

Practical Guide to  
Disciplinary Action in Banks

**G.S. Dubey**

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# PRACTICAL GUIDE TO DISCIPLINARY ACTION IN BANKS

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*This work is dedication to  
my respected father  
Lt. Pandit Prem Chand Dubey*

## PREFACE

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Disciplinary Action/Proceedings has been subject of many law books and some of them are enough bulky. The present work has been prepared keeping in view the requirements of personnel departments in public sector banks as well as the defending officer employee. The object of the book is that Disciplinary Action/Proceedings may be carried out in a smooth manner and the same can be achieved only when parties to action understand their position in the proceedings. Further, an introduction to many concepts like probation, vigilance etc. has been given to augment the usefulness of the book for officer of the Bank.

I acknowledge the contribution received from friends particularly Mr. M.C. Vyas, Retd. Chief Manager, Central Bank of India.

I hope the work will be useful in day-to-day working for all concerned.

I am awaiting your response and precious advice for betterment of the work in coming editions.

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**PART I**



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# CHAPTER 1

## PUBLIC SECTOR BANKS AND THEIR CONDUCT RULES

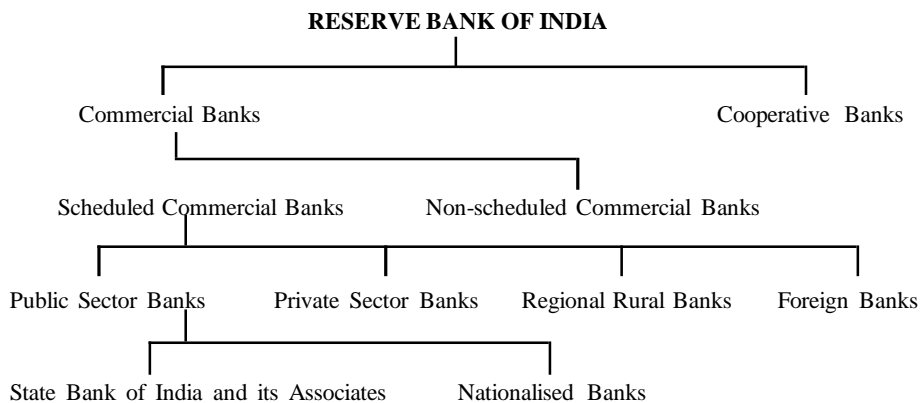
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### 1. About Officer of Bank and his Misconduct

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Indian Banking industry consist of various kinds of banks including foreign banks. Reserve Bank of India is regulatory and statutory authority and controller in Banking industry. Table given below depicts the structure of Indian banking Sector:



Although the disciplinary action/procedure runs on the almost same route banking sector and as well as other financial institutes but considering the number of employees in public sector banks, reference is made to them.

The concept of public sector banks means and includes —

- I. A Nationalised Bank
- II. State Bank of India
- III. Subsidiaries of State Bank of India
- IV. Any other Bank which may be declared by Government

The management of all public sector banks has been vested in their Board of Directors. Board of Directors has general powers of superintendence, directions and management of affairs of the concerned Banking Institution. Further, Government has granted managerial autonomy and therefore Government has no day-to-day control over personnel matters in public sector banks. So far as nationalised banks are concerned, the same have been established under the Banks Nationalisation Act (Act No. 5 of 1970) wherein the nationalised banks have been described as 'corresponding new bank'. It has been provided that on the commencement of the said Act, they shall be constituted such corresponding new banks as are specified in the First Schedule. In sub-section (2) of Section 3, it is laid down that the paid-up capital of every corresponding new bank constituted under sub-section (1) shall, until any provision is made in this behalf in any scheme made under Section 9, be equal to the paid-up capital of the existing bank in relation to which it is the corresponding new bank. Sub-section 3 of Section 3 provides that the entire capital of the new bank shall stand vested in, and allotted to the Central Government. Sub-section (4) of Section 6 lays down that every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of the said Act, to acquire, hold and dispose of property, and to contract, and may sue and be sued in its name. From the aforesaid provisions contained in Section 3 of the Banks Nationalisation Act, it is evident that the nationalised banks have been established under the provisions of the said Act and the same are distinct juristic persons with perpetual succession and the power to acquire, hold and dispose of property and to contract and having the right to sue and be sued in their own name and further that the entire capital of the said banks is vested in the Central Government, meaning thereby, that the said banks are owned by the Central Government.

Whether nationalised bank is a body corporate or a corporation can be answered by referring the provisions of the Banks Nationalisation Act which show that the nationalised bank has been constituted as a distinct juristic person by the Act and it is owned by the Central Government. There are other provisions in the Banks Nationalisation Act which show that the general superintendence, direction and management of the affairs of business of the bank is vested in a Board of Directors constituted by the Central Government and the Central Government has the power to remove a person from the membership of the Board of Directors [Section 7(2) and 7(3)] and in the discharge of its functions the Bank is to be guided by such directions in regard to matters of policy involving public interest as the Central

Government may, after consultation with the Governor of the Reserve Bank of India give (Section 8). This indicates that the nationalised banks have all the attributes of the new pattern of public corporation.

Merely because the expression 'body corporate' has been used in relation to the nationalised banks in Section 3(4) of the Banks Nationalisation Act and the expression 'corporation' has not been used, does not mean that the nationalised bank is not a corporation. The expression 'body corporate' is used in legal parlance to mean 'a public or private corporation.' The conditions of service of the employees are governed by the Act and Service Regulations framed thereunder. Under Section 8 of the Act, the Bank is guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with Governor of Reserve Bank of India given under Section 19 of the Act enables the Board of Directors to make regulations to provide for all matters for which provision is expedient even relating to duties and conduct of officers and other employees of the corresponding new Bank.

In nationalised banks, Conduct Rules are framed under Section 19 of Banking (Acquisition and Transfer of Undertakings) Act 1970 (Act No. 5 of 1970) in consultation with Reserve Bank of India and with the previous sanction of Government of India, Board of Directors must have regard to the guidelines issued by Central Government. Once a regulation is formed, it becomes part of statute book. Any breach in term of Regulation is deemed to constitute misconduct. Regulations deal with different terms of employment of service. **The officer conduct regulations** of a nationalised bank do not apply on following category of staff:

1. The Chairman of a Bank.
2. The Managing Director of a Bank.
3. Any Whole-time Director of a Bank if there is any.
4. Award staff including casual labourers paid from contingencies.

Once Banks have framed Regulations pertaining to the terms and conditions of the services of the Officers, any circular of Government having not been adopted by Board of Director, in contradiction of Regulation of the Bank, will not be effective. Any such direction of Government will be liable to be ignored.<sup>1</sup> De hors, the Regulations, there is no power vested in the Bank to issue directions relating to conditions of service of its employee.<sup>2</sup>

In terms of Regulations, drawing-up a charge sheet by the Disciplinary Authority is the first step for initiation of disciplinary action. Therefore, unless and until, a charge-sheet is drawn up, Disciplinary Action/Proceedings for the purpose of Conduct Regulations cannot be initiated. Drawing up a charge-sheet is a condition precedent for initiation of Disciplinary Action/Proceedings. In absence of any

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1. Apoorva Ranjan Sarkar Vs Bank of India 1995(2) Bank CLR 181 (Patna)  
2. Bank of India and Others Vs Bank of India Officers' Association (A.P. Unit) and Others 1995(2) Bank CLR 189 (A.P.)

statutory rule operating in the field resorting to a preliminary inquiry would not by itself be enough to hold that a disciplinary proceeding has been initiated. Under the Conduct Regulation of Bank, a breach of any of the provisions of the Regulations is deemed to constitute misconduct punishable.

## **1. ABOUT OFFICER OF BANK AND HIS MISCONDUCT**

*Who is an Officer?* – Officer is also an employee of Bank. A person who is holding a supervisory, administrative or managerial post in Bank is called an Officer. A person may become Officer either with the initial appointment or by promotion. Officer employee is a cadre, though while working in Bank, he may be designated with any other name. Even if an Officer is deputed to any other organisation, he will remain Officer and will not lose his cadre as per the posting in new institution. What is made relevant and what is required to be considered in deciding whether a person is employed in a managerial or administrative capacity is not his designation in the employment but what exactly are the duties assigned to him. Thus, an officer doing some manual or clerical work as ancillary or incidental to his employment will not become a clerk.

Similarly, though an officer may be subject to control and supervision and answerable yet it will not make his functions less managerial. A Bank officer is required to exercise higher standard of honesty and integrity. He deals with money of depositors and the customers. Every officer is required to take all possible steps to protect the interest of Bank and to discharge his duty with utmost honesty, integrity and devotion.

Good conduct and discipline are inseparable from the functioning of every officer of the Bank. The very discipline of an organisation more particularly of a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and misconduct.<sup>1</sup>

The dictionary meaning of word '**misconduct**' is improper behaviour, intentional wrongdoing or deliberate violation of a rule of standard behaviour. The word 'misconduct' does not mean inefficiency or slackness. It is something more deliberate and intentional having involvement. Therefore, charge of misconduct is the charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee to the employer. Misconduct is something more than mere breach of term of the agreement or the rule. It must ordinarily be something which must impinge upon the conduct expected of an officer. Misconduct for which Disciplinary Action/Proceedings can be taken need not always be a discharge of duty in the course of employment. Conduct outside the employment may have a bearing on the employment and may constitute sufficient reason for inflicting the one of the penalties given in Conduct Regulations of Bank. Any act

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1. Chairman and Managing Director, United Commercial Bank and Others Vs P.C. Kakkar 2003(1) Bank CLR 622 (S.C.)

wherever and whenever committed if it has subverting discipline or good conduct will amount to misconduct. Long back, Bombay High Court<sup>1</sup> highlighted the illustrated cases of acts of misconduct which will justify the dismissal of the Delinquent Officer employee:

- “(i) if act or conduct is prejudicial or likely to be prejudicial to the interest of the master or to the reputation of the master;
- (ii) if the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;
- (iii) if the act or conduct of a servant makes it unsafe for the employer to retain him in service;
- (iv) if the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;
- (v) if the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- (vi) if the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;
- (vii) if the servant is abusive or if he disturbs the peace at the place of his employment;
- (viii) if he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant;
- (ix) if the servant is habitually negligent in respect of the duties for which he is engaged;
- (x) if the neglect of the servant, though isolated, tends to cause serious consequence.”

In case the allegations made against a Delinquent Officer does not constitute misconduct, the same cannot be proceeded departmentally and no penalty can be imposed. Erroneous act of an employee or error of judgment on his part will not amount to misconduct.

Misconduct generally consists of two kinds as per Conduct Regulations (Please see the Regulations of the Bank) —

I. General Misconduct

II. Special Misconduct

Now, we talk of breach of ideal conduct which will constitute general misconduct. Some of such ideal conduct examples may be —

- Officer will discharge his duties with utmost integrity, honesty, devotion and diligence.

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1. Sharda Prasad Omkar Prasad Tiwari Vs Central Railway 1960(1) LLJ 167, (Mumbai)

- Officer will do nothing which is unbecoming of a Bank Officer.
- Officer will maintain good conduct and discipline.
- Power conferred/delegated will be utilised in the interest of Institution.
- Officer shall take steps to ensure the integrity and devotion to duty of subordinates also.
- Officer shall maintain secrecy about Bank or its customers' affairs and will not disclose any information to outsider.
- Officer will not utilise his position to procure benefit for his/her relatives/nears.
- Officer will not do any trade or business directly or indirectly.

Code of Conduct as set out in Conduct Regulation clearly indicates the conduct expected of an officer of the Bank. It will follow that conduct which is blameworthy for the officer in the context of Conduct Rules would be misconduct. A disregard of an essential condition of the contract of service will constitute misconduct. Breach of manual of instructions, regulatory circulars, specific instructions, orders and directions will constitute misconduct. Some irregularities, recognised as misconduct in banking industry, are given below though they are not exhaustive but provide a glance as to the true nature and concept of misconduct.

#### **Government-sponsored Schemes**

- Issuance of fixed deposits from the cash disbursed to borrowers and recovery effected from the proceeds of the said fixed deposits on maturity.
- Loan pass books not issued to the beneficiaries.
- Receipt/borrower's certificate evidencing purchase of asset in respect of loans disbursed in case not found/not preserved or bills of purchase not obtained.
- Letters sponsoring the applications of beneficiaries under various schemes were not kept on record or not available.
- Scale of finance not adhered to.
- Financing bullock/bullock cart to ineligible borrowers.
- Financing pump sets/tractors without observing the requirement of possessing the minimum landholding by the borrower.

#### **Staff Loans**

- Sanctioning of housing/conveyance/personal consumer loan to staff while the earlier loan was outstanding.
- Availing overdraft against the securities pledged for Demand loan.
- Fraudulently availing Demand Loan against the deposits of others.
- Non-payment of loan installment.

**Housekeeping/Correspondence etc.**

- Not attending to controlling office correspondence.
- Lack of diligence and vigilance while taking over temporary charge of the branch.
- Non-adherence to the laid down systems and procedures leading to loss of security forms/revenue leakage etc.
- Payment of fraudulently drawn cheques/withdrawals without verifying the specimen signature recorded at the branch.
- Delayed reporting and settlement of currency transfer transactions with Reserve Bank of India.
- Passing withdrawal forms for payment without pass book.
- Failure to put through large accumulated non-responded inquiry memos.
- Delayed remittances of collections to Government departments causing loss to the Institution.

**Audit**

Non-reporting of deficiencies/irregularities/balancing position in audit report.

**Advances**

- Granting of credit facility beyond discretionary powers.
- Allowing drawing in cash credit (bills) account before compiling opinion report on the buyers.
- No effective pre-sanction and post-sanction visit of the units.
- Encouraging middleman in selection of borrowers.
- Inadequate follow-up of advance.
- Sanctioning of *ad hoc* limit while the account was irregular.
- Sanction of demand loans against matured and paid fixed deposits and other like securities.
- Non-verification of the security offered for pledge before sanctioned.
- End-use of funds not ensured.
- Borrowers failed to abide by stipulated repayment terms or mechanism while branch failed to enforce the same.
- Granting of credit facilities to dependants and relatives.
- Enhancement of limits in irregular loan accounts.
- Obtaining of defective securities or securities with defective title or inadequate security.
- Issuing of Bank guarantees without taking commission.

**Books and Register**

- Non-maintaining of receiving Dak register particularly of the beneficiary's application for loan under Government-sponsored scheme.
- Non-recording of sanction in sanction register.
- Non-maintenance of inspection and village index register.
- Non-recording of movements in log-book/movement register.
- Non-recording of loan applications in loan application and disposal register.
- Unauthorised alterations of the names of the beneficiaries in the loan applications and control card cum ledger sheets.
- Permitting outsiders to make entries in ledgers.
- Failure to maintain token register resulting in perpetration of fraud.
- Duplicate saving bank pass book issued but not recorded on the ledger sheet.

**Staff Matters**

- Non-relieving of staff who has been transferred by management.
- Opening of office and doing business at holiday.
- Non-relieving of staff for few days for assistance in another branch.
- Acting in breach of Bank circulars.
- Inclusion of increment non-available in the register.

**Negligence in Working**

Charge can be sustained even if negligence by bank manager is proved which is likely to cause serious loss to Bank thus even simple negligence that nature will be gross misconduct.<sup>1</sup>

Likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct. Gross negligence or negligence likely to involve the Bank in 'serious loss' would come under major misconduct. Even assuming that there is no gross negligence, simple negligence will come under major misconduct if accompanied by 'likelihood' of serious loss.<sup>2</sup> There is little or no scope for an officer of Bank to take shelter under the pretext that the proved misconduct has occasioned on account of an error of judgment.

The scope of Disciplinary Action/Proceedings is confined to finding out whether or not the Delinquent Officer is a guilty of the misconduct alleged against him. The line dividing a claim made on error of judgment is too thin.

Where the Delinquent Officer tries to defraud Bank for his personal gain, it is immaterial whether the Bank has suffered any financial loss or not. It is the conduct

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1. R.S. Gupta Vs State Bank of India and Others 2000(2) Bank CLR 248 (Del)

2. State Bank of India and Others Vs T.J. Paul 2000(2) Bank CLR 343, 1994(4) S.C.C. 759



which matters most and therefore Delinquent Officer cannot be treated with benevolence by giving him an opportunity to mend himself.<sup>1</sup>

The fact that *no loss* has been caused to the Bank that is a matter which may effect the punishment to be inflicted but not the sustainability of the specific charges framed against an employee. Where loans were granted wrongly and loan accounts are running irregularly for long, it cannot be said that no loss has been caused to the Bank because though the figures may be available in accounts but the impact of the grant of amounts to persons without proper credit will be actually felt when recovery steps start in due course.

Where a branch manager attempted to raise loan under SEEUY scheme in the name of his wife but did not encash the loan cheque, it was held that non-encashing does not matter and punishment from removal service was awarded.<sup>2</sup> Similarly, where branch manager took ` 25,000/- due to surgical operation of his wife unauthorisedly but later money was deposited back with 24% interest in Bank, the punishment of removal was upheld.<sup>3</sup>

It is immaterial whether any loss has been caused to the Bank. Supreme Court in the case of Nikunj Bihari Patnayak<sup>4</sup> has held

*“Even though no loss has been caused to Central Bank of India even then acting beyond one’s authority is by itself a breach of discipline and breach of Regulation 3 which constitutes misconduct within the meaning of Regulation 24.”*

Manner of Disciplinary Action/Proceedings to be drawn is generally given in further Regulations differing from Bank to Bank.

Similarly, where charges depict that Delinquent Officer tried to defraud Bank for his personal gain and in fact succeeded in his design, it is immaterial as to whether the Bank has suffered any financial loss or not because Bank having lost confidence in the Delinquent Officer cannot be found to be on fault.<sup>5</sup>

### **False TA/Medical Bills etc.**

It is the bounding duty of a responsible Bank Officer to make sure that any bill produced by him staking any claim for reimbursement from the Bank must be true and correct and it is the responsibility of the officer concerned to make sure that no incorrect claim is made to Bank. A Delinquent Officer in respect of TA bill took one of the defenses as under:

*“.....please note that I have not certified anywhere in the TA bill that all the particulars furnished by me are true and correct. All bills are subject to normal errors, more so in the case of inspectors because they have to submit such bills frequently...”*

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1. Biren Borah Vs United Bank of India & Others 2004 (2) Bank CLR 176 (Gau)
  2. Ganesh Sunta Ram Sirur Vs Bank of India and Another 2005(1) Bank CLR 455 (S.C.)
  3. Damoh Panna Sagar Regional Rural Bank and Another Vs Munnalal Jain 2005(1) Bank CLR 749 (S.C.)
  4. Disciplinary Authority cum Regional Manager and Others Vs Nikunj Bihari Patnayak 1996(9) S.C.C. 69, Judgment Today 1996(4) S.C. 457
  5. Biren Borah Vs United Bank of India and Others 2004(2) Bank CLR 176 (Gau)

The defense was treated as an irresponsible defense<sup>1</sup> where the charge in respect of L.T.C. bill was as under:

1. You have taken advance of ₹ 1,300 on 20/02/1986 from Sakchi branch towards cost of railway tickets for onward journey from Tatanagar station to visit Jagannath Puri in order to avail L.T.C. facility but subsequently refunded the amount on 28/08/1987.
2. You had requested vide your application dt. nil addressed to the manager Sakchi branch and received ₹ 1,300 on 20/02/1986, the cost of first class railway tickets for onward journey from Tata Nagar station to Jagannath Puri in respect of four adults and two children but you did not actually undertake the said journey.

On the above allegations, the charge of temporary embezzlements of funds was not found to arise in view of the L.T.C. rules where it was provided that when an officer takes advance and goes not to submit bills within seven days from the date of resumption of duties is liable to be recovered a lump sum from the salary of the officer and accordingly inquiry was quashed.<sup>2</sup>

### **Unauthorised Absence**

The Bank being a public institution, the employees are required to observe strict discipline of punctuality, efficiency and honesty. It is not the fundamental right of employee to remain absent without prior permission and that too without any just reason. However, in exigencies, employees may not be in a position to inform immediately to his employer for attending his duties on account of sudden sickness or accident, but at the earliest opportunity, the employee is required to inform his employer about the causes of his absence and if he is not in a position to report for the duty he must send his report of leave at the earliest opportunity.

An employee who does not bother about obtaining necessary permission for a pretty long time will be treated as having committed misconduct. Being misconduct, management can hold an enquiry and may even pass an order of termination for unauthorised absence.

Where the contract/standing order/service rules are silent, the management has power to deduct the wages for absence of duty. Whether the deduction from wages will be pro-rata for the period of absence only or for a longer period, will depend upon the particular facts of a matter. It is not enough that the employees attend the place of work; they must put in the work allotted to them. It is for the work and not for mere attendance that the wages are paid. If the employees do not work even as a protest on collective basis but comply with the formalities, like signing on register etc., the wages can be deducted. Deduction of wages can also be done in pursuance

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1. M.C. Charati Vs Personnel Manager and Disciplinary Authority, Syndicate Bank 2001(2) Bank CLR 90 (Kant)  
 2. Apourva Ranjan Sarkar Vs Bank of India 1995(2) Bank CLR 181 (Patna)

to concerned enactment such as 'Payment of Wages Act' which provides for wage cuts for the absence from duty subject to its applicability. Though strike may be a legal one and legitimate and therefore may not invite Disciplinary Action/Proceedings which an illegal strike may do so, be it misconduct. But regardless of the legality of strike, the employees are liable to loose wages for the period of strike. During the period of strike, the contract of employment continues but the employees withhold their labour. Consequently, they cannot expect to be paid.

In cases of mass strike, management need not to conduct disciplinary inquiry either on individual basis or on mass basis but still has requisite power for deduction of wages on pro-rata basis. But such pro-rata need not be necessarily only for the hours of strike. Thus, even employees strike only for four hours or any part of the day, the salary of employees can be deducted for the whole day.<sup>1</sup>

The same will apply in cases of 'go slow action' or 'pen down strikes'.

There is no doubt whenever an employee indulges in a misconduct such as deliberate refusal to work, the employer/management can take Disciplinary Action/Proceedings against and impose on him penalty prescribed for it which will include some deduction of wages. However, when misconduct is not disputed but is on other hand admitted and is resorted to on a mass scale, there is no need to held any inquiry. Where employee did not attend Bank for casting their votes in Gram Panchayat elections while the day of voting was not declared as a holiday under Negotiable Instrument Act but only a State holiday; afterwards an explanation was called by Bank for unauthorised absence, the Court held that it was necessary for employee to avail any kind of leave/permission and accordingly the Court refused to quash the explanation.<sup>2</sup>

No misconduct, where wife of the Delinquent Officer got a loan from Bank without disclosing the relationship on the basis of pledge of gold ornaments and loan application form was having no column for the disclosure of the fact that applicant is related to Bank Employee and she was otherwise entitled for loan. It was held that in absence of any circular/rule for disclosing relationship, no case of misconduct is made out.<sup>3</sup>

In another matter on the charge of insubordination due to refusal by the Delinquent Officer to operate vault of currency chest, the Delinquent Officer took plea in his reply that he has no experience of opening and closing the vault and that he did all the works of claims department except opening and closing of vault it was found that there is no foundation for alleged misconduct.<sup>4</sup>

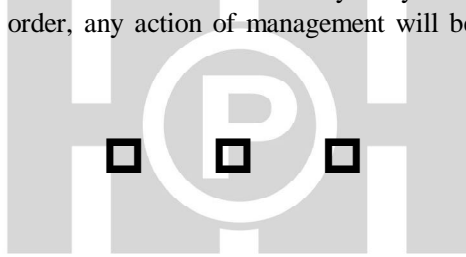
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1. Swatantra Kumar Singh Vs Gorakhpur Kshetriya Gramin Bank and Others 2000(3) Bank CLR 30 (Allahabad)
  2. R. Gopal Krishnan Nair and Another Vs State Bank of Travancore 1997(2) Bank CLR 302 (Kerala)
  3. Satyendra Kumar Ghosh Vs State Bank of India 1995(1) Bank CLR 638 (Patna)
  4. Reserve Bank of India and Another Vs C.L. Toora and Others 2004(2) Bank CLR 323(S.C.)

In a case where the employee did not join duty within thirty days of the notice nor did he try to satisfy the Bank that he intended to join duty and he did not show any sincerity in joining duty in spite of leave not being granted, he even withdraw his leave applications, it was held that the condition necessary to deem a voluntary resignation satisfied and it was not to be interfered under Article 227 of the Constitution and the writ petition was dismissed.<sup>1</sup>

Apart from the misconducts, as referred above, there are some other types of misconducts also. While the above referred misconducts arise out directly from Banking activity and decision as to committing of misconduct is taken by Bank authorities or their administrative heads.

Here, we intend to refer the misconducts which are indicated by other authorities like Courts or other statutory authorities. Instantly, we may refer the provisions of Right to Information Act wherein express power has been conferred upon the Information Commissioners to recommend for disciplinary action.

Going further, High Court, Supreme Court and other authorities also sometimes recommend for initiation of disciplinary action/proceedings against the erring officer. Such orders/references should be construed strictly. Beyond the specific language used in the statute or order, any action of management will be in violation of rules of natural justice.



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1. T. Venkateswarlu Vs Branch Manager, State Bank of India, Vijaywada and Anr., 1990(1) Bank CLR 96 (H.C. A.P.)