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A CRITICAL STUDY OF THE MISCONDUCT AND DISCIPLINE PROCESS FOR GOVERNMENT EMPLOYEE IN INDIA

AUTHORED BY - SIMANT PRIYADARSHI & DEEPAK GUPTA

ABSTRACT

When an employee engages in misbehaviour, it can be in the form of actions, inactions, or behavioural patterns. This could support the employer's decision to take disciplinary action. Misconduct can be defined as wrong, improper, or illegal behaviour driven by a deliberate, premeditated goal or by an unwavering disregard for the repercussions of one's actions. Misconduct is regarded as inappropriate or unacceptable behaviour, particularly when it involves a professional. Misconduct encompasses both illegal acts, such as deceitful manipulation, and actions deemed inappropriate. Because "Gross Misconduct" is sufficiently serious and may even be illegal, such as stealing or sexual harassment, it can result in an immediate termination. Rather than failing to act or doing nothing at all, which could be referred to as subpar performance, misconduct is an action. Government employees are crucial to the operation of the nation's government. They are significant parts of the country's administrative structure. They serve as the cornerstones of the government departments, which are in charge of carrying out the policies of the government. At the local level, they offer public services to the people, and in a similar vein, they take public complaints, representations, and demands to higher authorities for a successful resolution. Only the government employees' loyalty accounts for it. Compared to their counterparts in the private sector, government employees have a different work culture and set of responsibilities.

KEYWORDS- Professional, Misconduct, Authorities, Proceedings, Servant

INTRODUCTION

Employees of the government are held to a set of standards of conduct in both their official and personal capacities. These responsibilities are inherent in their position. Employees of the government have duties to both the public and the government. The Central Civil Service Conduct (Rules) 1964 is one of the main rules that outlines the responsibilities of civil servants and is one of the rules and regulations set forth by various acts to enforce this.

Employees in a company or industrial concern may have their employment terminated due to misconduct. Any act by a servant that harms the employer's assets and reputation as well as the business enterprise is considered misconduct. Any behavior that is included in model standing orders or business concern standing orders that are specifically written to meet the needs and requirements of the organization is considered misconduct. When evaluating whether a specific act or omission constitutes misconduct, consideration should be given not only to the harm to the employer but also to the overall calm and well-being of the organization. "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior" is the definition of "misconduct" according to Black's Law dictionary. Regarding the relationship between an employer and employee, it states further that "misconduct, which renders a discharged employee ineligible for unemployment compensation, occurs when the employee's conduct evinces willful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standard of behavior which employer has the right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design." It's not always the case that behaviour involving moral turpitude and misconduct are the same.

The term "misconduct" is relative and must be interpreted in light of the context and subject matter in which it appears, as well as the parameters of the Act or statute under interpretation. "Misconduct" literally translates to "wrong or improper behavior." A wide range of human behaviour is included in "misconduct." It might be an act that interferes with the actor's employer's ability to run their business smoothly. Misconduct can have petty roots, like not doing your job, or it can have more serious roots, like acting riotously or insubordinately while at work. The term "misconduct" refers to a variety of behaviors, including improper or wrong behavior, bad behaviour, unlawful behavior, and mismanaged behavior. Malfeasance, misdemeanor, delinquency, and offense are all included.

The phrase does not always suggest wrongdoing or criminal intent. Therefore, misbehavior is a general term, and specific misbehavior such as following instructions, being subordinate, ignoring tasks, etc., are species of misbehavior. But "misconduct" and "negligence" are two entirely different things. While some forms of carelessness might qualify as misconduct, others might not. Even though there may be lapses in performance or errors in assessing the circumstances, these situations do not always amount to misconduct unless the consequences of the negligence are so severe as to render the negligence irreversible or the resulting damage is so great as to place a high degree of blame on the negligent party. Errors may be a sign of carelessness, and the severity of the carelessness may be indicated by the degree of culpability. More harm can frequently be caused by negligence than by intentional evil or malice. The term "misconduct," while imprecise in definition, derives its meaning from the circumstances, the deviance in behavior, and its impact on the nature of responsibility and discipline. The act complained of bears a forbidden quality or character; it may involve moral turpitude; it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not merely an error of judgment, carelessness, or negligence in performance of duty. When a police constable is on duty and consumes large amounts of alcohol, it is considered grave misconduct under the Indian Service Law and is grounds for termination from service. Employers find general misconduct problematic, but gross misconduct calls for immediate disciplinary action—typically termination.

OBJECTIVES OF THE STUDY

1. To study on practical implication of the judicial decisions explaining the extent and scope of judicial control in Government's relation to civil service matters.
2. To study on the role of administrative system for promoting transparency and people's participation.
3. To study on the decision making, implementation and evaluation of projects programmes and public policies for good governance.
4. To identify the strategy that could be formulated for maintaining balance between the interests of the civil servants.
5. The fundamental interest of the society that conflict with each other.
6. To suggest the necessary legislative and reforming parameters needed in this regard.

STATEMENT OF THE RESEARCH PROBLEM REGARDING TO GOVERNMENT EMPLOYEE

It should be noted that as of right now, neither a law nor a regulation precisely defines the idea of "reasonable opportunity," as stated in Article 311 of the Indian Constitution. The courts are responsible for determining whether the applicable laws or regulations give a civil servant a reasonable opportunity. As a result, the courts are issuing a variety of rulings that are confusing. Thus, the researcher believes that it is imperative to reevaluate Article 311 of the Indian Constitution because it is currently being abused to grant immunity to dishonest civil servants or government employees whose integrity is in question. It is in this backdrop that Civil Servants accused of any crime cannot be easily suspended pending inquiry of the offence committed.

RESEARCH PROBLEM

1. By and large the civil service in India has lost its neutral and anonymous character and even though there are still some upright civil servants they are getting marginalized in the process of governance.
2. Increasingly, corrupt practices have become prevalent in the higher civil service and public perception of higher civil servants as a class is not edifying.
3. The higher civil servants particularly officers of the Indian Administrative Service Indian Police Service and Indian Forest Service working in different States of the country do not have a fixed tenure in any post and hence are not able to achieve the targets fixed for them in their assignments. In the absence of any fixed tenure, these officers of the All India Services are not able to function as effective instruments of public policy and are simply wasted due to frequent transfers from one post to the other.
4. A majority of civil servants are arrogant. They are not perceived as people friendly and by and large they have lost touch with ground realities... Civil servants in the States have almost given up the earlier practice of sustained tours of remote areas and night halts in those areas which are so essential to understand and redress problems of the poor and the weaker sections of the community.
5. There is 'groupies' among higher civil servants and increasingly they have been divided along sectarian lines – an extremely unfortunate development. Some civil servants develop an unhealthy nexus with power brokers and do not hesitate to resort to questionable means to get good postings in India or abroad.

SIGNIFICANCE OF THE RESEARCH PROBLEM AND JUSTIFICATION OF PROFESSIONAL MISCONDUCT

In the twenty-first century, a country's reputation, standing, and image in international affairs are primarily determined by the commitment, competence, efficacy, and efficiency of its civil servants and government servants. When there are changes in leadership in democracies, they frequently occur within the Cabinet and Parliament. The majority of the time, however, political transition occurs throughout the administration as a whole, with important positions in Government Ministries and Departments also changing hands and card-carrying members sometimes exhibiting conflict as well as mutual mistrust due to differing role interpretations.

HYPOTHESIS

1. Whether the Government Servant/ Civil Servants, at present in India possess the necessary competence, skills, and capability to perform multiple roles.
2. Whether Government Servant/Civil Servant are constructive thinker, speedy decision maker and crisis manager in view of the emerging problems in a successful way leading to the growth of the economy of respective States.
3. Whether various legal instruments in place in India guarantee job security and better conditions of service for persons employed by the Government.
4. Whether Politics and Government Service /Civil Service go hand in hand.
5. The various Suggestive Measures has been undertaken for delinquent Government Servant/Civil Servant for displaying in pivotal role in misconduct.

REVIEW OF THE LITERATURE

The following is a brief summary of the literature that is relevant to the current study: - The insightful treatises "Parliamentary Govt. in England" and "The Growth of Administrative Discretion" by Harold J. Laski provide an excellent overview of the Home Civil Service of England, detailing its origins, current relevance, and influence on English politics and society at large. Likewise, a classic source for "The Role of the Civil Service in the Modern World" is Herman Filner's "The British Civil Service" (London 1937, P. 14–15). Herman Filner's seminal work on "The Theory and Practice of Modern Government" also contains some excellent research. where he has made an effort to provide a comprehensive analysis that highlights the critical issues facing the civil service through comprehension, original research, and first-hand

observation. Civil Service and Civil Servant are greatly impacted by John Alder's Constitutional and Administrative Law and E.C.S. Wade & Godfrey Philips' Constitutional Law. Other books on Indian constitutional law, such as the Introduction to Constitution of India by Durgadas Basu and the shorter Constitution of India by Basu, emphasize the significance of civil service and the need for recruitment, conditions of service, and interpretation to be governed by laws that are subject to the Constitution's provisions.

RESEARCH METHODOLOGY

In order to gather the necessary data for this study, the researcher used a doctrinal or non-empirical method. The results of this study were derived, among other things, from critical and analytical research. Two data sources, namely primary and secondary, will be used in this study in order to produce relevant findings and reliable recommendations. Data will be gathered through a review of primary sources found in the library and online, including the Indian Constitution and Government Recommendations, Disciplinary Proceedings Statutes, Conduct Rules, Regulations, Commission Reports, Case Laws, etc. Besides these, secondary sources include things like articles from law journals, reports from independent agencies, papers given at various conferences and seminars, and commentary pieces written by different authors. Newspapers and various e-sources will also be relied upon.

MISCONDUCT- UNDER THE GOVERNMENT OF INDIA'S DECISIONS ON THE PROVISIONS OF CENTRAL CIVIL SERVICES (CONDUCT) RULES, 1964, THE FOLLOWING ACTS MAY AMOUNT TO MISCONDUCT

1. If the act or conduct is prejudicial or likely to be prejudicial to the interests of the employer or to the reputation of the employer.
2. If the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his employer.
3. If the act or conduct of an employee makes it unsafe for the employer to retain him in service.
4. The act or conduct of the employee is so grossly immoral that all reasonable men will say that the employee cannot be trusted.
5. If the act or conduct of the employee is such that the employer cannot rely on the

faithfulness of his employee.

6. If the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly.
7. If the employee is abusive or if he disturbs the peace at the place of his employment.
8. If he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of employer and employee.
9. If the employee is habitually negligent in respect of the duties for which he is engaged.
10. If the neglect of the employee though isolated, tends to cause serious consequences.

IMPORTANT JUDICIAL RECOMMENDATION

& LEADING CASES

In several cases involving the termination or removal of civil servants from their positions, our courts have been asked to interpret Article 311 over the course of the last seven decades. This paper aims to conduct a critical analysis of some of the most significant rulings made by the Supreme Court regarding delinquent civil servants.

SATISH CHANDRA'S CASE

In *Satish Chandra Anand v. Union of India*¹, the petitioner agreed to be subject to the Central Service (Temporary Service) Rules, 1949, which stipulated that he could leave his position with one month's notice. His services were soon terminated, and he was given a month's notice. Following that, the petitioner filed a motion with the Supreme Court under Article 32 of the Constitution, arguing that his dismissal was a flagrant breach of Articles 14 and 16 of the document. In addition to accusing the other civil servants of being denied the protections provided by Article 311 of the constitution, he also claimed discrimination.

SHYAM LAL'S CASE

In the case of *Shyam Lal v. State of Uttar Pradesh*², where the appellant was forcibly retired from service under Article 465A of the Civil Service Regulations, which provided punishment for specific acts of gross misconduct, Article 311 was once again subject to interpretation before the Supreme Court. In actuality, charges were brought, and an investigation was carried out; however, he was advised that the investigation was of an informal nature, limited to gathering information regarding the question of whether he ought to retire automatically. Later, he contested the order, claiming that it violated Article 311 of the Constitution because it amounted

to removal from service. Furthermore, it was claimed that the rule allowing this kind of retirement without giving a reason was invalid because it went against the terms of Art.

DHINGARA'S CASE

The appellant in Purshotam All Dhingra v. Union of India⁵ began working for the railways in 1924 as a signaler and was later promoted to chief controller (a class III post) in 1950. He was designated as an officiant for class II service in 1951. In the High Court, the civil servant filed a writ. The court decided that because Mr. Dhingra was not given the chance to object to the proposed action against him, the provisions of article 311 had been broken, making the action against him unlawful. Mr. Dhingra then petitioned the Supreme Court after a Division Bench of the same High Court overturned this decision. Section 311.

JUDGEMENT BY THE COURT IN RECENT UNBECOMING OF GOVERNMENT SERVANT IN INDIA

B. Dev v. Union of India & Others, The petitioner violated the Hon'ble High Court's Circular No. 6/2002, acting in a manner unbecoming of a Government Servant, and committed an offense under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. Additionally, the petitioner's conduct was deemed unbecoming of the Government under Sections 7 and 13(I)(d) of the Prevention of Corruption Act, 1988.

S.B. Ramesh v. Ministry of Finance & Others, The government servant violated Rule 3(1) (ii) due to negligence in performing his duty, failure to maintain devotion to duty, and unworthy behavior. Additionally, the government servant violated Rule 3(1) (iii) of CCS due to gross negligence in performing his duty, failure to maintain devotion to duty, and unworthy behavior.

Sreenivasan v. Servant and Union of India, Rule 15-A (1) of the CCS (Conduct) rules 1964 states that no government servant may sublet government accommodation that has been assigned to him. This rule was broken by the lawful communications sent to Shri N. Vinod Kumar's residence, which committed an act unbecoming of a government servant and consequently continues to be absent without leave application or permission. An officer of inquiry was designated.

SUGGESTIVE MEASURES AND REMEDIES AGAINST

IMPOSITION OF PENALTIES FOR COMMITTING

MISCONDUCT

There are numerous subspecies of misconduct, and a wide range of employee behaviors can be classified as misconduct. The employer's remedies in the event that the employee is found to have engaged in misconduct include suspension, termination, and dismissal. There isn't a clear hierarchy regarding termination that prioritizes some wrongdoing over others when deciding how harshly a crime is punished. It's important to remember that the only circumstances under which an employment can be terminated are those of proven misconduct. The inability to perform effectively or with incompetence is not listed as a reason for dismissal. Even in cases where there is employee misconduct, it can be difficult for the employer to terminate an employee under our adversarial system because evidence is difficult to present. The following are the remedies available to a government servant who is dissatisfied with the Disciplinary Authority's decision regarding the order that was made against him.

CONCLUSION

In our nation, it's critical to find a balance between the demands of industrial efficiency and social justice. By examining the case law, one can draw the conclusion that there is no set interpretation of the ideas surrounding the connection between misconduct and termination by the courts. Each case's unique facts and circumstances will determine a lot. Using imprecise language only ends up wasting the time of the courts. While there exist certain unambiguous classifications of misconduct in the model standing orders, such as persistent tardiness, theft, or fraud, there are also certain gray areas, such as gross negligence and habitual negligence, whose interpretation is contingent on particular situations.

Legislators and the courts need to be more explicit and certain about what behaviors count as misconduct and what does not. Uncertainty leads to systemic inefficiencies, and legal entanglements can occasionally stop the economy's and commerce's wheels from turning. For industrial matters, greater uniformity is required. In addition, the courts must continue to act as a watchdog in the event that an employee's rights are violated. When attempting to establish that an employee has engaged in misconduct, an employer may encounter challenges due to the broad application of concepts related to such misconduct.

Employers cannot profit from the courts' strict application of standards, which would undermine the economy's efficiency. It would be ideal if the courts developed some set standards to guarantee the prompt resolution of cases and to remove the stigma associated with employers.

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