**MISCONDUCT & DAR**

**[S.K. Kulshrestha – Ex. CVP/AIREC & AISMA]**

 Fundamental right enshrined under Article 20 of constitution of India provides:-

“No person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charge as an offence”.

 Likewise in the services no charge sheet/penalty can be initiated for the act which is not ‘misconduct’ in other words “charge not containing misconduct is no charge”

 **[Rati Ram V/s U.O.I. CAT Chandigarh, SLJ May 2001 page 73]**

For example as per law ‘unauthorized retention of quarter’ is not misconduct, though under Railway Board Order DAR action allowed, the charge sheet issued was held illegal, as Railway Board Rules cannot supersede the law of land, held, ‘what is not be so made by only an opinion or instruction of the authorities’ and quashed the penalty by several courts including Apex Court, however, Railway may invoke PPE Act or charge damage rent.

 Now the question comes what is misconduct?

 “Misconduct is generic term”

**[Chairman BPC V T.K. Raju 2006 (viii) P470**]

 "Comprised positive acts and not mere neglects or failure”.

**[Ballentine’s law of master and servant (4th Edition Page-63)]**

“Misconduct assessing from all notice; acts of negligence, error of judgment, or innocent mistakes, do not constitute such misconduct.”

**(Strods dictionary, 1986 fifth edition)**

 “Misconduct may involve moral turpitude. It must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, careless or negligence in performance of duty, the act complained of bears forbidden quality or character.”

**[State of Punjab V Ramsingh AIR 1992 SC 2188]**

Further,

 “No charge memo can be issued in absence of misconduct.”

**[G. Buddappa V/s U.O.I., OA No. 198 of 2000, decided on 12.07.2001 Banglore CAT]**

 “An employee can be punished only for the act which have been specifically prohibited by the relevant rules

**(A.V.S. Reddy V/s State of A.P. AIR 1988 CAT P 271)**

 IPC of Rly DAR mostly confined on Rule 3.1 of Railway servant (Conduct) Rules 1966 i.e.

1. Maintain absolute integrity
2. Maintain devotion to duty
3. Do nothing which is unbecoming of a Railway servant

**INTEGRITY**

Integrity – the word derived from latin word “*integritas*”, as per lexicon means “freedom from moral corruption, innocence, sinless ness.

“This word has not been defined anywhere in rules. It means uprightness, honesty, and purity. Integrity is wholesome – up brightness honesty and purity. Lack of integrity can be divided into two types (i) straight forward cases of corruption like bribery, misappropriation, making false declaration, forging and interpolating official record etc. (ii) cases showing undue favors either to self or others involve an element of lack of integrity. Infect any dishonest act in the discharge of the official duty will amount to lack of integrity within the meaning of this rule.”

**[Sripat Bishwas V/s Collector Custom AIR 64 P 415 Calcutta High Court]**

 To ensure integrity amongst Govt. servants, the government have introduced certificate of integrity in the annual confidential report of Govt. servant.

 If a government servant lives beyond his means and cannot explain the source of his income to the satisfaction of his superior authority, he can be deemed to be indulging in dishonest practice.

 Look at the mockery of vigilance for variation of Rs.6/-only lack of integrity is invoked and Railway officers endorse the same blindly.

**DEVOTION TO DUTY**

Devotion to duty means faith full service. Mere presence within office premise is not enough. If the Govt. servant is absent from specific place of duty, he indulges in misconduct. Coming late, leaving early, sleeping on duty amount to no devotion to duty.

 A railway servant who habitually fails to perform the task assigned to him shall be deemed to be lacking in devotion to duty.

 Devotion to duty implies due care on the part of an employee in performance of work assigned to him.”

**[Om Prakash Bindal V/s U.O.I. (1984) 2 SLJ 28 Allahabad HC]**

 As already explained earlier that mere careless, negligence, inefficiency cannot be lack of devotion to duty.

 In **U.O.I. V/s J. Ahmed 1979 SLJ 308 (S.C.)** the leading judgment pronounced by the Supreme Court of India, had established the principle of service jurisprudence.

 “It is however, difficult to believe that lack of efficie*n*cy, failure to attain the highest standard ability would constitute misconduct. The deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.”

 In other words careless, negligence can be misconduct, if there is behind -

1. Malafide intention
2. Ulterior motive, or
3. Consequence irreparable damage
4. High culpability, behind above.

For example given in same judgment. If a cabin man gives signal wrongly or a nurse injects wrong injection carelessly without any malafide intention, but it is a serious lack of devotion. Further clarified

“There may be negligence in performance of duty and a lapse in performance of error of judgment in evaluating the situation may be *n*egligence in discharge of duty But would not constitutes misconduct, unless the consequence directly, attributable to neglige*n*ce would such as to be irreparable or the resultant damage would be so heavy, that the degree of culpability would be very high.”

Further in another case -

“In this case before, us all what is alleged in the charge sheet is that applicant was negligent or careless in proper discharge of his duty. It is curious to note it is nowhere mentioned as to what was resultant damage caused to the Railways, because of such negligence or carelessness. So from the averment in the charge sheet the degree of culpability as observed by, the Supreme Court cannot be assumed. So in the absence of that we are constrained to held that the allegation made against the applicant would not constitute misconduct, so as to initiate a disciplinary enquiry against a Govt. Servant.” –

**[Binay Gopal Mukharjee V U.O.I. Calcutta SLJ (III) 1989 P-576]**

**No lack of devotion** –

“A head ticket collector of Railway was punished for poor collection of revenue on a charge of want of interest and lack of devotion to duty. The punishment order was set aside because it was not established in the enquiry that poor earning was either intentional or due to slackness on his part.”

**[Debabrata Ghosh V/s U.O.I. 1989 (7) SLJ CAT Calcutta]**

**It is a lack of devotion** **to duty - Non-declaration of personal cash**:-

In a surprise raid on the applicant the authorities found him carrying a personal cash of Rs. 340/- which he has not declared. His plea was that it was given by one of his friends on way to be handed over to another friend at next station. The plea was also taken that non-declaration of personal cash is not misconduct mentioned in rules so it could not be taken up as per Kalia’s case. The Tribunal held that Kalia’s had no application. Declaration of cash was required in terms of government orders published in SC Railway Gazette. Non-compliance of this would be a violation of Rule 26 of R.S. (Conduct) Rules 1966 enjoining on all to follow administrative instructions issued from time to time. As such it was held to be violation of Rule 3(1) of R.S.(Conduct) Rules 1966.

**[Jaffer Sheriff V/s U.O.I. 1988 SLJ (CAT) 458 Hydrabad]**

The court ultimately held –

“It is obvious that by boycotting the Central telephone system of the railway, these Station Masters risked the lives of lakhs of travelling public and exposed them to serious hazards of railway accidents. The boycott of control phones of railway and consequential disruption of essential public utility services threatens the security of lakhs of innocent citizens and may have encouraged threatening even the security of the State.

***[R.K. Bhatnagar* v. *U.O.I*., *1984(1)* SLJ *261 Raj.]***

 **UNBECOMING OF RAILWAY SERVANT**

“Unbecoming of Railway servant construe, that conduct of the employees should confirm to the ordinary norms of decency and morality, prevailing in the society and one should not violate the law of the land. Railway can also demand a certain standard of conduct from its employees even in their private life not connected with their official duties.

While deciding as to whether the conduct is unbecoming the D.A. should be largely guided by commonsense as unbecoming conduct Rule 3(1) (iii). Broadly it should confirm to –

1. It is in consonance with law of the land
2. It is in confirmative with the ordinary norms of decency and morality
3. It should not be against the policies of Government
4. There is deliberate breach of departmental rules “

**[U.O.I. V/s K.K. Garg 1989 (1) CAT JBP SLR P-184]**

 Further,

 “The word unbecoming is not defined in rules in question. Therefore we have to go by the dictionary meaning of the word. Dictionary meaning of the word unbecoming is ‘INDECOROUS’ not proper or befitting, not suited to the bearer. In the context of the rules it would mean either ‘INDECOROUS’ or not proper or befitting. However, while considering the conduct of government servant it is to be kept in mind that the conduct should be ‘INDECOROUS’ or improper as a government servant. The disciplinary authority cannot determine the nature of conduct as ‘INDECOROUS’ or improper as per his own norms of behavior and belies.”

**[Babu Taramand V/s District Superintendent of Police 2004 Karnataka HC324]**

“It is not possible to give an exhaustive list of acts which would be unbecoming of a Government servant. There are well understood norms of conduct of morality, decency, decorum and propriety becoming of Government servants. A fall from such standard would render an act unbecoming of a Government servant.”

***[Inspecting Asst. Commissioner of Income Tax v. S.K. Gupta* 1976 (1) 145 Cal.]**

“Misconduct or unbecoming conduct or conduct of moral turpitude need not necessarily relate to an activity in the course of employment and it could relate to an activity outside the scope of employment. If the act of Government servant brings down reputation of not only himself but also the office which he occupied, the Government can definitely set the rule in motion for disciplinary action.”

**[State of Tamil Nadu v. P.M. Bu (1984) 3 SLR 534 (Mad.)]**

Further

“When a Station Master committed misconduct as a Secretary-cum-Treasurer of the S. Rly. Employees Co-operative Stores, it was taken as misconduct under Rule 3 and he could not say that he was not liable as the conduct related to his private life.”

***[Natrajan* V *Divl Supdt. S. Rly. 1976(1) SLR 669 Kerala*]**

 Only the charge for the violation of the above Rule No. 3(1) is against law, in the charge sheet the violation of particular rule must be mentioned and covered under Rule 26 of R.S. (Conduct) Rules 1966.

 “A specific offence should not be charged under general Rule (3)

 **[S.V. Vasudev V U.O.I. CAT Banglore SLJ November 2009 P279]**

 “Rule 3 of conduct Rule is a general Rule and can be used where no other specific Rule applies.”

**[Ashok Kumar Gautam V U.O.I. CAT Principal Bench SLJ Jan 2011 P16]**

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