective and desirable**.