

**HOW TO SERVE CHARGE SHEETS  
ON  
VARIOUS MISCONDUCTS  
OF EMPLOYEES**

*BY*

**HEMANT NAYYAR**

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## CHAPTER-I

### What Should A Charge-Sheet Contain

Charge sheet must be in writing and must clearly state the offence, date and time of occurrence. It must require the accused employee to show cause on a particular day and time. The important thing in a charge-sheet, that it should contain the charge very clearly, and once the charge is clear, any other irregularity may be omitted. In *Kanpur Mazdoor Congress Vs. K. Cotton Manufacturing Company Ltd.*, (1951 II LL. 3. 1252 P 599), where the charges for dismissal was collection of subscription; it was held that a charge-sheet need not state the purpose for which the subscription was being collected or indicate the course of information or evidence in support, for in many cases, it would be impossible for the employer to know the purpose for which the money was being a collected or would be utilized and that it may not be desirable to disclose the names of the witnesses who would be called to prove the charge at the enquiry. The question arises as to in what way a charge-sheet should be clear and in what way can it be vague. A specimen charge-sheet given by employers in *Andhra Scientific Co. Vs. Sheshagiri Rao* (1959 II LL. J. P. 717) will illustrate the whole point. In this case, the charges framed against respondent I were in these terms.

- (1) Your handling of the stores has through out been most reckless and inefficient and your work was always very unsatisfactory.
  - (a) The items in the stores were never arranged properly and were never labelled.
  - (b) A very large number of discrepancies between the physical inventories and ledger balances were being noticed at every time of annual closing and stock taking, which were not properly explained or reconciled at any time, though assistance was given.

- (c) The annual stock taking was never properly done and the stock lists were never submitted for audit within reasonable time.
- (2) Your work was found so unsatisfactory that the directors felt that they had no option but to dispense with your services. But at the request of Shri A. M. Rao, your brother who was then a director of the company and on the personal undertaking of the General Manager for your good conduct, your salary was reduced by Rs. 50/-per month with effect from 1st September 1953. You did not show improvement in any manner even after this drastic action. The closing stocks lists as on 30th June 1954 as audited clearly revealed how recklessly the stores were handled.

So far the charge-sheet is very vague, because it does not specify any particular charge-nor does it state the time and the date of any occurrence which amounted to misconduct on the part of the employee concerned. But if we further probe into the charges which were made, they specifically did lay down the misconduct and also the time and the date of the occurrence. The charge-sheet further stated :

- (3) In day-to-day handling of the stores you were very careless. To mention a few instances :
- (a) On 23 November 1953 you sent leaky drums for getting spirit from Vuyyum.
- (b) As admitted in your explanation dated 25th Dec. 1953, you did not maintain any record for the packing materials of considerable value being purchased from time to time.
- (c) You were required to submit stock lists of slow selling items. As admitted in your explanation dated 8th August 1955 you got the lists prepared from the ledgers without reference to the actual stocks.

- (d) Several items in stock for which orders were received, were recklessly certified as not available in stores vide your explanations dated 8th August 1955 and 10th August 1955.
  - (e) You were refusing to receive items into the stores.
  - (f) That after several reminders you submitted closing stock-lists as on June 1955 at 4-25 P.M. on 16th April 1956.
- (4) You proved yourself to be unfit for any place of trust or responsibility by utilizing over Rs. 5,000 when you were president of the employees Co-operative Society and also allowed the other servants of the Society to indulge in acts of temporary misappropriation.
- (5) Your work in handling stores for despatches against orders, was found so unsatisfactory that by memorandum dated 18th February 1956 Mr. T. Kameswarma Rao had to be placed in charge of the stores.
- (6) It was your slogan throughout that the stocks and stock ledger can never be kept properly and that the annual stock lists can never be correct unless all work (of receipts and issues) be stopped for 11 months for physical stock taking and another 11 months for reconciliation of discrepancies.
- (7) (a) The stores were kept by you in such a hopeless and confused manner that the managing agents were obliged to make personal inspection in September 1955. At your request time was given to you upto 17 October 1955 for arranging the labels. You did not do this work inspite of repeated instruction.
- (b) "When I committed previously about the finishing of the work by 17 October 1955, I did so on the spur of the moment without an idea whatsoever".

You wanted time upto 31st November 1955.

(c) You were definitely intimated on 25 November 1955 that if the work be not finished by 1 Jan. 1956, the management would have no option but to replace all the members of the stores section.

(d) You did not complete that work even by 28th April 1956, the day on which you were suspended and the work entrusted to others.

You are therefore requested to show cause why your services should not be dispersed with for utter carelessness, negligence of duty amounting to grave and unpardonable misconduct and inefficiency.

Thus this specimen charge-sheet clearly states the specific categories of misconduct for which the employee is charged. Also it states the time and the date of the occurrence.

A part from the charge being clear it must be substantial and it, in no way must vitiate the principles of natural justice. The point has been clearly brought about by industrial Tribunals, High Court, and the Supreme Court. In *express Newspaper Private Ltd. and Industrial Tribunals, Madras and others* (1959 11 LL.J., P. 793), the compositors in a newspaper office refused to do the work of 'Joining' work. There upon the management framed charges against them, obtained their explanation, held an enquiry and eventually dismissed them. Now the charge against one of the compositors was that after doing the joining work from 2-30 to 6-30 in the afternoon of 24 July 1958, he suddenly refused to do that work after 7-30 thereby he deliberately delayed the naging of papers and that he did discharge the manager order in that regard. To this charge his explanation was in these terms :

"As you had asked me to do joining work in addition to the composing work which I was doing till now, but you refuse to carry out

your assurance that in consideration thereof you would give me enhancement of salary. I did only the composing work which had to be done by me normally) and I did not refuse to do my work. Further I have not caused any kind of loss to this concern. I hereby make it known that I have not refused to do the composing work allotted to me by the manager. The delay on account of the failure to do joining work was not due to me. I am not a joiner."

The management refused to accept the explanation and eventually dismissed him. The Industrial tribunal dealing with the question of his dismissal could not take evidence and come to the conclusion that the refusal was justified. In the absence of any finding the conclusion of the management was baseless, and perverse of that the management was guilty of any error in dealing with the case of the concerned workman.

The Madras High Court held that the charge in the instant case being one of refusal to do 'joining' work, the conclusion of the Industrial Tribunal that joining', work was not part of the compositors work, must be held to be erroneous on the face of the record.

Whatever might have been merits of the decision of the High Court, the fact of the charge being not a substantial one is clearly revealed by following the case closely.

Still another requirement for a proper charge is, that all grounds of dismissal must form the subject matter of the charges sheet. New charge cannot be added at the spot-such a procedure would lead to unfair labour practice and shall vitiate the principles of natural justice In *Suba Rao V. State of Andhra Pradesh* 1958, (LL J. P. 206) when the witnesses being examined at the enquiry stage many question were disallowed on the ground that they were not relevant to the issue. There was a conflict between the enquiry officer and the petitioner. The petitioner was trying to prove that the entire enquiry was a clock for carrying out a preconceived and pre-arranged plan among the official concerned. While the former was anxious that nothing which happened behind the scenes should come to light.

Besides, one of the main reasons for which the High Court of Andhra Pradesh did not uphold the dismissal order was that the government finally removed the petitioner from services on the ground that he was not temperamentally capable of working harmoniously in his services, with his colleagues and his juniors. Incompatibility of temperament was not one of the charge levelled against the petitioner. Except alleging that the petitioner by characterizing the opinion of the medical board as oversight and diplomatic cast un-warranted aspersions on the integrity, independence and judgment of the medical Board. No allegations were made, much less a charge was framed against him that he was not harmoniously working with his services, colleagues and juniors. Nor did the Government in their notice to the petitioner give that as one of the reasons for their proposed action against him. It was therefore clear that he was dismissed on the basis of a reason which was neither the subject matter of a charge against him nor in regard to which he was given opportunity to disprove. In such cases where the charge-sheet is defective at the initial stages the employer is bound to lose his case.

With regard to the civil servants Departmental proceedings are made on the same principles. It is too elementary that before coming to a finding as regards the guilt otherwise of a public servant the enquiring officer should give the public servant concerned an opportunity to test the evidence collected against him by cross examining the witnesses and also to adduce evidence on his behalf. It will not be proper for an officer holding the preliminary scrutiny after taking in to considerations the explanations given by the public servant. Such preliminary scrutiny is made for the purpose of satisfying the officer that there are prima-facie grounds for framing charges against the public servant and calling upon him to explain. But once the public servant submits his explanation and therein does not admit the facts on the basis of which charges are made, it is obvious that a regular enquiry should be held in his presence. Witnesses should be examined, if necessary and he should be given an opportunity to cross examine them and to adduce evidence on his behalf. Doubtless, if all the facts are admitted, by him in his



explanation, the necessity of a regular enquiry may not arise, it may be open to the enquiring officer to dispose of the proceeding on the basis of the materials collected during the preliminary scrutiny and the explanation submitted by the public servant. In *Shyam Sunder Misra V. State of Orissa* (1958 1. LL.J.,P.53) the petitioner derided every one of the allegations made against him. He also made a grievance of the fact that during the preliminary enquiry witnesses had been examined behind his back and that he did not get an opportunity to test their statement by cross examination.

In the same case, with regard to the charges, not framing subject matter of the charge-sheet, Narsingham C. J. observed.

"The special officer has also committed a serious irregularity in taking into consideration nine other charges which had been framed by the chairman and the executive authority of the municipality on a previous occasion against the petitioner. If he wanted to use those charges also in the present enquiry he should have included them in the charges that were sent to the petitioner and after giving him an opportunity to cross examine the witnesses and also to adduce rebutting evidence, should have come to his independent finding in respect of every one of the nine charges. It is highly improper to take in to consideration some other charges against the public servant which were not included in the charges that he was called upon to meet and then to use those charges as an aggravating circumstance for passing the maximum punishment," in the cases discussed above, the Orissa High Court held that it was open to the authority concerned to continue the departmental enquiry by framing fresh charges against the petitioner and terminating the same after giving him due opportunity to cross-examine the witness in respect of those allegations which are not admitted and also giving him an opportunity to adduce rebutting evidence.

A part from these requirements a slight technical irregularity is always ignored, if otherwise the charge-sheet contains all the details in

*Cloth Mill Karamchari Union Vs. Rai Bahadur Lachman Dass Mohan Lal & Sons* (Decision dated 29-5-1952 in appeal Cal. 197 of 1951 unreported), the charge-sheet given to the worker contained all the details of mis-conduct. The only thing omitted was that the serial number of the standing order under which the employee was charged was not mentioned. The Labour Appellate Tribunal held that this omission did not make the charge-sheet irregular or vague as it definitely conveyed the idea as what was the charge which the employee had to meet.

Again a written charge-sheet is not necessary in the case an officer to whom the standing orders were not applicable. In *Kanpur Mazdoor Congress Vs. Employers Association of N. India* (1952 ILL TP. 501 at P 503) the Labour Appellate Tribunal referring to the employee concerned observed. He was an officer and so, the standing orders are not applicable. A written charge-sheet accordingly was not necessary and we are satisfied on the materials that he was asked orally to explain, that an enquiry was held in his presence and what transpired at the enquiry has been recorded".

Notwithstanding these relaxing factors in relation to a charge-sheet, the employer must always realise the positive importance of a charge-sheet. The fact must be never ignored that before dismissing a workman, a regular charge-sheet has to be served upon him, an opportunity is to be given to him for explanation and an enquiry is to be held. In *British India Corporation Ltd. VS NT Gandhi* [A.I.R. 1955 N.U.C.] [b a t i 6 118 IV. 42), the respondent was not served with a regular charge sheet. The Labour Appellate Tribunal at Lucknow thus observed.

"The fact that his attention was drawn from time to time to certain faults alleged to have been committed by him and warning were given to him can by no means take the place of regular enquiry which should be taken before terminating the services of an employee.

Even where the standing orders make a provision for termination of services by giving one month's pay or notice or pay in lieu therefore, the principles of natural justice must be observed and the services of an employee should not be terminated without his being given an opportunity to explain the charges, without these formalities the termination would be justified in awarding him compensation.

A very interesting case regarding the extent to which a charge-sheet is necessary and to which the employers can go is the one decided by the Central Industrial at Dhanbad in employers in the relation to the New Marine Colliery of the New Marine Coal Co. (Bengal) Private Limited and their Workman Reference No. 25 of 1958 Gazette of India, Saturday, September, 6, P. 1575). The facts of the case are that Debu Roy, the workman concerned who was a winding Engine Khalasi, was on duty at the colliery. He suddenly started the engine without giving or receiving any signal. This resulted in the prop. Mistry falling down into the shaft but providently escape by catching hold of the haed-gear frame work. The manager of the Colliery who was present and who witness the incident called for an explanation from workman, who stated that the cage had moved because of the defective brakes. The manager caused the brakes to be tested by the Head Mistry found the brakes to be working properly and he made a statement to that effect which was recorded. Statement of three other workman were also recorded in the presence of Debu Roy. Thereupon the Manager after taking the permission of the agent; served Debu Roy with dismissal order on that very day. On behalf of the Koyla Mazdoor Sabha, it was argued that dismissal was wrongful as no charge-sheet was served upon the workman nor was reasonable opportunity given to him to defend himself against the charge. The above stated facts of the case leave no doubt that the manager held on the spot inquiry and the company stated this fact in their written statement. This was also recorded by him in the notice of dismissal which he served on the workman, Salim M. Merchant, Chairman of the Central Government Industrial Tribunal at Dhanbad, thus observed.

“Having been an eye witness to the incident and having held enquiry on the spot. I do not think, it was necessary to have drawn up a formal charge-sheet, it was not necessary to have drawn up a formal charge-sheet against Debu Roy as he well knew what he was being charged with and a reasonable opportunity was given to him to give his explanation.

In making the award the Hon'ble Tribunal relied on the Supreme Court case of *Burn & Co. Ltd.* already referred I (see *Supra*) 1956, L.A.C.P. 79) 1957-1 LL J. P. 226).

**CHARGE-SHEET FOR MISCONDUCT**  
**(for wilful insubordination and gross**  
**mis-behaviour on the premises )**

To

Shri.....  
 .....

Dear Sir,

Whereas you have been complained against by the general manager that on.....1960 at about..... during your interview with him in connection with your leave application, when he conveyed to you his decision that no further leave could be granted to you because the entries in the Register of staff-leave maintained by the factory indicated that no further leave remained due to you, you flew into a fit of temper, threatened him with dire consequences and left his presence in a huff with a demonstration of extreme insolence and wilful insubordination.

You ought to be aware that such kind of gross misbehaviour on the premises on the part of an employee constitutes grave misconduct attracting the penalty of dismissal under the Standing Orders and Rules framed by the factory.

Therefore please be warned that you are hereby required to show cause why you should not be dismissed from your employment in the factory and that in case you fail to show such cause within a week from the date of service of this notice on you, the necessary action called for under the circumstances will be taken against you.

Yours faithfully  
 Office Manager.

**CHARGE-SHEET FOR MISCONDUCT**  
**(by wilful disobedience of an essential order)**

Shri .....

To

Dear Sir,

This is to bring home to you the glaring example of dissidence and disobedience of an essential order, set by you to others.

Faced by an emergency necessitating increased production during a given period, a general order was issued by the Company requiring all workers to work overtime for double the normal wages. Being in accord with the Model Standing Orders, the general order was promulgated by its display on the Notice Board as well as by its intimation to each worker individually.

Despite the fact that the issuance and implementation of the general order was warranted by a sudden need for a higher output required of the Company, which correspondingly benefitted also each worker who got a chalice of earning double-wage by working over-time in a bonafide manner, you betrayed yourself as a depraved and dissident worker by refusing to obey the general order, deliberately intent on bringing upon the company such harm, if any, as was possible, even at the cost of your own wages.

Dismissal alone from the Company's service is the answer to misconduct constituted by your flagrant disobedience of such an essential order, which in the case of a dissident worker like you, is justified by the Model Standing Orders.

You are therefore required to submit your explanation, within a week from the receipt hereof, showing cause, if any, against your proposed dismissal from the Company's employment for this kind of stark misconduct on your part, failing which, effect will be given to the proposition herein contained.

Yours faithfully  
 Manager

**CHARGE-SHEET FOR MISCONDUCT**  
**(By wilful breach of discipline endangering**  
**human life and property )**

To

Shri .....

Dear Sir,

You are aware that the Company's premises, where you work along with other employees comprise large storage for petroleum products and other highly inflammable articles, owing to which smoking any where on the premises is strictly prohibited by virtue of inflexible rules framed by the Company in this behalf.

It has been observed and reported that you persist in smoking in the premises by wilful disobedience of the orders of your superiors and in deliberate breach of essential rules, without showing any/sense of responsibility or any regard for the safety of human life and security of the Company's valuable property, all of which goes to show that you are too dangerous a person to be fit enough to be retained in the Company's service.

You are therefore hereby called upon to show cause, within a week from the receipt of this memorandum by you, why your dismissal from the Company's service, should not be effected.

By Order  
for General Manager.

**Charge-Sheet for Misconduct**  
**(By disregard and disobedience of essential rules)**

**MEMORANDUM**

It has been noticed quite often that Shri.....  
by his general conduct and behaviour indulges in acts subversive of  
discipline in that he betrays contempt of the rules of management  
prevailing in the factory, disrespect for the authority of the employers,  
indifference to the work of the factory, disobedience to the reasonable  
orders given within the scope of his duties by his superiors, and general  
affront to the management.

It has therefore been considered a fit case for termination of his  
services and consequently Shri.....  
.....is hereby given an opportunity to prove,  
within a week from the receipt hereof, whether, and if, so, how he is a fit  
person to be retained in service, inspite of the fore going allegations  
made against him, constituting grave misconduct on his part, failing  
which steps to secure his dismissal will be resorted to.

By Order  
Director