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“PROFESSIONAL MISCONDUCT IN GOVERNMENT SERVICES WITH SPECIAL REFERENCE TO ROLE OF CIVIL SERVANT’S IN INDIA”

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ABSTRACT

Misconduct is when an employee does something wrong either by doing something, not doing something, or through their behaviour. This may justify some disciplinary action being taken by the employer. Misconduct is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts. Misconduct can be considered an unacceptable or improper behaviour, especially for a professional person. Misconduct includes something seen as unacceptable as well as criminal offenses e.g. deceptive manipulation. "Gross Misconduct" can lead to immediate dismissal because it is serious enough and possibly criminal, e.g. stealing or sexual harassment. Misconduct refers to an action, rather than neglecting to take action, or inaction which could be referred to as poor performance. Government Servants play a very important role to run the administration of the Country. They are important constituents of the administrative set up of the nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to higher ups for their effective resolution. It is only because of loyalty of Government Servants. The Government Servants have different work culture and responsibilities as compared to their counterparts in private sector. They are smartly paid, have some kind of privileges and facilities but at the same time they have heavy responsibilities toward the Government in particular and public in general. The responsibility of the Government Employees has increased and become time bound. In order to ensure that Government Employees give their best to the country, some constitutional safeguards have been provided to the Government. However, as many a times, some Government Servants start misusing their official power and position. They start shirking work, do not do their work as per rules and orders and indulge in other kinds of misconduct. Therefore, in order to discipline them and to control them, the concept of Departmental Proceedings is provided in the service rules. The procedure to be followed in Disciplinary Proceedings is generally laid down in Service Rules and Standing Orders made there under. However, the procedure, so laid down, is subordinated to the provisions of the Constitution of India i.e. any rule cannot be ultra-vires the provisions of the Constitution, e.g. Article-309, 310, 311 etc. Although the provisions of the Indian Evidence Act, 1872, do not apply to the Departmental Proceedings but the principle of Natural Justice has to be followed. Thus, Reasonable Opportunity to defend himself must be given to the person against whom Departmental Proceedings have been initiated. It is also to note that acquittal in criminal proceedings on the same set of charges, per se, does not entitle the delinquent to claim immunity from Disciplinary Proceedings, the Departmental Proceedings against a Government servant starts with the lodging of a complaint with the Disciplinary Authority. On the receipt of a complaint, it is open to the Disciplinary Authority to

hold preliminary inquiry to ascertain the prima facie truth in the allegations. The complaint may be made by an ordinary citizen or superior officer of the employee.

Keywords;-Professional, Misconduct, Government Service/Servant, Civil Service/Servant Conduct Rules, Disciplinary/ Departmental, Proceedings, Committees, Authorities, Constitutional, Administrative, Remedies, Accountability, Good Governance etc.

A. INTRODUCTION-

Misconduct is a ground for the termination of employment of the workers in an organisation or industrial concern. Misconduct means any act of the Servant that is detrimental to the property and reputation of the employer as well as the business concern. Misconduct can be any act that comes into fold in model standing orders or the standing orders of the business concern specially framed in consonance with the needs and requirement of the organisation. Not just the loss to the employer but also the general peace and tranquillity of the organisation is a driving factor in determining whether a particular act or omission is misconduct or not. Black's Law dictionary defines 'Misconduct' as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour". Further regarding employer employee relationship it says, "Misconduct, which renders discharged employee ineligible for unemployment compensation, occurs when the conduct of employee evinces wilful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standard of behaviour 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." Misconduct under the Indian Service Law Page 3 of 27 "The term 'misconduct' implies a wrongful intention, and not involving error of judgement. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct. 'Misconduct' covers a large area of human conduct. It can be an act that prejudices the smooth functioning of the establishment where the actor is employed. Grounds for misconduct can be trivial such as neglect of work or more serious like insubordination or riotous behaviour during working hours. Misconduct is a generic term and means a conduct amiss; to mismanage; wrong or improper conduct, bad behaviour; unlawful behaviour or conduct. It includes malfeasance, misdemeanour, delinquency and offence. The term does not necessarily imply corruption or criminal intent. Thus, misconduct is a generic term while specific misconduct like disobedience of orders, insubordination, neglect of work etc. are species thereof. However, "misconduct" and "negligence" are different notions. Some kinds of negligence may amount to misconduct, while some others may not amount to misconduct. There may be negligence in performance of a duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences thereby attributable to negligence would be such as to be irreparable or resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of negligence. Carelessness can often be production of more harm than deliberate wickedness or malevolence. The word

“misconduct” though not capable of a precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude; it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgement, carelessness or negligence in performance of duty; the act complained of bears forbidden quality or character. Misconduct under the Indian Service Law Page 6 of 27 police constable on duty intakes heavy alcohol, it constitutes gravest misconduct, warranting dismissal from service. While general misconduct is a problem for employers, gross misconduct is a reason for swift disciplinary action, usually dismissal.

B.OBJECTIVES OF THE STUDY.

- 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.
- To study on the role of administrative system for promoting transparency and people’s participation.
- To study on the decision making, implementation and evaluation of projects programmes and public policies for good governance.
- To identify the strategy that could be formulated for maintaining balance between the interest of the civil servants and that of the fundamental interest of the society that conflict with each other.
- To suggest the necessary legislative and reforming parameters needed in this regard

B. STATEMENT OF THE RESEARCH PROBLEM REGARDING TO GOVERNMENT SERVANT/CIVIL SERVANT;

-It can be noted that at present, there is neither law nor rule clarifying the contents of the concept of ‘Reasonable Opportunity’ as envisaged in Art.311 of the Constitution of India. It is for the Courts to ascertain whether or not the law or the rules available provide for a reasonable opportunity to a Civil Servant. Consequently, diverse judgements creating confusion are being passed by the Courts. Therefore, in the considered opinion of the researcher it is high time to re-examine Art.311 of the Constitution Of India as at present, it is being misused to give immunity cover to dishonest Civil Servants or Government servants of doubtful integrity. It is in this backdrop that Civil Servants accused of any crime cannot be easily suspended pending inquiry of the offence committed. This ironically, results in the possibility of tampering of evidence essential for conviction of a Civil Servant leading to low rate of conviction or dismissal of dishonest Civil Servants. These lacunae need to be addressed through this research. Every Civil Servant is enjoined to promote the welfare of the people by securing and protecting a social order in which social, economic and political justice shall form all institutions. Civil Servants need to work to minimize the inequalities of income, status, facilities and opportunities and to secure a legal system that promotes justice on the basis of equal opportunity British a comprehensive Civil Service structure and established practices. In India, its utility for ensuring national unity and Good Administration/ Governance was recognized and accepted by the Constituent Assembly and incorporated several provisions

RESEARCH PROBLEM : The pertinent issues of focus as enumerated below, set the parameters of the study in the context of 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. There is a sharp decline in their field visits and inspections of field programmers. 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.
6. The Vigilance Organization in States and the Central Bureau of Investigation in Government of India have created such a fear psychosis that civil servants are afraid of taking bold decisions in the public interest i.e decisions involving expenditure of big amounts of money and important commercial decisions. There is a need to enforce the 'Single Directive to protect honest officers who take bold decisions in the public interest even though they might be guilty of technical violations of procedure in taking such decisions.
7. After 15 years of service a rigorous review should be made of performance of higher civil servants to weed out the corrupt and the inefficient.
8. Article 311 of Constitution is meant to protect honest and efficient civil servants and not to shield the corrupt and the inefficient Article 311 of the Constitution should be amended to remove corrupt officials from service and give them an 29 opportunity to defend themselves in a post decisional hearing only after their removal from service. If the civil servant is exonerated in the post-decisional hearing he may be restored his entire service benefits including arrears of pay and allowances.
9. Terms of Reference (i) Protecting the Civil Service against wrongful pressure exerted by administrative superiors political executive business interests and other vested interests. AND (ii) changes in All India Service Rules and Central Civil Service Rules and policies for lack of accountability of officers for waste of public money because of inadequate supervision of programmes under implementation which attractive adverse notice of the political executive.
10. Problems of cadre management and results in an imbalance in the structure of the cadre. The officers also miss out on the opportunities for professional growth.

11. Problem of appointment of an inquiring authority in a disciplinary proceeding. Data base on departmental inquiries & time schedule for completion of disciplinary cases.
12. Civil servants should be politically neutral to inspire.
13. There must be trust and mutual respect between the Minister and the Civil Servant as without them unity of action in the higher echelons of government will be difficult to achieve.
14. Making the Civil Service e-governance friendly. To provide a clean honest transparent govt. antiquated rules and procedures in Government must be discarded and new simplified ones be put in place. Such an exercise is absolutely essential for introduction of e-governance.
15. Without fixity of tenure and in absence of objective and impartial evaluation of work on the basis of annual performance targets the civil Service has degenerated into a closed priesthood without any semblance of accountability.
16. Due to lack of appreciation of role of Civil Servants by the higher judiciary the legislature and the political masters there is no synergy harmony and unity of purpose in the higher echelons of the Civil Service.

D. SIGNIFICANCE OF THE RESEARCH PROBLEM AND JUSTIFICATION OF PROFESSIONAL MISCONDUCT;

A nation's image, position and standing in the International affairs in the 21st Century largely depend upon the dedication, capability, efficiency and effectiveness of its Government Servant/ Civil Servant. In democracies where leadership transitions take place, it is often within Parliament and the Cabinet. But more often than not, political transition also takes place throughout the entire administration where key roles in Government Ministries and Departments also change hands and card-carrying members characterized by mutual suspicion and occasionally by conflict as well, arising from conflicting role interpretation. For e.g., the political administrative culture of centralism which has been fostered since independence has been largely responsible for the problems under review in the Civil Service. Unless the attitude is changed and proper measures are put in place, the poor relationship between the two groups is bound to continue ruling political party are moved into influential posts. Cronyism is rampant and nepotism not uncommon especially in the process of recruitment and promotion of Civil Servants. The present "all change" policy of the Civil Service of politically moving officials from their current duties to other posts as a favour or disfavour is detrimental to the effective functioning of public services. During recruitment and promotion, attracting the best and the brightest to join the Civil Service should be the only criteria to give impetus to the growth and dynamism of the public sector. However, politics and corruption have proved to be a major impediment in the efficiency of Civil Servants in the public sector in India in the contemporary era. Another murky spot in the Civil Service is that, some people employed in the Civil Service at present in India are not competent to hold Civil Service Posts. This has led to increased inefficiency and poor service delivery in most of the Government offices. It is also a common feature now-a-days for persons to hold the post in acting capacity for a long span of time in the civil service. The competent authorities empowered to make regular recruitments are adopting delaying tactics, probably, because of political pressure and wrangles within the Ministry concerned. It is therefore inevitable to reconsider the legal provisions to address this issue. In the light of the above, the present research, being one of its kind and one that has never been carried out, aims at finding out the loopholes in the government service It is therefore incumbent that there should be an effective and stringent law in place to ensure that Civil Service officials should be basically

meritorious and non-partisan especially in the execution of their duties to ensure services are provided to the public in an efficient and effective way. Most of the unqualified persons in the Civil Service were either recruited through corrupt means/cronyism or political influence. It is an experience that persons appointed on acting capacity are not ready to take concrete decisions for fear of either losing their jobs or being held responsible in case of anything done wrong. existing laws, rules and regulations to counter the menace of increasing Politicization, Corruption, Lack of Transparency and Accountability in (a) the recruitment and promotion of Civil Servants in India, (b) streamlining the procedure/manner in which recruitment and promotion is carried out in the Civil Service so as to increase the efficiency in service delivery, (c) determining conditions of service of Civil Servants and (d) ascertaining dispute settlement mechanisms of service matters. The justification provided in the succeeding paragraphs of this synopsis would re-emphasize upon the assertion of the researcher in this context.

E. HYPOTHESIS

Most Important points are related in this context are the following:-

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

F. REVIEW OF THE LITERATURE.

A brief review of the literature relating to the present study been detailed as follows:- Harold J. Laski's valuable treaties entitled "Parliamentary Govt. in England" & "The Growth of Administrative Discretion" gives a wonderful account of the Home Civil Service of England tracing down its history its relevance for the day and the impact it has had on the English Society and politics as a whole. Similarly Herman Filner's "The British Civil Service" (London 1937 P. – 14 & 15) is also a classic source of "The Role of the Civil Service in the Modern World". We also find good research in Herman Filner's classic treatise on "The Theory and Practice of Modern Government", where he has attempted in-depth analysis with comprehension, original research & first hand observation highlighting the crucial problems of the Civil Service. Constitutional and Administrative Law by John Alder and Constitutional Law by E.C.S. Wade & Godfrey Philips have tremendous impact on Civil Service & Civil Servant. Other books on Indian Constitutional Law like Durgadas Basu's shorter Constitution of India and the Introduction to Constitution of India on the services under the Union and the State, Dr. Base gives importance to Civil Service and interpretation, recruitment and conditions of Service to be regulated by legislation subject to the provisions of the Constitution. The most respectable book on Constitutional Law of India by H.M. Seervai has given a

wonderful account of what the role of Civil Services citing quotations from Sir Warren Fisher, Permanent Head of the British Treasury, Sardar Vallabhbhai Patel and from Shah Commission's Report. Seervai's treatise gives an excellent account of Article - 309 to 311, 313 and other articles in Part – XIV of the Constitution including Chapter – 2 of Part – XIV. Another important book that is found to be very close to the subject of the research study is "The Civil Servant under the Law and the Constitution" by Dr. N. Narayan Nair, casting increasing attention on the roles governing the conduct of the Civil Servant and legislations that control Civil service, aimed at enhancing disciplined efficiency and fair service conditions. It also examines the position of the Civil Servant and the significant features of the problem pertaining to the Civil Servants under the Law and the Constitution. The subject has received a very careful treatment marked by spirit of enquiry assisted by a close examination of the opinions of jurist and judicial pronouncements. Other books close to my topical area of research study is Prof. Narendra Kumar's "Law Relating to Government Servants and Management of Disciplinary Proceedings". Prof. Kumar in a very simple language highlighted Service law pertaining to certain controls like 'the pleasure doctrine under Article 310 system of Confidential Reports, disciplinary proceedings such as suspension, removal and dismissal from service and reduction in ranks etc. Report of the Law Commission of India on various topical legal issues concerning my research has also been studied and their significant findings have been integrated into my research. Research findings of Indian Bar Review have also been studied to integrate important research concerns. Internet Depository on my research area is a significant source of legal research and various inputs would necessarily be used in my topical research area. Justice Rama M. Jois in his work "Service under the State" influences most simple level as a source of overall understanding of civil services law and civil services jurisprudence. It is this inversion which possess the basic enigma of the Indian judicial process. Similarly Ejaz Ahmed's The All India Services Manual, published by Ashoka Law House New Delhi, is a best source of relevant case laws & notes on Government of India resolutions, decisions, circulars and notification including Amendments by Sixth/Seven Pay Commission relating to Civil Service law.

G. RESEARCH METHODOLOGY-

The researcher in the present research has adopted Doctrinal or Non-Empirical Method for collecting required data. This research has based its findings, inter alia, on analytical and critical studies. To come up with pertinent findings and to provide credible recommendations, this study will utilize two sources of data i.e., primary and secondary. Primary sources, such as, Constitution and Recommendations of Government of India, Disciplinary Proceedings Statutes, Conduct Rules, Regulations, Commission Reports, Case Laws, etc., available in the library and on the Internet will be perused for collection of data. In addition to these, Secondary sources like for e.g., Commentaries written by various authors, reports published by Independent Agencies, Papers presented in different Conferences and Seminars, Articles published in Law Journals, Newspapers and various e-sources will also be relied upon.

H. MISCONDUCT ACT DONE BY GOVERNMENT SERVANTS/CIVIL SERVANTS;-

Government Servants/Civil Servants holds a certain responsibility, which comes with their post, they have to adhere with a certain kind of standard of conduct at both in official responsibility as well as private capacity. Government Servants holds a responsibility towards the Public as well as Government. To enforce this, there are certain rules and regulations laid down by different acts, which describes the responsibility of Government Servants/ Civil Servants and one of the major guidelines is Central Civil Service Conduct (Rules) 1964.

I. 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 a 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 can not 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.

J. IMPORTANCE AND IMPLICATIONS OF CENTRAL CIVIL SERVICE CONDUCT RULES TO THE GOVERNMENT/CIVIL SERVANT;-

Central Civil Service Conduct and rules was notified on 30th November 1964 and the rule came into effect from the same day of notification. The CCS conduct rules apply to every person appointed to Central Civil Service or post including Civilians in Defence of Service. The rules don't apply to railway servant and the person holding a post in the railway board or of the financial commission of railways.CCS (Central Civil Service Conduct) rules also don't apply to Member of the All India Services and holder of any post of which president has, by general or special order, directed that these rules shall not apply. There is a total of 25 rules mentioned in this Act, the Civil Servant can be subjected to inquiry on violation of any of the rules mentioned in the Act. The most vital rules which must be followed by Civil Servants in the process of discharging their duty. maintain absolute integrity. Integrity here refers to honesty, efficiency and good behaviour of the Civil Servant, If he fails to satisfy any of them, departmental action can be taken against him on the charges of lack of integrity. Devotion to duty which means if Civil Servant habitually fails to perform the task assigned to him on a regular basis, an inquiry can be

set on him. Conduct unbecoming of a government servant/civil servant should conform to the ordinary norms of decency and morality, should not violate laws of the land, perform his official duties promptly and actions in courteous manner. The test of determining the conduct is left to the discretion of the government, and the test will be objective not subjective. Actions can be taken for the 'past misconduct' committed by government servant. Employment of near relatives of Government servants in companies or firms, this means a Civil Servant near relative should not be employed with firms or companies with which he is dealing in his official capacity. Action against Civil Servant can be taken if he is convicted on criminal charges by court. Involvement of Civil Servant in infidelity, undue influence, fraud, deceive, misrepresentation, unaccountable, mistake, trustworthiness will amount to misconduct in duty on his part. Habitual late attendance, absence without leave, non-performance of contract and disorderly behaviour during office hour.

K. DISCIPLINARY PROCEEDINGS: AGAINST GOVERNMENT SERVANT/CIVIL SERVANT;-

According to the definition of vigilance, the receipt of information about corruption, malpractice or misconduct on the part of the public servant, from whatever source, would be termed as complain. The first action is to check whether it has got vigilance angle or not. If yes, then it will be entered into the appropriate part of the register prescribed by vigilance manual. Vigilance angle includes obtaining illegal gratification like obtaining money from corrupt means, abusing official position, possession of disproportionate assets, forgery, cheating, and other criminal cases including the different rules prescribed. The registers are classified into two types namely into A listed officers and B listed officers, to move forward against the complaints of a listed officers a recommendation from CVC (Central Vigilance Commission) is required, but for B listed officer no such recommendation is required. In a situation when officers of both categories are required the complaint will be maintained in A listed register. In case of false complaint, if it is found it was done on malicious or vexatious ground, the inquiry will be initiated against the false complainant officer, if he is not a government servant charges, he will be dealt with the normal proceeding for false complaint on Civil Servant. The complaint can be entertained by different method by sending it to the department concerned, if the matter is of grave important it can send to CBI or it can itself entertain by Vigilance commission. The disciplinary authority is one who is entrusted with authority to impose any penalty on account of misconduct, generally the disciplinary authority is defined with reference to the post held by employee and the definition mentioned in rule 2(g) of CCA rules. There are generally two kind of authority one who can impose major penalty and another who can impose minor kind of penalty. Mentions of disciplinary authority are clearly done in part XIV of the Constitution which relates to 'Services the Union and States', the Article 309, 310 and 311(i)&(ii) are related with the Disciplinary Proceedings.

L. CONSTITUTIONAL PROVISIONS:-RELATING TO GOVERNMENT SERVANT/CIVIL SERVANT;-

In India there exists no specific judicial remedy available exclusively to civil servants. Whenever an aggrieved civil servant wants redress he has to seek the general remedies available to all others and there exists no privileges or special status in this regard. The present article is an attempt to draw out the practical implication of the judicial decisions explaining the extent and scope of judicial control in Government's relation to civil service matters. Any system of judicial control of administrative action is ultimately based on the wider concept of the rule of law. Since the judiciary has to uphold the law of the

country the action of an authority contrary to law could be Challenged in a Court of law. But the above statement does not mean that every person whose interest is adversely affected by an administrative order can approach the Court for redress. The role of the judicial institutions is only sporadic and peripheral in reconciling the interests of the Government and the governed. The masterpiece work has been to deal with various legal, constitutional and fundamental rights of a civil servant. The problem of this branch of law requires besides an examination of the rights and obligations of the Government and the civil servants. A study of the remedies available to each party if the other violates the obligations imposed on him. The enforcement of the formal rules of law on the civil servant is comparatively easy because the Government being the pay-master and the holder of the power of all grades of termination of employment up to dismissal can, generally speaking act on its own.

Under the various Articles of the Indian Constitution, the Parliament, State Legislatures, Central or State Government and other authorities are empowered to frame rules and regulations so as to regulate the conduct of Government Servant/Civil Servant within the framework of the Constitution.

Article 98 of the Constitution empowers the Parliament to make law to regulate services of the Secretariat Staff of the Parliament.

Article 146 of the Constitution empowers the Chief Justice subject to the approval of the President to frame rules regarding service conditions of the officers and staff of the Supreme Court.

Article 148 empowers the President to make rules regulating the terms and conditions of service to the employees working in the Indian Audit Staff in consultation with the Comptroller and Auditor General of India. Similarly Articles 217, 229 and 312 deals with the framing of rules

Article 309 of the Constitution empowers the Central and State Government to frame rules to regulate the services and conditions of their employees.

Art-310-This article is also known as 'Pleasure Doctrine' as President can appoint Union Civil Servant depending upon its pleasure. Pleasure of President can be overridden, only by express provision provided in the constitution not any other else, it also talk about tenure of office of persons serving the union or states.

Article 311 is the safeguard and protection available to the Government Servants. Clause (2) of Article 311 after amendment in 1963 and in 1976 has brought a considerable change in the matter of punishments to be imposed on a government servant. It is significant to note that the Constitutional safeguard available to a Government Servant up to 1976 was to the extent of providing delinquent officer with an opportunity of being heard in two stages i.e. i) at the stage of enquiry and ii) at the stage of punishment. The second stage of affording opportunity has undergone an amendment in the year 1976 and the relevant provision now reads as under

Article 311 Clause (2). No person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges

Art-311-No dismissal, removal or reduction in rank of persons employed in civil capacities under union or state. The dismissal procedure does not apply to defence personnel under this article. Two essential feature of this article are (1) Government servant be should informed about the charges alleged on them (2) to give them reasonable opportunity to defend them.

The implications of the provisions of Article 311 have been the subject of a close examination by the Supreme Court. The Supreme Court has given exhaustive interpretation of the various aspects involved and they provide the administrative authorities authoritative guidelines in dealing with disciplinary cases.

The **Civil Servants** for the purposes of Article 311 may be classified into the following categories.

- a) Regular civil servants of the Union.
- b) Members of All India Services
- c) Persons holding civil posts outside the regular services under the Union.
Regular civil servants of the States.
- d) Persons holding civil posts outside the regular services under the State Regarding classes (a) (b) and (d) much difficulty would not arise. The Union and State Governments treat them as civil servants and their services are regulated by statutory rules

M. IMPORTANT JUDICIAL RECOMMENDATION & LEADING CASES

During the last seven decades, Article 311 have come for interpretation before our courts in a number of cases regarding dismissal or removal of civil servants from service. In this following paper, an attempt is made to examine critically some of the leading judicial pronouncements by the apex court in the context of delinquent civil servant.

SATISH CHANDRA'S CASE ;-

In Satish Chandra Anand v. Union of India,¹the petitioner accepted a temporary job on the condition that he would be governed by the Central Service (Temporary Service) Rules, 1949 which provided for termination of service by a month's notice on either side. Soon his services were terminated by serving on him one month notice. Thereupon, the petitioner moved the Supreme Court under Article 32 of the Constitution and contended that his termination has been made in gross violation of the provisions of Articles 14 and 16 of the Constitution. He alleged discrimination as well as the denial of the constitution protection afforded by Article 311 to the other civil servants.

SHYAM LAL'S CASE

Article 311 again came for interpretation before the Supreme Court in the case of Shyam All v. State of Uttar Pradesh² where the appellant was compulsorily retired from service under Article 465A of the Civil Service Regulations which provided punishment for specific acts of gross misconduct. In fact the charges were leveled and an enquiry was conducted but he was informed that the enquiry was purely informal and confined to finding of facts only whether he should be retired compulsorily. Later, he challenged the order stating that it amounted to removal from service within the meaning of Article 311 of the Constitution. It was further alleged that the rule permitting such retirement without assigning any reason was void as contravening the provisions of Article 311.

1. AIR 1953 SC 250.(India). & Hartwell Prescott Singh v. State of U.P. AIR 1957 SC 886.(India).

2. AIR 1954 SC 369.(India).

SAUBHAG CHAND'S CASE

In *State of Bombay v. Saubhag Chand M. Doshi*³ the respondent was compulsorily retired without holding any enquiry in terms of Rule 165 A of the Bombay Civil Service Rules, which were adopted by the State of Saurashtra with some modifications.⁴ The order was reversed by the High Court on the ground that it was one of dismissal and there was no enquiry and hence illegal and void and violated provisions of Article 311 of the Constitution. On appeal to the Supreme Court, it was contended that the impugned rule involved a stigma or imputation of misconduct and therefore amounted to dismissal or removal. In rejecting the contention the Supreme Court said that the policy underlying Article 311 (2) which provided for giving an opportunity to be heard was that when an action was proposed to be taken against a civil servant by way of punishment which would result in loss of benefits already earned by him he should be given an opportunity to show cause against such order. Since the impugned order did not amount to a dismissal or removal under Article 311 (2) it was valid.

DHINGARA'S CASE

In *Purshotam All Dhingra v. Union of India*⁵ the appellant joined the railway service as a signaller in 1924 and was later promoted to the post of chief controller in 1950 (a class III post). In 1951 he was appointed to officiate in class II service. The civil servant filed a writ in the High Court. The court ruled that since Mr. Dhingra was not given an opportunity to show cause against the action proposed to be taken in regard to him, the provisions of article 311 were violated and hence the action taken against him was illegal. However, a Division Bench of the same High Court reversed this ruling and hence Mr. Dhingra moved the Supreme Court.

3. AIR 1957 SC 892. (India)

4. Under rule 165A compulsory retirement could be ordered on the grounds of inefficiency or dishonesty id., at 574-75.

5. AIR 1958 SC 36.(India)

P. BALKOTIAH'S CASE:

In *P. Balkotiah v. Union of India*⁶ the services of a civil servant who joined railway service in 193 and held a permanent post were terminated under rule of the Railway Services (Safeguarding of National Security) Rules, 1949. He was charged with having taken part in subversive activities which were true and resulted in termination of his services. The order stated that the civil servant was given one month's salary in lieu of notice. Thereupon he moved the High Court contending that the above rule was void. The court observed that the action of the railway authorities was sustainable under rule 148 Railway Establishment Code, which provided for termination of service by giving a month's notice or salary in lieu thereof. Before the Supreme Court the order of termination was challenged inter alia on the ground that security rules violated article 311 (2) and were therefore void.

GOPI KISHORE'S CASE ;-

In State of Bihar v. Gopi Kishore⁷ a civil servant who was on probation was removed from service on the charge of corruption and inefficiency. No opportunity was given to him to defend the charges leveled against him. The order was reversed by the High Court on the ground that neither the same was shown to the civil servant nor were its contents communicated to him. The government went in appeal against the order and contended that, the order of termination of a probationer did not amount to removal or dismissal within the meaning of article 311 (2). In such a case, he is entitled to the protection of Article 311 (2) of the Constitution. The Court, however added, But if the employer simply terminates the services of probationer without holding an enquiry..... the probationer civil servant can have no cause of action even though the real motive behind the removal from service is that his employer thought him unsuitable for the post he was temporarily holding on account of misconduct or inefficiency or some cause.⁸ In regard to the termination of services of permanent civil servant Dhingra's case has been modified by the judgment of a larger bench of the supreme Court in Moti Ram v. North Eastern Frontier Railway⁹ to the extent that neither the term incorporated in a

6. AIR 1958 SC 232.(India).

7. AIR 1960 SC 689. (India).

8. ONGC v. Iskender Ali, (1980) 3 SCC 428, cf. State of Orissa v. Ram Narayan Das, AIR 1961 SC 177.(India)

9. AIR 1964 SC 600.(India).

service contract nor the rules relating thereto (except concerning superannuation or compulsory retirement) may provide for termination of services of a permanent civil servant except according to the procedure laid down in article 311 (2) of the Constitution.

SEERVAI¹⁰ a leading constitutional authority has criticized the ruling by saying that the interpretation put by the majority is wrong. Seervai submits that the assumption that a civil servant had a right to hold a post till the age of superannuation is wrong as no such right exists. In his view neither law nor service rule nor contract can confer such a right as such law or rule would be void and violative of the pleasure doctrine incorporated in article 310 (1)¹¹ According to him the pleasure doctrine can be fettered in two ways. First that a government servant cannot be dismissed removed or reduced in rank by a person inferior in rank to the person appointing him and secondly that if any such action is proposed to be taken against him he must be afforded an opportunity to show cause against it. In nutshell, Seervai thinks that a simple termination is not dismissal or removal and hence no punishment is involved in terminating a Government servants service.¹²

S. P. VASUDEVA'S CASE:

In **S P Vasudeva v. State of Haryana**¹³ the appellant was working as an assistant in the Public Works Department. Later, he was appointed as legal assistant in a deputy commissioner's office. The appointment was purely on adhoc basis. Thereafter he was transferred to another deputy commissioner's office and ultimately reverted to his parent office. The order of reversion was challenged inter alia on the ground that it amounted to reduction in rank and was the result of a conspiracy. The High Court dismissed the petition and hence the present appeal. The Supreme Court found the charge of conspiracy as "reckless". The above ruling of the Supreme Court shows that there is definitely a sort of confusion or uncertainty in the development of the law relating to various categories of civil servant.

10. H.M. Seervai, Constitutional Law of India, vol. III at 3002-03 (ed.2008).

11. Id. at 3006, 3007.

12. Id. at 3005.

13. AIR 1975 SC 2292

DEBESH CHANDRA' CASE:

In **Debesh Chandra v. Union of India** the appellant¹⁴ the appellant who was the Chief Secretary of Assam, was appointed a Secretary in the Central Government, on a tenure post which was to expire in July, 1969. In September, 1966 he was asked to choose between reversion to service of his parent State and compulsory retirement. He contended that the order was a stigma and amounted to reduction in rank which could not be passed without following the procedure laid down in Art. 311(2). The Court said that the cadre for the I.A.S. were to be found in the States only and not in the Central Government. Few of them, however, were intended to serve at the Central and when they did so, they enjoyed better emoluments and status. Such an appointment meant promotion to higher post. In these circumstances, the Court held that the order of reversion to the original post amounted to the appellant's reduction from a higher to a lesser rank, and not a reduction in the same time-scale post or deprivation of places in the time-scale post, thereby adversely affecting his seniority therein or charges of promotion

CHANDRABHAN'S CASE:

In **State of Maharashtra v. Chandrabhan**¹⁵ the Supreme Court struck down a rule of Bombay Civil Service Rule as violative of Art. 311 (2) which provided for payment of subsistence allowance at the rate of Re.1/- p.m. To a suspended government employee whose appeal was ending against his conviction and suspension. Subsistence allowance at the rate of Re.1/- p.m. Is illusory and meaningless and it makes the right of appeal meaningless. It would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in Trial Court and to prosecute his appeal fruitfully. A civil servant

under suspension is entitled to the normal subsistence allowance even after conviction by the Trial Court pending consideration of his appeal till the appeal is finally disposed of whether he is on bail or in prison.

14. AIR 1970 SC 77.

15. AIR 1983 SC 803.(India).

BABURAM UPADHYAY'S CASE¹⁶

In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein. (2). The power to dismiss a public servant at pleasure outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitation or qualifications mentioned in Article 311 of the Constitution. (4) The Parliament or the Legislatures of States cannot make a law abrogating or modify this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310 as qualified by Article 311. (5) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof. (6)

DISPENSING WITH INQUIRY

UNION OF INDIA V TULSIRAM PATEL¹⁷

The reason for dispensing with the inquiry need not contain detailed particular but it cannot be vague or just a repetition of the language of Clause (b) of the second proviso. The superiors of the disciplinary authority will be able to judge whether such authority had exercised its power under Clause (b) properly or not with a view to judge the performance and capacity of that officer for the purpose of promotion etc. It would also enable the civil servant to approach the High Court under Article 226 or the Supreme Court under Article 32.

In **SATBIR SINGH V. UNION OF INDIA¹⁸**: The safeguard provided to civil servants by Clause (2) of Article 311 is taken away when any of the three clauses of the second proviso to Article 311 (2) becomes applicable. Any such act or rule which provides for dismissal removal or reduction in rank of a civil servant without holding an inquiry as contemplated by Clause 2 of Article 311 except in the three cases specified in the second proviso to that Clause would therefore, be unconstitutional and void as contravening Article 311 (2).

16. State of U.P. V. Babu Ram Upadhyaya AIR 1961 SC 751 (761) : (1970) 1 LLJ 670 : (1961) 2 SCR 679 : (1961) 1 Cr LJ 773. (India).

17. AIR 1985 SC 1416 (1985) 3 SCC 398.(India).

18. AIR 1986 SC 555 (559): (1985) 4 SCC 252(India).

ALTERNATIVE MECHANISMS

The opinion of the Supreme Court in Sambamurthy¹⁹ and Sampath Kumar²⁰ as regards alternative mechanisms for judicial review cannot be construed as binding precedents under Article 141 of the Constitution that the tribunals constituted under the Administrative Tribunals Act, 1985 are invested with power to 'deal with question pertaining to the constitutionality or otherwise of such laws as offending Articles 14 and 16 (1) of the Constitution does not become a binding precedent'. Later on the Supreme Court of India in L. Chandra Kumar v. Union of India²¹ has approved the view taken by the A.P. High Court in Sakinala Harinath v. State of A.P. The Supreme Court held as follows : "The Tribunals will however continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Court's even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned". "We, therefore hold that all decisions of Tribunals whether created pursuant to Article 323-A or Article 323 B of the Constitution will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls This will serve two purposes. While saving the power of judicial review of legislative action vested in the High Court's under Articles 226/227 of the Constitution it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter". There is a point view that Article 311 of the Constitution of India gives only a procedural protection and where such procedural rules are followed meticulously the Courts power of review is ousted of.

¹⁹. AIR 1987 SC 663(India).

²⁰. AIR 1987 SC 386(India).

²¹. AIR 1997 SC 1125. (India)

N. EXAMINATION PROCEDURE AND PROCESS OF IMPOSING PENALTY BY DISCIPLINARY AUTHORITY;-

The Disciplinary Authority appointed for Inquiring the cases are generally called Inquiring Officer or Presenting Officer. The procedure that is followed from entertaining the complaint to the final decision and entertaining appeal in a systematic manner. Examination of the complaint and whom to be appointed as Investigating Authority. If there is need to suspend government servant, on recommendation of delinquent servant of the department, next step regarding this will be preliminary warning for misconduct, training of employee, or providing counselling to them on certain matter, so that Government Servant can improve and correct himself Next step, in the process will be to consult with the CVC (Central Vigilance Committee) or any other authority if required. The authority should tell whether is need to file a charge sheet on complain of certain charges. The Charge sheet can be issued according to the Rule 14(3) of CCS(CCA). Now the next process will be to check whether there is need of oral hearing in case of imposing minor penalty on the Civil Servant. After that the issue

of charge sheet need to be addressed as whether there is a need to conduct inquiry or close matter and impose penalty. After all these processes, the final order will be passed concerning the complaint against the Civil Servant. After the process of giving final order. In case there is an appeal on the decision from the Government Servant who is subject to inquiry. That appeal should be quickly forwarded to the appellate authority who has got the right to entertain, the appeal cases.

O. THE DEPARTMENTAL PROCEEDINGS AGAINST GOVERNMENT SERVANT/CIVIL SERVANT:-

Lodging of complaint or making allegations of misconduct against the Government Servant, Holding of Preliminary Inquiry, Consideration of the report of the Preliminary Inquiry by the disciplinary authority, Show cause notice to the delinquent official who is prima facie held responsible in the Preliminary Inquiry, Replying of the employee to the Show Cause Notice, Issuance of Charge-sheet to the delinquent official, if reply is considered unsatisfactory by the disciplinary authority, Replying of the employee to the charge-sheet, Scrutiny of the reply by the disciplinary authority, Appointment of Enquiry Officer i.e. order for regular inquiry and nomination of Presenting Officer, Legal assistance for defence, Attendance and examination of witnesses, Submission of Inquiry report by the enquiry officer, Show Cause Notice to the delinquent employee, Submission of reply and Consideration of past records of the delinquent official, Penalty Proposed, Final order, Service Appeal, if any.

P. PRINCIPLES OF NATURAL JUSTICE SHOULD BE FOLLOWED BY DISCIPLINARY COMMITTEE:-

The Principles of Natural Justice the term denotes, basic principles relating to judicial, quasi-judicial and administrative decisions. According to Krishna Iyer Principle of Natural justice is the 'Bone of healthy Government Administration'. All decisions passed by the Disciplinary Committee should follow the principles of natural justice: Nemo debet esse judex in propria causa (No man should be judge be in his own case)- A man cannot judge his relatives or any person related to him in legal and he cannot be a judge in a case in which he is involved Audi altrem partem (Everyone should be given a right to be heard)- No decision can be taken without hearing both sides, decision must not be given by just hearing one side in the case according to Natural Justice. Justice should not be done, but it should appear to be done. Final orders must be reasoned speaking order and reason for the decision must be clearly identifiable.

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

Union Of India & Others v. B. Dev,²² Petitioner committed the offence under Section 7, 13(1)(d) of the Prevention of Corruption Act, 1988 and the petitioners conduct was unbecoming of the Government under Section 7 and 13(i)(d) of Prevention of Corruption Act, 1988 and thereby acted in a manner unbecoming of Government Servant and have violated the instructions issued by the Hon'ble High court in Circular No.6/2002 and thereby acted in a manner unbecoming of a Government Servant.

Union of India & Others v. K.K Dhawan ²³The respondents submit that due to the petitioner's irregular conduct and taking note of unbecoming of the petitioner/Government servant affecting discipline and decorum warranting a detailed enquiry for the so-called charge of unbecoming of Government Servant alleged against the petitioner for more than a year at any point of time. The petitioner submits that the impugned transfer is hit by mala fides and that he has been victimized and it amounts to punishment

22.Karnataka High Court, Date: 6 Sept,2019

23.Madras High Court Date: 14 Feb, 2017

Govind Singh Rajput v. Government of India Ministry of Defence²⁴ -Unbecoming of Government Servant appear to be rather harsh in the facts and circumstances of the present case. The delinquent committed a fraud or that his conduct is unbecoming of a Government Servant are too harsh and the petitioner was not afforded any opportunity of hearing before the same was recorded in the impugned Government Service as a Clerk in 1968 and retired in 2005 from the post of Administrative Officer. The petitioner in his capacity as an Administrative Officer was Drawing and Disbursing Officer (DDO)

Union Of India & Others v. Upendra Singh²⁵ -Applicant acted in a manner of unbecoming of Government Servant that the penalty of reduction from the time scale of pay by two stage for three years with cumulative effect is excessive to the manner of unbecoming of Government Servant is without any elaboration. Without stating exactly how the conduct amounted to lack of devotion, the modified penalty imposed on the applicant by the discernable on the part of the appellant and the charge that applicant failed to maintain absolute integrity cannot be established, but there was lack of devotion of duty.

Ministry Of Finance & Another v. S.B Ramesh²⁶ -Negligence in performance of the duty and has failed to maintain devotion to duty and acted in a manner unbecoming of Government Servant violating Rule 3(1)(ii) duty and has failed to maintain devotion to duty and acted in a manner unbecoming of Government Servant violating under the Rule 3(1)(iii) of CCS gross negligence in performance of his duty and thereby failed to maintain devotion to duty and acted in a manner unbecoming of Government Servant

V. Sreenivasan v. Union of India²⁷- The lawful communications sent to the residence of Shri N.Vinod Kumar, committed an act unbecoming of Government Servant and thereby continues to be absent without leave application/permission committed an act of unbecoming of Government Servant and thereby violated Rule 15-A(1) of CCS (Conduct) rules 1964 wherein no Government Servant shall sublet Government accommodation allotted to him. An inquiry officer was appointed.

²⁴Bombay High Court Date: 17 Mar,2016

²⁵Central Administrative Tribunal Date 8 Dec,2016

²⁶Central Administrative Tribunal Date: 28 Jan,2015

²⁷Central Administrative Tribunal Date: 8 Oct, 2015

R. SUGGESTIVE MEASURES AND REMEDIES AGAINST IMPOSITION OF PENALTIES FOR COMMITTING MISCONDUCT;-

Misconduct has many subspecies and a lot of varied acts of the employees can be considered within the ambit of misconduct. Termination, dismissal and suspension are the remedies available to the employer in case there is a proved misconduct on the part of the employee. Regarding termination, no hierarchy is visible which places certain acts of misconduct over the others in determining punishment for such an act. A point worth noting is that only proved misconduct can be said to be the ground of termination of the employment. Incompetence or failure to work efficiently is not cited as the grounds of termination of employment. Evidences are hard to adduce and in our adversarial system it becomes tough on the employer to get the termination of employee, even if there is misconduct on the part of the employee. A Government Servant being not satisfied with the decision of the Disciplinary Authority has the following remedies against the order passed against him:

S. Murugan v. Deputy Inspector General of Registration²⁸ -A Government Servant was charge-sheeted for failure to maintain devotion to duty and his behaviour was unbecoming of a Government Servant. After advent that he failed to maintain devotion to duty and his behaviour was unbecoming of a Government Servant. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government Servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

Hulas Chandra v. Union of India (Uoi) ²⁹- Central Civil Services (Conduct) Rules, 1964 relates to all time maintaining integrity devotion to duty and to do nothing which is unbecoming of a Government Servant and reads as follows: (i) maintain absolute integrity; (ii) maintain devotion to duty, and (iii) Government Servant do nothing which is unbecoming. In this case the appellant committed to unauthorized absence, the Disciplinary Authority alleged that he failed to maintain devotion to duty and his behaviour.

²⁸. Supreme Court of India Date;10 Feb, 2014

²⁹Supreme Court of India Date; 15 Feb,2012

(A) CONSTITUTIONAL REMEDIES: - A government Servant being a citizen of India, is entitled to protection under the Constitution of India. Therefore, if any action taken against him is in violation of his Constitutional Rights, he may invoke the writ jurisdiction of the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution of India.

(B) ADMINISTRATIVE REMEDIES: -

(I) APPEAL;- A delinquent Government Servant may prefer an appeal to the appellate authority specified on this behalf, under the Rules regulating his service. An appeal shall generally be preferred within a period of 45 days from the date of delivery of the order to the Government Servant. However, the appellate authority may entertain the appeal after the expiry of the said period of 45 days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time. The appeal should be complete in all respects and contain all material statements on which the reliance is placed. It should not contain any disrespectful or improper language. A copy of the appeal, complete in itself, shall be forwarded by the appellant to the authority which made the order

appealed against. The authority would forward the same with its comments thereon, together with the relevant records, to the appellate authority without any delay. Generally, the appellate authority shall be the authority to which the authority making the order appealed against is immediately subordinate. The order passed by the appellate authority must be a speaking order. The appellate authority has to dispose of the appeal taking into consideration all the circumstances of the case in accordance with the Rules regulating the exercise of appellate power. The appellate authority may confirm, reduce, enhance or set aside the penalty or it may remit the case to the authority which passed the order appealed against with such direction as it may deem fit in the circumstances of the case. It may revise, review or modify an earlier order if it finds that the earlier order was contrary to the Constitution of India or provision of law or was otherwise arbitrary or unfair.

(II) REVISION: - When, after the appellate authority has passed its judgement and if the Government Servant is not satisfied with it, he may file revision with the revisional authority, as prescribed by service rules. No proceedings for revision should be commenced, until after the expiry of the period of limitation of appeal or the disposal of the appeal, where any such appeal has been preferred. The power of Revision shall be exercised only on the ground: (a) Of material irregularity in the proceedings of the Inquiry of appellate authority, or (b) On account of some mistake or error apparent on the face of the record..

(III) REVIEW: - Right of review is a weapon in the hands of Government Servant, where all questions decided are open to challenge. In the absence of any specific provision authorizing the authority to review an order passed in Disciplinary Proceedings, it is not permissible for an authority to review the order. State of Haryana Vs Roshan Lal,³⁰ Where such power is so vested, the designated authority shall exercise this power within the period of limitation.

(IV) RECOMMENDATION BY ADMINISTRATIVE REFORMS COMMISSION/COMMITTEES ON CIVIL SERVANT'S ACCOUNTABILITY FOR GOOD GOVERNANCE-The Civil Service as the primary arm of government must keep pace with the changing times in order to meet the aspirations of the people. The purpose of 'reform' is to reorient the Civil Services into a dynamic efficient and accountable apparatus for public service delivery built on the public service ethos and values of integrity impartiality and neutrality. The reform is to raise the quality of public services delivered to the citizens and enhance the capacity to carry out core government functions thereby leading to sustainable development. Prior to developing the contents of Civil Service Reforms there is a need for an open objective stock taking of the current situation. Civil Service is essential for the functioning of government Civil Servants have special obligations to the community because of three reasons. First, they are responsible for managing resources entrusted to them by the community. Second, they provide and deliver services to the community. Third, they take important decisions that affect all aspects of the community's life. The community has a right to expect that its Civil Service functions fairly, impartially, and efficiently. It is essential for the community to be able to trust and have confidence in the integrity of the civil service decision-making process. Within the Civil Service itself the decisions and actions of Civil Servants should reflect the policies of the government of the day and the standards that the community expects from them as government servants. The expectation that the Civil Service will maintain the same standards of

professionalism responsiveness and impartiality in serving successive political governments is a key element of the way which democratic polity functions.

³⁰. AIR 1970 (P&H) 739.

S. CONCLUSION:

It is important to strike a balance between the requirements of social justice and the need for industrial efficiency in our country. Looking at the case-law, one may conclude that the concepts pertaining to the relationship between misconduct and termination do not carry a fixed meaning before the Courts. Much depends on the facts and circumstances of each case. A vague terminology results only in wastage of the Courts' time. Though there are clear cut categories of as what qualifies as misconduct in the model standing orders like habitual late coming or theft or fraud, there are a few hazy areas like habitual negligence and gross negligence interpretation of which depends upon cases and specific circumstances. The courts and legislature need to be more specific and certain about some acts qualifying as misconduct or not. Uncertainty breeds inefficiency in the system and legal tangles sometimes break the continuity of moving wheels of commerce and economy. More consistency is needed for industrial matters. At the same time, the courts also must remain the watchdog in case there is an encroachment on the rights of the employees. An employer may face difficulties, owing to the usage of a wide range of concepts relating to employee misconduct, when trying to prove the acts of an employee as misconduct. The application of strict standards by the Courts cannot benefit the employers, causing harm to the efficiency of the economy. It would be desirable if certain fixed standards were evolved by the Courts so as to ensure the quick disposal of cases and to dispel the darkness that surrounds employers. Thus, the procedure for taking Disciplinary Action against a Government Servant is lengthy and detailed one. A Government Servant is expected to perform his duties with utmost care, efficiency, economy and effectiveness. The procedure is lengthy in order to ensure that he performs his responsibilities without any pressure or corruption. But at the same time, it ensures Discipline amongst the employees and shows the door to the employees who have become dead wood and do not perform as per expectations of public in general and his department in particular. In the present issue of my research article an enquiry was conducted and the Government Servant/ Civil servant were found guilty of subversive activities and it was as a result of enquiry report that their services were dispensed with. In fact, the order amounted to putting a stigma on the civil servant but the court held that it was not a case of dismissal or removal. this paper with the memorable words of Justice Frankfurter when his Lordship said "The ultimate touchstone of constitutionality is the Constitution itself, not what we have said about it". Therefore void.

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