

Disciplinary Proceedings, Departmental Enquiry

1. Whether the services of an employee on deputation can be terminated by the borrowing department on the allegation of misconduct or negligence during service ?
2. Whether unexplained inordinate delay in framing charges would amount to violation of principles of Natural Justice and vitiate the entire disciplinary proceedings ?
3. Whether the preliminary inquiry report/fact finding report can be relied upon by the disciplinary authority to terminate the services of the delinquent employee on the ground of the misconduct or negligence ?

Thus, in the light of the aforesaid discussions, the issue No. 1 is answered accordingly to the effect that the services of an employee on deputation cannot be terminated by the borrowing department, in case of any negligence or misconduct, he can only be repatriated to his parent department alongwith the report about his conduct.

Delayed initiation of proceedings is bound to give room for allegations of bias, mala- fides and misuse of power. Such delay is likely to cause prejudice to the delinquent officer in defending himself. Therefore, the delay and laches on the part of the employer in conducting departmental enquiry without any satisfactory explanation for the inordinate delay are sufficient to vitiate the entire disciplinary proceeding.

Law is settled that the employer can always conduct preliminary enquiry in order to ascertain correct facts and in case the allegations against the employees are found to have substance, then a regular disciplinary enquiry has to be instituted. Since the preliminary enquiry is merely a fact finding report, therefore, its object is merely to form an opinion as to whether a formal enquiry in the matter is required to be conducted or not.

Once the decision is taken by the authorities to institute regular disciplinary proceedings then findings in the preliminary enquiry report ordinarily is not to be relied upon. In case such a report is to be relied upon then the delinquent employees has to be confronted with such materials, and only after hearing their version in the matter that such a report could be relied upon. Any other course followed would clearly be a violation of principles of natural justice. **[Wing Commander Rajesh Kumar Nagar v. State of U.P., 2021(6) ADJ 658(LB)]**