

## **Improving Efficacy of Disciplinary Proceeding in KoPT**

*(Concept Note, Case Study and Systemic Improvement)*

GAD forwarded a letter to Vigilance Wing seeking NOC for issuing Passport in favour of one Shri CCC of KDS. In the papers enclosed with their forwarding letter was the following noting made by an officer of GAD:

*“As per available records it seems that a disciplinary case was initiated against the said Officer but no documents/file have been found. Since long it is missing. There is no record of date of initiation of disciplinary case.”*

Every month, various departments provide information on “departmental proceedings and their status” to Vigilance Wing for onward transmission to CVC. When this was checked, it was found that department to which the officer belongs has been informing about some major penalty case against the officer but without indicating its present status under the pretext of file not being available. Intrigued by this, the personal file of the concerned officer was called for with the hope that some details of penal action might be recorded therein. But even there no trace of initiation of any disciplinary action against Shri CCC could be found.

Further search revealed that vigilance department had specifically enquired about this matter from Sr.P.O./LA&IRO as far back as in April 2018. In response he had informed that one “Disciplinary Case” had indeed been initiated against Shri CCC on 22.07.2013 and the concerned officer had even responded to the same on 06.08.2013. His information to Vigilance did not indicate whether the said “disciplinary case” was “Major Penalty” or “Minor Penalty” in nature. In his letter he further informed that although the concerned file had been put up to Dy. Chairman it had not been returned back for last 5 years.

Since this appeared to be a Departmental Case (and not a Vigilance Case), it was expected that records of Disciplinary action would not be available in the Vigilance Department. But vigilance old-timers recalled that this case had actually arisen out of a vigilance investigation. It was then, that past vigilance records were searched out which confirmed that the case, indeed, **had arisen out of a vigilance investigation which implicated 3 Officers, one of whom was Sri CCC.**

**The Missing Case:** From Vigilance file it was found that the three officer implicated in the said Vigilance Investigation were:

- (a) Shri AAA
- (b) Shri BBB
- (c) Shri CCC

Though all the above 3 were Class-I officers (and hence came under the ambit of CVC Consultation Provision), the then CVO felt that the case should be referred to Port Authority for imposition of suitable penalty. Interestingly, GAD returned back the investigation file saying that there was “vigilance angle” and the same should be dealt by the vigilance department. But, the then CVO approached the Chairman, took his approval and sent the case back to Port Administration for initiating appropriate disciplinary action.

Following this, Shri **AAA** was issued a Major Penalty charge sheet in 2013. The resulting enquiry proved all the charges against him but the DA felt that a “Censure”

will meet the ends of justice. 3 Years before this case happened, in 2010, Shri **AAA** had been served a Major penalty charge sheet. Therein, also, the then D.A had exonerated him on the **basis of his written explanation without even holding an enquiry**. In fact, during the succeeding five years i.e between 2013 to 2018, Sri AAA would go on to receive 3 more charge sheets, one Major and 2 Minor.

As far Shri **BBB** is concerned, like AAA, he too received a Major Penalty Chargesheet and underwent the full range of Disciplinary Process with Inquiry Officer proving all charges against him. But here too, the then DA, found him worthy of only a "Censure". Interestingly, a few months later, CBI caught Sri BBB while demanding and accepting illegal gratification leading to his arrest and detention.

However the case of **CCC** stands, even as on date, on a rather surprising footing. He was served a Major Penalty charge sheet in the instant case and submitted his response. Although GAD claimed that they did not have any further trail of AAA's case, Vigilance could easily obtain the copy of Sri CCC's response (from Sri Dutta himself) wherein Sri CCC appears to have admitted to the Charges and sought clemency. The trail of this case seems to have gone cold thereafter, both in GAD and the governing department of CCC, with CCC continuing to remain under the pendency of an undisposed Charge sheet.

#### **Systemic Improvement suggested :-**

- 1) Chairman is requested to kindly direct GAD to issue a circular allocating precise responsibility for authority/authorities in recording and monitoring every disciplinary proceeding process after their initiation till final disposal. Absence of such administrative instruction allows officials to deny /disown/divert their responsibility. This aspect had earlier been highlighted in another "approved" system improvement titled "**Creating a definite accountability structure in KoPT**".
- 2) Recording the initiation of disciplinary process and its final outcome against an employee in the Personal File is a must. The responsibility for this as well as uploading such penal data in the ESR Module along with a PDF copy of the Punishment Order, should be clearly delineated to specific officer/officials of a given department/departments or done centrally if a central arrangement is felt preferable by the administration.
- 3) CVC has repeatedly stressed upon the fact that Disciplinary Authority should award punishment proportionate to the offence committed. Para 2.3.6 of Vigilance Manual urges Disciplinary Authorities to "**While imposing punishment on the officer, the Disciplinary Authority should ensure that the punishment imposed is commensurate with the gravity of the misconduct proved against Charged Officer ... it should be ensured that the punishment imposed is not academic or ineffective.**"

Not just the institution of CVC, even the courts have observed in past the disturbing effect of misplaced sympathy on offenders proven guilty on enquiry. A case in point is a Circular issued by the highest authority of Indian Railways i.e., the Railway Board to all Senior Officers in the year 2015. In this letter, the Railway Board referred to a **landmark judgement of the Hon'ble High Court of Punjab and Haryana** in connection with the Disciplinary Action against a TTE who had allowed 48 ticketless travellers in Delhi - Ferozpur Express and was caught by a Vigilance team. On being apprehended, the said TTE promptly

promptly filed criminal cases in Court against Vigilance and RPF personnel accusing them of manhandling him.

When a Major Penalty Charge Sheet was issued and enquiry proved the charge levelled against him leading to his removal from service, he mounted a fierce legal challenge against the disciplinary action both in CAT and then in High Court. During the proceedings in High Court, it was found from the TTE's service record that he had also been implicated in a similar charge earlier and had been handed down a punishment of "Removal from Service". However, the punishment imposed by DA was drastically reduced by the Appellate Authority to a mere "withholding of an increment for 3 months". Upon such revelation, the Hon'ble High Court made the following observation:

***"Imposition of token / lenient punishment to an employee against whom there are serious charges arising out of a vigilance case or a departmental case by DA cause loss of deterrent value. It becomes even worse when the stiff penalty action by a DA gets unjustly overturned or reduced to a non-deterrent penalty at the appellate / review stage:.***

**[Civil Writ Petition No 17864 of 2014]**

Needless to say that the raison d'être of administrative-justice system is to effect correction in the behaviour of the delinquent employee through commensurate penal action so as to act as deterrent against repetition of such behaviour. Not doing so in proven cases actually serves as encouragement to the delinquent employee (as the subsequent conduct of the two officers described in the above case study after they got off with a "censure" proves). Awarding token punishment, especially in cases where charges are established through an elaborate enquiry process, defeats the entire effort of the investigating agency, the energy of Organization devoted to consequent disciplinary proceedings, not to mention the countless man-hours lost and fees paid to Inquiry Officer(s)!

It is therefore requested that officers who might be called upon to discharge the duty of Disciplinary Authority for KoPT may keep the above in view.

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