

## **DISCIPLINARY & VIGILANCE PROCEEDINGS**

### **Issues to be considered**

- (i) Classification of Misconduct
- (ii) Abuse of the omnibus conduct Rule
- (iii) Authority for imposing Major Penalties
- (iv) Definition of Moral Turpitude & amendment of B.R.A.
- (v) Disposal of disciplinary cases & appeals
- (vi) Copy of CVC/CVO advice
- (vii) Provision of Personal Hearings
- (viii) Interpretation & Effect of Penalties
- (ix) Debarment period
- (x) Sanction of Prosecution/Arrest
- (xi) Suspension & Subsistence Allowance
- (xii) Defence Representatives- No.of pending cases
- (xiii) Agreed List- LODI
- (xiv) Jurisdiction of CAT
- (xv) Proceedings after Retirement
- (xvi) Issuance of Charge Sheet
- (xvii) Other issues

### **(i) CLASSIFICATION OF MISCONDUCT**

In the Officers Service Regulations, Minor and Major penalties have been classified, but there is no classification of Minor and Major misconduct. Breach of any provision of the conduct rules is to be deemed as Misconduct. It is left to be decided by the Disciplinary Authority (**in short DA**) whether to initiate proceedings under Minor/Major penalty clause thereby leaving scope for subjectivity. In case of Award Staff and also Government employees, major and minor misconduct has been defined as a result one doesn't get major penalty for a minor misconduct. In case of Officers, though a large number of cases of proceedings under major penalty end up in exoneration or award of a minor penalty depending upon gravity of misconduct proved after enquiry but in very many cases of minor misconduct, the officers end up getting a major penalty. Also, there are mental blocks in the minds of some DAs who think that if Major Penalty proceedings are initiated, minor penalty or exoneration or withdrawal of charge sheet etc.cannot be done.

#### **Recommendation**

Minor and Major misconducts should be defined with clear provision that minor penalty or exoneration may be awarded after conclusion of major penalty proceedings but major penalty cannot be imposed in cases of defined minor misconduct.

## **(ii) ABUSE OF THE OMNIBUS CLAUSE**

Though conduct rules have been elaborated in the Regulations, the regulations at the same time contain an Omnibus Clause to fit the misconduct not specifically defined into the omnibus clause. The tragic reality is that in more than 90-95% cases, the officers are booked under this Omnibus Clause. It proves beyond doubt that where misconduct is specifically defined, violation is minimal. But more importantly, it indicates that there is an unbridled tendency among the DAs to abuse this provision and any conduct is dubbed as misconduct by invoking this clause which ought to be attracted in rare cases but which is applied in an overwhelming number of cases. If this clause is annulled and instead if the vast variety of misconducts covered under this clause over the last over three decades are analyzed and specifically provided in the conduct rules, it will lead to better compliance and minimal breach on the part of the officers. **In particular, what is unbecoming of a Bank Officer must be explicitly stated in the conduct rules.**

### **Recommendation**

The omnibus clause in the conduct rules should be deleted.

## **(iii) AUTHORITY FOR IMPOSING MAJOR PENALTIES**

As per Article 311 of the Constitution of India, Disciplinary Authority for imposing capital punishment should not be lower than the Appointing Authority. Since all capital punishments leading to cessation of service are classified under major penalties, it automatically follows that for imposing any major penalty, the Disciplinary Authority should not be lower in rank than the Appointing Authority. Though this principle is followed in the Government and various other Organisations, including the State Bank of India, in nationalized Banks it is not being followed.

### **Recommendation**

No Authority lower in rank to the Appointing Authority should be competent to award major penalty.

## **(iv) MORAL TURPITUDE & AMENDMENT OF B.R.A.**

Though the term Moral Turpitude appear prominently in the Disciplinary & Conduct Rules and on a great number of occasions, important decisions to proceed against the Officers or to place them under suspension have to be taken for the acts involving Moral Turpitude, it is a queer paradox that what constitutes Moral Turpitude has not been clearly or exhaustively defined either under law or in the conduct rules, though there are various court judgments which to some extent explain this term. Existence of a general provision in the Banking Regulation Act Section 10(1)(b)(i) which states that no employee who is convicted by a court

of law for an act involving moral turpitude can be continued in service enormously increases the need and importance of defining what is Moral Turpitude, particularly in the context of normal day to day bank work in order that large number of bank officers do not become unwary victims of these provision and suddenly lose their job with no recourse available or a reasonable hope of reclaiming the lost job due to a painfully slow and exasperating legal system and no provision for getting full back wages if the conviction is set aside later on. When the officer is convicted, he is summarily discharged or even dismissed without holding enquiry etc but when the conviction is set-aside after proper trial, the intervening period is at best treated as deemed suspension for payment of subsistence allowance only instead of payment of back wages. In the Indian Overseas Bank, even the subsistence allowance is not paid and this period is treated as break in service.

To elaborate, the gravity of prejudice suffered by Officers on account of this while performing the normal day today duties in the bank can be seen by the fact that Moral Turpitude has been defined thus in the American settled law:

Moral turpitude refers generally to conduct that shocks the public conscience. Offenses such as murder, voluntary man slaughter, kidnaping, robbery and aggravated assaults involve moral turpitude. However, assaults not involving dangerous weapons or evil intent have been held not to involve moral turpitude. Conviction of crimes of moral turpitude may also disqualify someone from an employment opportunity. The precise definition of a crime that involves moral turpitude isn't always clear, but the above serious crimes only are always considered crimes of moral turpitude.

In terms of the above and umpteen judgments given by the courts in India, out of the above list bribery and frauds committed by an officer himself shall qualify to be acts involving moral turpitude. But, it has been seen that various normal and seemingly innocuous normal banking acts have been routinely covered by the trial courts under Section 120 B or section 420 IPC resulting in the discharge or dismissal of the officer. By the time the appeals are disposed off the officer might cross the normal retirement age and he neither gets back wages or any other compensation for loss of employment.

### **Recommendation**

Moral Turpitude should be clearly defined in the conduct rules. In the banking context, acts of accepting bribe or fraud on the part of the officer himself should be considered the one involving moral turpitude. Full back wages should be paid if the officer is held to be innocent and his conviction is set aside after disposal of appeal. During pendency of the appeal, the officer may be placed under suspension. Admission of appeal and/or stay against sentence should be deemed as stay against prosecution for the purpose of compliance of provisions of Banking Regulation Act since the case is accepted for retrial. We should also demand from the government

Suitable amendment to Sec. 10(1)(b)(i) of the Banking Regulation Act.

## **(v) DISPOSAL OF DISCIPLINARY CASES & APPEALS**

It is laid down in the special chapter of CVC Manual that no cognizance of the misconduct will be taken if the action of the officer is more than two Inspections or four year old provided there is no fraud in which case there will be no limitation of time. But charge sheet continues to be served even after lapse of 10 or more years. Further, though the maximum time permitted for service of charge sheet and for completion of disciplinary proceedings are laid down, in practice, it is rarely adhered to. The time for filing of an appeal against decision of the disciplinary authority as also the time for disposal thereof are laid down in the said chapter. Though, limitation of time is insisted upon for filing of the appeal and delay in filing is rarely condoned, the time limit for disposal of the appeal is rarely adhered to and disposal of appeals in many cases is delayed for years together. Consequently, the officers continued to suffer particularly when they are under suspension or when cessation of service has been effected.

### **Recommendation**

It is recommended that the laid down instructions should be meticulously followed and no fault should be found with the act of the officer after 2 Inspections have taken place or a period of four year has expired. Further, if the charge sheet is not served within the stipulated period of three months or if the entire proceedings are not completed within the stipulated time of six months as provided in the Vigilance Manual, the suspension of the officer should be automatically revoked with back wages and in case the proceedings are not completed even within a period of one year, the case should be deemed to have been concluded in officer's favour and he be deemed to have been exonerated. In case, the charge sheet is not filed by CBI within the time limit of 90 days, bail is automatically granted but same principle is not applied for revocation of suspension. It is recommended that in such cases, suspension should be revoked without prejudice to the decision of the Court case. Similarly, if the appeal preferred by the officer is not disposed off within the stipulated period of three months, it should be deemed to have been allowed.

## **(vi) COPY OF CVC/CVO ADVICE**

As per laid down instructions a copy of CVC advice is required to be furnished to the delinquent officer. In practice, however, it is observed that the authorities simply provide the operative part of the CVC advice but the entire correspondence between the Disciplinary Authority and CVC is not made available which defeats the very purpose of the provision. Further, there is no system of providing the advice of the Chief Vigilance Officer of the Bank where CVC jurisdiction is not attracted. This distinction is wholly unwarranted. The advice of CVO is at a lower footing must be furnished when there is explicit provision to provide the advice of the CVC.

## **Recommendation**

The CVC/CVO advice alongwith the entire correspondence should be made available. It is further, recommended that the CVC/CVO should only recommend category of penalty to be imposed i.e. Major or Minor and not the specific punishment because in that case he assumes the role of the Disciplinary Authority himself. Further, in case of appeal further reference should not be made to CVC particularly if the Appellate Authority proposes to give a lower punishment within the same category already recommended by the CVC.

### **(vii) PERSONNEL HEARING.**

The disciplinary procedures have been gradually evolving in favour of the charged officer and in the past some favourable changes have taken place like provision of enquiry, making available report of the Inquiring Authority to the charged officer so that he can argue against his findings, making available of copy of CVC advice etc. But, an important provision like grant of a personal hearing to the charged officer before award of the penalty has all along been denied. As a result, he does not get a chance to argue against the proposed penalty before hand so that some aspects of the case which might have escaped the notice of the Disciplinary Authority can be pointed out in good time and he will be able to take a more balanced and reasoned view. After the final decision is taken by the DA, it becomes difficult to undo the injustice as there is general reluctance to correct the mistakes and the appeal system is also loaded against the employee. There is already a provision for grant of a personal hearing to the workman employees. Recently, the Hon'ble Supreme Court has decided in a case related to State Bank of India Officer that while deciding the appeal the Appointing Authority must give a personal hearing. By that logic, the DA should also give personal hearing to the officer. The same logic should hold good for review petition as well. This provision is also there in the rules applicable to officers working in the Govt of India.

## **Recommendation**

The DA should take a tentative decision and grant a personal hearing to the charged officer along with his Defence Representative before taking a final decision. The same procedure should be adopted by the Appellate Authority / Reviewing Authority while disposing off the appeal of the officer.

### **(viii) INTERPRETATION & EFFECT OF PENALITIES.**

While the minor penalties are simple and easily understandable, some of the major penalties are very technical and can not be easily understood by the charged officer and even most of the Competent Authorities. At times promotion of the officer is withheld when no promotion is actually due to him. This results in undue prolongation of the rigour of the penalty which might not have been the intention of the DA and the penalty though minor in effects become harsher then a major penalty. Likewise, penalty of recovery of loss is a minor penalty and

logically a symbolic recovery of small sum should be effected but at times it is clubbed with a major penalty and amount of recovery runs into lacs. For example removal of service with recovery of two lacs. Further, when an officer is reverted to a lower grade, the reversion is taken as a permanent reversion unless the officer re-qualifies and earns back the promotion, whereas in government reversion is for a period of two years whereafter the officer is placed back in the higher scale from where he was reverted. It is also a practice to give more than one penalty like reversion to lower or the lowest grade coupled with reduction in pay etc.

### **Recommendation**

CCA Rules should be followed in this respect in the banks also.

### **(ix) DEBARMENT PERIOD.**

Debarment Rules are different in different banks. In some banks, there is no debarment when minor penalty is awarded while in some others debarment period extends to 15-20 years also. No debarment period is stipulated in case of the penalty awarded is Reversion to a lower grade whereas in case of Govt employees debarment period of reversion is defined. In some organizations, when criminal proceedings are pending whether for misconduct pertaining to Bank or some other criminal misconduct, result of the officer is held in sealed cover throughout the pendency of criminal proceedings which sometime run for 8-10 years also and sometime beyond the normal retirement date as well.

### **Recommendation**

In case of minor penalty, there should be no rigor and no debarment for promotion and results if any placed in the Sealed Cover should be given effect to. The maximum debarment / rigor for a major penalty should not be more than one year.

### **(x) SANCTION OF PROSECUTION/ARREST**

There are different rules in different banks. The authority empowered to sanction Prosecution of an officer always acts under the influence / pressure of the CBI / CVO and is not permitted to act independent. Further, while provision has been made for obtention of sanction of the Competent Authority before launching prosecution against the officer but no such provision has been made to obtain similar sanction before arresting the officer.

### **Recommendation**

The power to sanction Prosecution of an officer should be vested in his Appointing Authority. The ground rules should be laid down for giving sanction for prosecution and the Appointing Authority or the Disciplinary Authority should be given a free hand to act independently. Once he declines to give sanction, he becomes a functus officio and sanction cannot be sought

unless fresh evidence is presented before him. A provision should also be incorporated to obtain sanction of the Appointing Authority before arresting the officer.

#### **(xi) SUSPENSION & SUBSISTENCE ALLOWANCE.**

Though the instructions provide that an officer will not be placed under suspension before investigation, in practice frequent deviations are made. Ground rules for ordering suspension of an officer are seldom followed. Suspensions are mostly effected as a knee jerk reaction and is invariably behind the back of the officer without giving him any hearing. In most cases the option of transferring the officer instead is not even considered. Once the officer is placed under suspension, there is virtually no review thereof. Review mechanism is totally absent. Review is generally on the papers and in almost all the cases reinstatement of the officer takes place only after the proceedings are concluded and final order is passed. At the time of passing final order, the DA is niggardly in his treatment of the suspension period. In case of arrest of an officer, there is provision of deemed suspension after 48 hours of the arrest but there is no simultaneous provision of a deemed reinstatement after he is acquitted. There are different rules about payment of subsistence allowance in the government, in the award staff within the banking industry and within the different banks.

The Disciplinary Authorities are too niggardly in the matter of treatment of suspension period while passing final order. It has been seen that except in cases where the officer has been exonerated, suspension period is treated as such irrespective of the gravity of the penalty awarded and nothing more than the subsistence allowance already paid is paid at the time of reinstatement which is grossly unfair. Benefit of Annual increment also is not given even for calculation of the subsistence allowance.

#### **Recommendation**

Ground rules of suspension must be meticulously followed. Suspension of an officer prior to completion of investigation should not be effected. The option to transfer the officer to a distant place instead of placing him under suspension should be mandatorily considered as it is good for the officer as well as Bank. In the rare case where suspension of an officer is the only choice, the officer should be given an opportunity to show cause before placing him under suspension. Review of suspension should be regular and meaningful. Suspension should not be continued after investigation completed since the accused officer would not then be in a position to tamper with the evidence or influence the witnesses. In case, the bank or the Investigating agencies fail to serve the charge sheet within the time stipulated in the Vigilance Manual or the proceedings are not concluded within the given time frame the officer should be reinstated. In case of detention beyond a given period or conviction by a Court, there is a provision for Deemed suspension of the officer. Similar provision of deemed reinstatement needs to be provided in cases where regular bail is granted or when the conviction is set aside.

The rate of Subsistence Allowance should be uniform. For the first three months half the salary and allowances should be paid and after six months, which is the period provided for completion of proceedings, subsistence allowance equivalent to full salary and allowances should be paid.

If the disciplinary proceedings conclude in the imposition of the minor penalty, the suspension ought to be held as totally unjustified as already held by the Hon'ble Supreme Court, and full back wages should be paid. The Committee was of the view that barring the cases where the penalty awarded is cessation of service, full salary for the suspension period should be paid as there is no justification to continue suspension after the initial few months when investigation is conducted.

Notional annual increment should be taken into account for the purpose of calculating subsistence allowance and if salary revision is taking place during the period of suspension, arrears should be paid for the period prior to date of suspension and enhanced subsistence allowance from the date of suspension should be paid.

#### **(xii) DEFENCE REPRESENTATIVES**

The position is not uniform. In all the Nationalized Banks, Defence Representatives are allowed to have 2 pending cases at any point of time as against 3 cases laid down in the CVC Manual. Only in State Bank of India 3 pending cases are allowed. Further, though there is restriction of 2/3 cases for the defence representatives, there is no such restriction for the Presenting Officer or the Inquiring Authority. There are also different provisions in this regard for officers and award staff. Whereas, in case of officers only serving officer is allowed to defend in case of workmen any office bearer of a registered Trade Union whether retired or serving and whether belonging to same or different bank is allowed to defend the charge sheeted employee. This distinction / discrimination is wholly unwarranted.

#### **Recommendation**

There should be no restriction on the number of cases to be taken up by any defence representative as in the case of Presenting Officer / Inquiring Authority so that the Officers are not deprived off the assistance of trained persons who are not easily available and particularly because officers are not allowed to take the assistance of lawyers, there is a strong case for allowing the retired officers of the bank to give this service to the officers of his parent bank.

#### **(xiii) AGREED LIST / LODI.**

This list of officers whose honesty / integrity is taken to be doubtful is prepared at the back of the officers and in many cases it is not as per the letter and spirit of the laid down norms. Even where after enquiry the fraudulent motive is not proved and the penalty awarded is not

so serious and where acquittal is more or less on merit, names of officers are kept in the LODI and cases are not scarce when officers are unnecessarily put under watch by placing their names in the agreed list and the officers concerned do not even come to know about it because the sensitive and non sensitive positions are interchangeable. The list of sensitive positions has been exhaustibly drawn up by including a large number of assignments which are not sensitive at all. This result into under utilization of talent and experience and in many cases officer not actually placed in the agreed list when posted to these assignments get an impression that their integrity are under watch.

### **Recommendation**

There is a need to revisit the issue and carefully draw the list of sensitive assignments. The officers whose names are placed in LODI / Agreed list should be informed so that they can at least make an representation to the Competent Authority to review their decision. The laid down period of three years / one year for keeping the name in LODI and Agreed List respectively should be adhered and not prolonged. On expiry thereof, name should be automatically deleted from the list.

### **(xiv) JURISDICTION OF CAT.**

The Central Administration Tribunals were first established in the year 1985 with the laudable objective of reducing the burden on the various Courts and reduce pendency as also to provide the persons covered by these tribunals a speedy and relatively less expensive and effective remedy. The Tribunals have served the declared objective to a great extent but only the employees of the Central Govt and other notified organizations are covered. Bank employees have not been brought within the jurisdiction of these tribunals sofar even though banks are now owned by the Government. As a result the bank employees are suffering enormously as they are at the mercy of the bank management and do not get justice in most of the cases. The handling of the cases in the banks is highly subjective, perfunctory and whimsical. However, the bank employees in general and officers in particular keep suffering and do not in most cases approach the Court of Law because of the huge cost and delays involved.

### **Recommendation**

Since the tribunals are working satisfactorily and have now come to stay and through these the working class is able to get speedy and less expensive adjudication of disputes in respect of recruitment and condition of services as also the employees are able to challenge instances of gross miscarriage of justice in disciplinary matters where Principles of natural justice are violated at will by the Disciplinary / Appellate authorities. We strongly recommend that special administrative tribunals for bank officers and employees should be set up by the government.

#### **(xv) PROCEEDINGS AFTER RETIREMENT.**

The provisions in the Service Rules that Disciplinary proceedings may be continued after retirement of the officer was kept to take care of the situations where some fraud or gross misconduct is committed shortly before the superannuation of the officer. However, in practice this provision is grossly misused and even abused to stall / stop the normal retirement of the officer by digging out some act of misconduct committed years before the date of retirement and charge sheets are issued on the very eve of the actual retirement. Cases are not lacking where the alleged misconduct was discovered years before the retirement date but the proceedings like investigation, preliminary explanation etc proceed at snails pace and actual charge sheet is issued when the officer is on the eve of his retirement by invoking the provision to keep him in bank's service for the limited purpose of completing the departmental proceedings. Resultantly, his retiral benefits are withheld and the officer is made to undergo all sorts of stigma and social ignominy. Out of sight is out of mind. Once the officer is not on the rolls, the proceedings progress at even slower pace and the officer keeps suffering for years on end. Government instructions to put up such cases at least one year before retirement and these should be subjected to quarterly review by an authority no less than the CEO himself are not being adhered to.

#### **Recommendation**

It should be clearly provided that this particular rule can not be applied for misconduct which is more than say one year old at the maximum. Further, this rule 19 (3), 20(3) in some banks should not be invoked in the last quarter unless some fraud / act of misappropriation has been unearthed. It should be further provided that if the proceedings are not completed within three, or at the maximum six months of the date of superannuation, the retiral benefits will be released. Even when this rule is invoked and officer is retained in service for the purpose of completion of proceedings, the amount of leave encashment, which is not a retiral benefit, should not be withheld. Further, such officers are being paid provisional pension so that the organization is not legally called upon to pay salary for the period, proceedings remain pending. Provisional commutation value should also be paid. Similar relief should be provided to officers who are not pension optees.

#### **(xvi) OTHER ISSUES**

##### **(a) Effect of criminal proceedings**

Since criminal proceedings takes a long time to conclude and even if decided, against the officer result in award of a sentence under the law, it should not affect the promotion and / or retirement of the officer, if it is not related to misconduct pertaining to official banking transactions.

**(b) Provision of additional documents**

As in the case of government employees and as per the provisions of the CCA Rules on which the bank officers disciplinary rules are also based, all the management documents must be accompanied with the charge sheet and additional documents should not be allowed to be presented by the prosecution side unless so agreed by the charged officer since presentation of additional documents in case of government employees is taken as amendment to the charge sheet itself. The existing rules about amendment of charge sheets may be reviewed.