



# CAIIB

## Module-D Unit-5

### Human Resources Management



## CAIIB HRM Module D Unit 5- Employee Discipline

### Discipline Management

- Discipline management involves creating an environment where employees voluntarily obey rules and regulations. It also means and includes handling cases of indiscipline or misconduct.
- There are various approaches to discipline management, where it is necessary to identify the causes of indiscipline, analyse the reasons, try to convince employees-through counselling-that they need to follow rules, and as a last resort, go in for punitive action.
- A progressive organisation should aim to reform the employees by right-sizing their attitudes rather than punishing them for their minor acts of omissions and commissions.

***Following are some steps, which should enable the organisation to ensure promotion of positive discipline:***

- The code of conduct, rules and regulations should be laid down clearly, with the consequences to the organisation in terms of losses and bad reputation which may result from not conforming to these norms, should also be clearly communicated to the workers.
- The norms and standards should be so decided that they are easy to adhere to. Setting impossible standards is bound to lead to deviation.
- Once the rules are framed, the adherence thereof must be insisted upon. Mere laying down of rules and regulations, and laxity in its implementation would not create an atmosphere of positive discipline.
- The laid down rules need to be modified periodically to ensure that outdated rules are removed from and new rules, wherever required, to be included in the rule book.

### **Employee – Counselling**

- Counselling as an established process ensures better compliance to rules, leading to more productive employees. In matters of discipline, counseling which involves advising an employee, works as a major morale booster even when the going gets tough.
- Counseling is an elaborate process which includes intent listening by the superior and adopting a positive approach to guide the employee the right way. When it is noticed that an employee has committed an act of misconduct which is of minor nature, the counselling process could be helpful.
- Depending on the kind of misconduct and the reason put forth by the employee, the counseling process may end by giving necessary advice to the employee and taking corrective step in implementation of the rule. Counseling thus does not result in inflicting any punishment on the delinquent.

### **Reformative theory**

- The reformatory theory advocates that “**To err is human.**” Where one has to take a view of inflicting punishment on the employee for a proved act of misconduct, the disciplinary authority decides what kind of punishment, will meet the ends of justice, based on the kind of punishment which can be imposed for certain acts of misconduct; however, prudence demands that the employee be given an opportunity to improve and towards this, the punishment given is less harsh in the hope that the employee will appreciate the gesture and be motivated to improve the behaviour.
- A progressive organisation should aim to reform the employees by right-sizing their attitudes rather than punishing them for their minor acts of omissions and commissions. The approach should be to correct the erring employees rather than being too strict or too lenient. The process includes preliminary enquiries, counselling, verbal reprimand or warning.

### Principles of Natural Justice

- These principles are universally accepted set of rules which have survived the test of time. They ensure protection of rights of the individual employee. They provide a sort of guideline for disciplinary proceedings in all cases of misconduct.
- In essence, the principles say that there has to be a fair play, all along, during the disciplinary process, i.e., right from the issuance of charge sheet to the imposition of punishment, if the employee is found guilty of the charges. It states that the person who is proceeded against should have adequate notice of the proceedings against him/her, employees must have reasonable opportunity of being heard before the case is decided, and the authority must act impartially and in good faith.

*The principles of natural justice, including later additions to these principles, are enumerated below:*

- No man should be a judge in their own cause
- No one should be condemned unheard
- The employee proceeded against should be clearly informed of the charges levelled against him/her.
- The witnesses should be examined in the presence of the employee who should also be given a chance to cross-examine them
- The employee should be given a chance to examine their own witnesses
- Documents relied upon for proving the charge should be given to the employee for inspection
- The punishment to be imposed should be commensurate with the nature of the misconduct.

### Disciplinary Rules In Banks

- The Standing Orders prescribe the rules of an establishment in respect of disciplinary procedure. In the banks, the disciplinary rules originated in the tribunal awards and are presently a part of the First Bi-Partite Settlement of October, 1966. They are in respect of workmen or award staff.

- For the officers of public sector banks, the rules framed by the Officer Employees' (Conduct) Regulations and Officer Employees' (Discipline and Appeal) Regulations are applicable.
- For the other private sector banks, individual banks have their own rules for the workmen staff. And for the managerial staff, in view of **sec.14-B** of the Specific Relief Act, a personal contract of service cannot be enforced.

### **Domestic Enquiry**

- Departmental enquiry is not a mere formality but is a serious procedure and should, therefore, be conducted with due seriousness.
- Domestic enquiry is a quasi-judicial proceeding. Although the provisions of the **Evidence Act, 1872** do not apply, substantive principles of the Act should be kept in view.
- The scope of the enquiry is determined by the charge-sheet or articles of charge. It lays down the terms of reference for the enquiry officer. The enquiry officer should not go beyond the terms of charge-sheet.
- The employee proceeded against should be clearly informed of the charges levelled against.
- The entire proceedings should demonstrate a fair play on the part of the enquiry officer. If any doubt resides in a complex matter of what decision or ruling should be given, it is better to err in favour of the charge-sheeted employee.

### **Domestic Enquiry - Enquiry procedure**

- **Notice of enquiry:** The time, place and date of the enquiry should be clearly stated in the notice. Reasonable period should be given to the employee to prepare for the enquiry.
- **Venue:** The place of the enquiry should generally be the unit where the employee is posted.
- **Evidence:** Any statement made in support of charges must be made in the presence of the charge-sheeted employee so that he/she has an opportunity to question such a statement.
- **Witness:** A witness is a person who appears in the enquiry either in support of the charges or in support of the CSE. The statements made by the witness are considered as oral evidence. The witness should be examined first by the party producing him; this is known as examination-in-chief.
- **Persons who can be present at the enquiry:** Only those connected with the proceedings can attend the enquiry. They are: **(a)** the enquiry officer, **(b)** the management representative (MR), **(c)** the CSE, **(d)** the defence representative (DR), **(e)** the witness whose evidence is being recorded and a typist or a stenographer who records the minutes of the proceedings.
- **The proceedings:** At the first hearing the enquiry officer should enquire from the CSE whether the person has received the charge-sheet and has understood the contents thereof. Then in the presence of his/her representative officer should put a question to him/her as to whether he pleads guilty to the charges. If he/she pleads guilty, the person should be asked whether he/she has understood

the consequences of his/her pleading guilty and whether he/she is doing so at his/her volition. Answers to these questions should be recorded, preferably, verbatim. If the CSE does not plead guilty to any or all the charges, the enquiry officer should ask the management representative to lead the case in support of charges.

### **Fraud in Banks**

- **'Fraud' is a wrongful or criminal deception** intended to result in financial or personal gain. It can also be defined as an act or course of deception, an intentional concealment, omission, or perversion of truth, to **(1)** gain unlawful or unfair advantage, **(2)** induce another to part with some valuable item or surrender a legal right, or **(3)** inflict injury in some manner.
- The most common fraud that occurs in banks relate to shortage of cash when crediting a person's account or when paying out over the counter. Higher versions of fraud involve sanction of loans and advances on the basis of fraudulent documents.
- Most such litigation and enquiry are conducted in the public sector banks as officials of PSBs are considered to be public servants and are liable for disciplinary action under the provisions of the **Disciplinary and Conduct Rules of the Bank**.

### **Cyber Crime and the Banking Sector**

- **PwC's Global Economic Crime Survey of 2020**, revealed that cyber crime has now reported crime globally and that 47% of organisations have been hit with cyber crime in the last two years.
- While there are numerous threats aimed at bank systems and their customers, one of the biggest threats, and often one of the hardest to detect, is that of malicious, careless and compromised users. These employees, contractors and partners are already inside the banks secure perimeter and have legitimate access to its sensitive data and IT systems.
- When these insiders abuse their privileged access or are compromised by external attackers, the valuable data is easily exposed. As banks continue to expand online and mobile access, they also expand the attack surface. As such, they must be vigilant against Distributed Denial of Service (DDoS) attacks and web application attacks such as credential stuffing.

### **Ways IT can secure against bank cyber attacks**

- **Respond as if the network has already been breached:** Adopting this mindset forces the IT team to prioritize the most business-critical parts of the network and use network segmentation as a strategy. When done correctly, network segmentation, achieved through the creation of network zones, limits the ability for a hacker to move laterally across a compromised network but network segmentation requires continual updates and configurations.
- **Implement an enterprise-wide security policy:** A well-defined security policy serves as a crucial road map for any bank IT team to maintain a truly adaptive

security architecture. It's what helps the people tasked with protecting the bank's systems determine the best way for the network to operate with minimal risk. Additionally, the security policy should take into consideration all regulatory and enterprise compliance requirements and how to apply timely patches to maintain compliance.

- **Security policy enforcement:** It's one thing to have a security policy that defines how the IT platform behaves and another to actually validate that it is being enforced across your network. Doing the former but not the latter might allow you to comply with some regulations, but it won't make your network safer.
- Organizations must constantly monitor their network for changes to configurations and ensure that these changes are approved and compliant with policy. It's a Collaborative effort across the enterprise—network operations, security operations, and the CIO.

### **The Risk Attached To Delegation Of Financial Powers**

- All organisations that have different layers of staff as well as functions spread over various geographical areas have the need to delegate power and authority to officials at various levels. Thus, typically in a bank, the top management functions at a strategic level with very little exposure or involvement in day to day affairs of the Bank.

**A cursory glance at various activities in a bank would reveal a broad division of functions and responsibilities as under:**

<i>Level</i>	<i>Authority</i>
Top Management	Strategy and sanction of loans of large amounts.
Senior Management	Regional Large Branch Level. Sanction of Loans and Advances both Retail and Wholesale.
Middle Management	Large Medium Branches. Sanction of Loans more in Retail.
Junior Management	Processing of Loan Applications.

The risks associated with delegation of authority essentially refers to the **possible misuse of financial powers**. The best preventive measure is by **training employees in the correct procedure, by putting in checks and balances at every stage of a proposal** being prepared and approved and also a measurement system which gives indication of deviations if any from the laid down procedure which are considered as early indicators of defaults which again could be related to fraudulent activity.

### **Need For Vigilance Department In Banks**

- The Central government through a statute, constituted **Central Vigilance Commission (CVC)** consisting of three Vigilance Commissioners out of whom one is designated as Chief Vigilance Commissioner.
- The Central Government has defined the role of **Chief Vigilance Officer** and all public sector undertakings including banks are required to have a Chief Vigilance Officer at a senior level who would be in a position to influence decisions and developments that could prove detrimental to the financial stability of the Bank.

- These CVOs come under the administrative control of CVC but not the bank management. The Chief Vigilance Officer has a Department both at the Central Office as well as at major regional offices so that preventive measures could be taken by these officers as soon as they come across any signals that could lead to frauds in banks.
- As per the directives of CVC, each Regional / Zonal Officers of the Banks should have one **Vigilance Officer not below the rank of Chief Manager** who shall function directly under the administrative control of Chief Vigilance Officer (CVO) at Corporate Office.
- The roles and responsibilities of VOs have been clearly defined by CVC and they need to oversee the cases of frauds and other vigilance related issues including preventive vigilance matters in their respective Regions/ Zones and to directly report of CVO.

### **The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013**

- It is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

#### **Major Features of the Act**

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.
- The definition of "**aggrieved woman**", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the **Vishaka Guidelines** is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting get covered under this law
- **The Committee is required to complete the inquiry within a time period of 90 days.** On completion of the inquiry, the report will be sent to the employer or

the District Officer, as the case may be, they are mandated to take action on the report within 60 days.

- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs. 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000.
- Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.

### Penal Code

- Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence.
- Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.

### Amendment to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in May 2016

- There was an amendment to the Sexual Harassment at Workplace Act in May 2016. According to this amendment, the nomenclature was changed from 'Internal Complaints Committee' to 'Internal Committee' and 'Local Complaints Committee' to 'Local Committee'.

### *The role of Internal Committee (IC) is enhanced, they will have to ensure they work towards prevention and prohibition:*

- Create a culture of zero tolerance against sexual harassment at workplace.
- Train your employees, managers and committees to identify such behavior and raise it.
- Practice open door policy! Encourage employees to clarify doubts and ask questions.
- Be pro-active and ensure IC constantly works towards building safety, security and conducive workplace for their employees.

- Have very effective guidelines for disciplinary action, code of business conduct.
- Keep a vigilant eye and take preventive measures to advocate harmonious workplace. Sharing case studies with employees and their outcome on the subject is recommended.
- Changing the way IC team is called has clearly enhanced their role in the organisations. They have to now work towards making workplace “free of harassment”. It is the role of the employer and IC to provide employees with favorable workplace.

### **Compliance Rules of ‘POSH ACT’**

- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, commonly referred to as the ‘POSH Act’ is an Indian law was made effective in the whole of India on December 9, 2013, by the Ministry for Women and Child Development.

**The PoSH Act protects all women employees in the workplace from sexual harassment regardless of whether:**

- They are employed regularly, temporary, ad hoc or daily wage basis.
- They are employed directly or through an agent or a contractor.
- They are employed with or, without the knowledge of the principal employer.
- They are employed for remuneration or on a voluntary basis.
- The terms of employment are expressed or implied.

The POSH Act also applies to women contract workers, probationers, trainees, apprentices and interns

***Section 2(n) of the said Act defines the term ‘Sexual harassment’ to include the following unwelcome acts:***

- Physical contact and sexual advances.
- A demand or request for sexual favours.
- Making sexually coloured remarks.
- Showing pornography.
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

### **Employers’ Responsibilities Mandated under the Act**

- **Provision of a safe working environment in the workplace**
- **Constitution of an Internal Committee in every workplace with more than 10 employees:** The IC is responsible for hearing and redressing any complaints pertaining to sexual harassment in such workplace.
- **Constitution of the Local Committee in every District** for hearing and redressing complaints of sexual harassment from workplaces that may have fewer than 10 employees.
- **An in-depth inquiry into all complaints of sexual harassment:** The IC/LC, is required to conduct an inquiry into every complaint of sexual harassment in

accordance with the provisions of the service rules applicable to the respondent within ninety days (90 days).

- **Organisation of workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act**
- **Punishment for false and malicious complaint and false evidence:** If the IC/LC finds that an allegation of sexual harassment is false, it can recommend the employer or District Officer to take action the woman or the person who has made the complaint in accordance with the provisions of the service rules applicable to them.

### **Constitution of Internal Committees (ICs)**

*As per the Act, the following composition shall be adhered to in constituting the Internal Committees (ICs):*

Presiding Officer	Woman employed at a senior level at the workplace from amongst the employees.
Members	Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
External Member	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.
<ul style="list-style-type: none"> <li>• Not less than half of the IC Members shall be women.</li> <li>• The term of the IC Members shall not exceed 3 years.</li> <li>• A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry.</li> </ul>	

### **Powers of the Internal Committee (IC)**

The POSH Act stipulates that the IC and LC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- Summoning and enforcing the attendance of any person and examining him on oath
- Requiring the discovery and production of documents
- Any other matter which may be prescribed

### **Inquiry & Timelines as Prescribed Under the Act**

- Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline extendable by another 3 months.
- Upon receipt of the complaint, one copy of the complaint is to be sent to the respondent within 7 days.
- Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.
- The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.

- The Inquiry report has to be issued within 10 days from the date of completion of inquiry.
- The employer is required to act on the recommendations of the IC/LC within 60 days of receipt of the Inquiry report.
- Appeal against the decision of the committee is allowed within 90 days from the date of recommendations.

### **Punishments and Compensation Prescribed Under the Act for Proven Acts of Sexual Harassment**

- Punishment prescribed under the service rules of the organization (i.e., as per the provisions of Bipartite Settlements in respect of Award Staff and as per the provisions of Conduct Regulations in respect of Officer staff in Public Sector Banks).
- If the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service.
- Deduction of compensation payable to the aggrieved woman from the wages of the respondent.

### **Maintaining Confidentiality**

- Recognising the sensitivity attached to matters pertaining to sexual harassment, the POSH Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act.
- Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of Rs.5000/-.

### **Penalties for Non-Compliance of the Provisions of the Act**

- The POSH Act takes a firm stand against non-compliance of its provisions. If an employer fails to either constitute an Internal Committee, or discharge any of the other duties placed upon them under the act, they shall be punished with a fine which may extend to fifty thousand rupees (Rs. 50,000).
- In the event an employer contravenes the provisions of the POSH Act a second, they may be either fined twice the amount as the fine for the first contravention, or face cancellation of their license, permit or registration for carrying on their business or activity.

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