PROBLEMS RELATED TO DISCIPLINARY MEASURES UNDER THE CIVIL SERVANTS LAW

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TABLE OF CONTENTS

INTRODUCTION

In the civil service, as in any other organized activity, certain amount of discipline has to be maintained. This is the purpose that administrative law, disciplinary codes and systems are designed for, and in pursuing it an attempt is made to reconcile a number of different requirements. Firstly, there is the need to protect the civil servants against the risk of arbitrary actions on the part of the agencies and to protect the agencies against the risk of abuses on the part of the civil servants. Both these risks are inherent in any civil servant relation. Secondly, there is the need to ensure that the administration runs smoothly in the interests of efficiency and at the same time to provide guarantees of fair treatment for its civil servants. However, from the agencies it is expected that the civil servants want to do a good job, by assigning the right person to the right job, by giving clear instructions, by observing and evaluating everyone's work periodically, and by praising a job well done to create a well disciplined and self-disciplined atmosphere by avoiding and preventing causes of discipline problems.

When a civil servant who commits minor or grave disciplinary offences, the sequence in progressive discipline is designed to stimulate a change in the behavior that begins with disciplinary process. The usual sequences of the minor infractions are oral warning, written warning and fine not exceeding one month's salary. When the disciplinary problems occur after the administrative measures have failed to bring about the desired change in behavior, or a civil servant who has committed grave disciplinary offense entailing fine not exceeding three month's salary, down grading or dismissal depending on the severity of the offense. The grave disciplinary offences entailing rigorous disciplinary penalties provided as in proclamation No. 515/2006.

The disciplinary action is taken by a government institution should be undertaken by disciplinary committee which shall investigate disciplinary charges brought against the civil servants and thereby submit recommendation to the concerned officials.

The thesis have three chapters which is sub-divided in to different topics.

The first chapter deals with administrative law, administrative agencies and the civil service in general.

The second chapter discusses the rights and duties of the civil servant, the power of the head of the government institution related to a disciplinary measure, over view of the disciplinary committee, accountability and responsibility of the administrative decision maker, reason for imposing disciplinary action and disciplinary sanction and appeal procedure.

The third chapter deals with the problems related to disciplinary measure: the composition of the discipline committee, the approval of the simple disciplinary penalties, the witness testimony in the government office and the non-legal professional members of the disciplinary committee.

Finally, conclusion and recommendations will be forwarded as a solution to the problems raised.

CHAPTER ONE

1. Administrative law, agencies and the civil service in general

1.1. Definition, FUNCTION and historical development of Administrative law in general

1.1.1. Definition of administrative law

Administrative law is a newly emerging field of study and it is not as developed as other disciplines[1]. It is rather very difficult to provide a precise and commonly agreed up on definition of administrative law. Yet, it is possible to come up with workable definition as different scholars have done it. Accordingly, the writer would list a definition, which have provided by different scholars and then identify the common elements of the definition.

According to A.W. Bradley and K.D Ewing administrative law is "a branch of public law concerned with the composition, procedures, powers, duties rights and liabilities of the various organs of government, which are engaged in administrating public policies[2].

The second definition is according to the well-known author in the field of administrative law, K.C. Davis, "administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative actions"[3].

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[1] Property of St. Mary's University College summary notes on administrative law prepared by Dagnachew Asrat, April 2007, p.2
[2] A.W Bradely and K.D Ewing Constitutional and Administrative Law, 12 Edition P. 697
[3] Keneth Curp Davice Administrative Law, 1995 p. 1

According to another well known writer, Breyer Stewart, administrative law is “the authority and structure of administrative agencies, specify the procedural formalities that agencies employ, determine the validity of a particular administrative decisions and the rule of reviewing courts and other organs of government in their relation to administrative agencies[4]”.

The fourth definition according to Nail Haeke and Naill Papwrth "administrative law is deals with the legal control of government and related administrative powers. This means that a significant emphasis of subject is to control exercised by the high court over the use of statuary powers by a wide range of administrative agencies"[5], and the fifth definition according to sir Ivor Jennings contended that, "administrative law like other branched of law ought to be defined according to the subject matter, namely public administration. Administrative law then determines the organization, powers and duties of administrative authorities"[6].

From the above definition we can understand that administrative law is a branch of public law, which limits the powers of administrative agencies with in the bounds of law. It describes the procedural formalities that agencies employ; determine the validity of a particular administrative decision and the rule of reviewing courts and other organs of government in their relation to administrative agencies. Generally, administrative law, have an executive power of the governments, in relation to govern the executive, legislative, and adjudicative powers.

[4] Breyer Stewar administrative law 1995 edition p.2
[5] Nail Hawke and Nail Paworth, Introduction to administrative law No. 1996 P.1
[6] O. Hood Philips and PAUL JACKSON constitutional and administrative law 7th edition P. 10

1.1.2. Functions of Administrative law

The main function of administrative law is as follows: The first one important function of administrative law is to enable the tasks of government to be performed. Then, administrative agencies are created by law and equipped with powers to carry out public policies, drawn up with in government and approved by parliament. A second function of administrative law is to govern the relation between various administrative agencies. The third function of administrative law is to govern the relations between an administrative agency and those individuals over whose affairs the agency is entrusted with powers[7].

1.1.3. The historical development of administrative law in general

Administrative law is a very young field of study. It is a recently developed area of legal discipline, and its development is related to the development of administrative agencies in the modern society. In this sub section the writer will discuss the development of administrative law in America, England and Ethiopia.

The development of administrative law in America as a field of study dates back to 1880, marked by the establishment of the first independent agency. However, this does not mean that there were not administrative offices before that. Around 1770, there were government authorities that were authorized to make rules and decisions[8]. Its development has passed through four stages. In the first stage, the emphasis was up on its constitutional status. The second period emphasized the role of the courts in checking administrative decision making through judicial review. In the third phase, the procedures of

[7] E.C.S Wade and A.W. Bradley Constitution and Administrative Law 10th ed. P. 593-594
[8] Cited at No. 1 P. 1

rule making and adjudication come in to existence and strict adherence to them was emphasized and, in the fourth stage, the emphasis was on controlling administrative discretionary powers[9].

On the other hand, the development of the England administrative law was for many years dominated by the comparison, which Dicey drew between the systems of administrative jurisdiction[10]. The England administrative law is the proto type of one of the main system of administrative law in the modern world. The law emphasizes on the role of law and rejection of arbitrary power, which is at heart of the development of the British administrative law. A second feature of the pertinent British constitutional structure is the supremacy of the parliament. In a third principle, the British courts can interpret the law. In the British system the emphasis is given to the protection of individual rights and legal control of administration. To do this, the British administrative law have six specific remedies, that is habcous corpus, certiorari, prohibition, mandamus, injunction and declaration[11].

On the other hand, the development of the French administrative law has become perhaps the most important model for the civil law countries and the administrative jurisprudence of the modern world. In the period, previous to the French revolution, legal control had rested in the hands of central and regional institutions, most of which were known as parliaments. If government or its agents acted in an illegal way, there was no appeal to the courts, but only the administration itself. The ministers then become the judges of their own cases, and this condition lasted until 1806 when appeal from the ministry could be made to a unit, which is the council of state. The administrative law in France reflects the existence of dual court system. Ordinary courts decide civil and

[9] Property of St. Mary's University College Module 1 Introduction to a administrative Law P. 32-34
[10] H.W.R Wade and S.F. Forsyth, 9th P. 13
[11] Cited at No. 7, P. 596

criminal cases between private individuals. The other set of courts called administrative courts, which adjudicate cases between parties when one of them is a government authority. A second feature of French administrative law is its relative simplicity.

The injured person brings his action directly to the appropriate center, now usually one of the administrative tribunals and seeks remedies[12].

To come to our country, the historical development of the Ethiopian administrative law dates back to the 1st B.C. The growth and history of administrative agencies is a recent phenomenon[13]. For a long past, there was un-interrupted monarchial rules. Besides, there were no institutionalized extensions of the central authority.

The idea of developing government power to the organs of the government and there was no formal civil service system[14]. Hence, the establishment of the first ministerial framework by Minilik II in 1908 marked the first benchmark in the history of administrative agencies in Ethiopia. In this act, seven different ministries were established. In 1931, Emperior Haile Selasie I promulgated the first written constitution, pursuant to art 11 of this constitution. The emperor was empowered to lay down the organization and regulation of all administrative departments for it laid down a constitutional framework for the establishment of administrative agencies. During the post liberation period, due to the growth in size and complexity of the executive organ following the establishment of the prime minister in 1943, many administrative agencies come into being. The further development in the area is that in 1943 Order no. 1 was enacted with the view to create new ministries. This Order raised the number of the ministries to eleven and

[12] Cited at No. 9 P. 38-39

[13] Cited at No. 1 P. 15

[14] Cited at No. 9 P. 43

in 1961, the central personnel agency was established by order No. 23/61 and the 1995 FDRE constitution lays down the framework for the establishment of administrative agencies, Art 77/2/ of the constitution, clearly provides that the council of ministries is empowered to decided on the organizational structure of the ministries and agencies responsible to it[15]. Until now, there is no administrative law in Ethiopia, except the draft administrative law. However, the administrative law exists everywhere in all types of laws, such as in the constitution, proclamations regulations directive and serculars.

Recently, there are attempt to enact administrative procedure. The act is intended to govern the whole operation of administrative authorities. The attempts that are currently being made are not exhaustive. The draft procedure proclamation deals with procedures for decision-making, procedures and mechanisms for review of administrative decisions. It is silent concerning the procedures that should be followed by agencies when they make rules. We cannot over emphasis the importance of a standardized administrative procedure in Ethiopia such procedure regulation No. 77/2002 will ensure consistency, regulatory and fairness in administrative decision making[16].

1.2. Definition of administrative agencies, modes of establishment and their power

1.2.1. Definition of Administrative Agencies

According to the Ethiopian Federal Civil Service law proclamation No. 515/2006 'Agency' means "The Federal Civil Service Agency or general director respectively[17]". On the other hand scholars define the term 'agency' in different ways: according to Breyer Stewert. "Administrative

[15] Ibid P. 43-45
[16] Cited at No 9 P. 45

agency" is an authority of government other than a court or legislative body, with power to make and implement law in these various ways[18]".

According to the other writers the federal administrative act of America defines administrative agency as a government authority, other than a legislative body of court which has the power to affect the rights of private parties either through the formulation of rules or through adjudication[19].

From the above definition we can understand that, "administrative agency" is purpose oriented. The word by listing the name of the institutions that they are considered as an administrative agencies or by excluding some specifically mentioned institutions from the general category of the executive branch of the government, and for our issue, we shall try to see some of these definitions and then we will develop our own definition of the term. The most acceptable definition of the word is that of the Federal Administrative act of America defines administrative agency as a government authority, other than a legislative body or court, which has the power to affect the rights of private parties through the formulation of rules or through adjudication[20].

As the definition, the administrative agency is with the executive branch, under it, every governmental organization outside of the legislative court is administrative agency. From the administrative agencies, which are the subject matters of administrative law, are only those administrative authorities that affect private rights and obligations[21].

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[17] the Federal Civil Servant Proclamation No. 515/2006 p. 3536 Article 2/7/
[18] Cited at No. 4 P. 1
[19] Cited at No. 1 P. 4
[20] Ibid P. 4
[21] Berrard Sch Wartz Administrative Law 5th Edition P. 48

According to that definition, the organs of the executive branch enable to possess some combination of governmental powers and that e4xist outside of the legislative and the courts is an administrative agency[22].

In Ethiopia, we don't find a precise definition of administrative agency owing to the absence of over organized and systematized administrative law[23].

However, Ethiopia's administrative agencies are empowered to exercise the three basic functions of the government, to legislate, execute, and adjudicate cases that are related to their own main function.

1.2.2. Mode of establishment of administrative agencies.

Administrative agencies are creatures of the law or statue for the reason that they come in to existence as a result of specific "enabling legislations." There are, three modes through which administrative agencies could come in to existence. Provisions of the constitution of different states may directly create administrative agencies. Such as Articles 101 to 103 of the FDRE Constitution, establish namely the Auditor General, the Electoral Board and the population census commission. Agencies could also be established by proclamations issued by legislative organ of the government, for instance by proclamation No. 471/2005 32 ministries are established the executive organ might also be empowered to establish different agencies in order to see to it that specific laws and policies are properly implemented. For instance, Art 77/2/ of the FDRE constitution empowers the council of ministers to determine the organizational structure of ministers to determine the organizational structure of the Federal ministers and other federal administrative agencies responsible to the ministry and it coordinates

[22] Ibid

their activities and provides leadership. Thus, administrative agencies are established by constitution, proclamation and regulation[24].

1.2.3. The Power of the administrative agencies

A great many of the powers and duties of governmental agencies, whether they are part of central or of local government are laid down by statute[25]. Administrative power is a legally conferred or expressed power and on the other hand recognized or implied power, capacity to create, alter, diverse and direct the right or duties in connection to certain public bodies or private person. In the modern administrative agencies the tripartite powers and functions of government are blended in one. In other words, administrative agencies may have legislative, judicial and executive powers[26], to implement its function.

In principle the legislative and the adjudicating powers should not have been assumed and exercised by administrative agencies. However, in a various pragmatic reasons administrative agencies are delegated to exercise it, and all the three powers of agencies involve discretionary powers[27]. By these the given power executive organs are affecting the right of private parties through its adjudicating or rule making process.

But, most of the time, the agencies power is the fundamental of the executive branch of the government organs. These powers comprise organizing, directing, supervising, licensing, standardizing, investigating and discretionary power. Discretionary power is a power to option or teaching at a decision mechanism of controlling discretion. Their powers are concerned with the treatment of particular situations and are most of

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[23] Cited at No. 1 P. 4
[24] Cited at No. 1 P. 10
[25] Peter Cane an Introduction to Administrative Law 3rd Ed. P. 348
[26] Cited at No. 1 P. 17
[27] Cited at No. 9 P. 51

the time devoid of generality. There is no procedural obligation of collection of evidence and weighting agreements are imposed on agencies whenever they exercise these powers[28]. Decisions are made solely on the grounds of subjective satisfactions, policy consideration and expediency.

Administrative powers and duties assumed and exercised by administrative agencies vary from agency to agency. All institutions are endowed with several administrative powers and duties. That are according to Stweart and Breyer administrative functions discharged by administrative agencies can be classified in to four broad categories that over lap in a given cases. These are regulation of private conduct, government exaction, disbursement of money or other commodities and direct government provision of goods and services[29].

To carry out these functions administrative agencies employ a great variety of sanctions, incentive and other tools. In programs involving disbursements and direct government provision of goods and services, the authority to spend money is a basic tool of administration[30].

In other instances such as police protection and person administration force is involved. The richest mix of sanctions and incentive is also characteristically found in regulatory programs with the growth of administrative process. Nowadays, administrative legislation has assumed tremendous proportions and importance. In this time the bulk of the law that governs people comes not only from the legislative but also from the administrative agencies. The fact is that direct legislation of the parliament is not complete with out rules and regulations. Therefore, administrative agencies deserve specific attention in the study of the

[28] IP Massey Administrative Law 4th Edition P. 45
[29] Cited at No. 4 P. 5
[30] Cited at No.4 P. 3

subject matter[31]. (Next to this, the writer discuss about the concept of the civil service in general.)

1.3. The concept of the civil service in general

What is Civil Servant?

According to Bradely and Ewing, departments which control government agencies are staffed by administrative, professional, technical and other official who constitute the civil service staff the departments of central government. For the purposes of inquiry by civil servant commissions, civil servants have been defined as "servants of the independent government institution or agency, other than holders of political, judicial, offices, ministers, and members of armed forces who are employed in a civil capacity and whose remuneration is paid wholly and directly out of moneys voted by parliaments[32]. And Derek Robinson, defined the civil service as employee of central government engaged in central administration of the state or non-commercial activities[33].

From the above definition we can understand, the precise legal nature of relationship of the civil servants with the agency. It is an important constitutional principle that those concerned with the administration of government departments should infact enjoy tenure of office by which they may serve successive ministers of different political parties. The size and expense of the civil service have become a matter of political controllers. But with out the service, the achievements of modern government would have been impossible[34].

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[31] Cited at No. 4 Page 3-5
[32] H.W.R. WADE ACLLDFNA Administrative Law 5th edition P. 52
[33] Derck Robinson Civil Service pay in Africa, International Labour Office, Geneva Published 1999 P. 7
[34] Cited at No. 7 P. 273

Although the civil servant law is constantly concerned with the acts of government departments decided up on the majority of cases by civil servants, the effectiveness of civil servant administration depends on the quality and motivation of its members[35]. In addition, what the civil servant has to bear in mind is that apart from ministers who come and go with the tides of politics, government departments consist almost wholly of permanent career officials[36].

As to Ethiopia, the term "Civil Servant" shall have the meaning prescribed in Arts2/1/ of the proclamation of the civil servant law No. 515/2006 a person employed permanently by federal government institution and shall exclude:

a. Government officials with the rank of state minister, deputy director general and their equivalent and above.
b. Members of the House of People Representatives and the House of the Federation.
c. Federal Judges and prosecutors.
d. Members of the Armed Forces and the Federal Police including other employees governed by the regulations of the Armed forces and the Federal police.
e. Employees excluded from the coverage of this proclamation by other appropriate laws[37].

From the above discussion, the writer understands that civil servant means of all and other except Art 1 sub /a-e/ government official employ are civil servants. To administer the civil service to come to our country the term civil service the Ethiopian central personal agency of C.P.A. or the civil service commission was established by order no. 23 of 1961, to

[35] Cited at No. 10 P. 51
[36] Abra Jenbere Unpublished Administrative Law P 49
[37] Cited at No. 17 Art. 2/1/

maintain homogenous civil service. But, now by structuring of the federal system, it is changed by federal civil service agency. The administrative agency is interested with administrative quasi-legislative and quasi-judicial power[38]. Under the civil service agency established quasi-judicial organ, which deals with the civil servants matter in relation dispute and to render appropriate disciplinary measure to build up good work environment[39].

1.3.1. Power of decision making in the civil service

When parliaments authorities acted new forms of social service or state regulation, it is inevitable that questions and disputes will arise out of the application of the legislation. There are three main ways in which such questions and disputes may be settled: by conferring new jurisdiction on one or other of the ordinary courts, by creating new machinery in the form of special tribunals and by empowering the appropriate minister to make the decisions[40].

In the inquires case, the parliament may be contented with the normal process of departmental decision or may require the minister or the department to observe a special procedure. For example to hold a public inquiry, before the decision is made. There are important distinctions to be drawn between decisions made by a tribunal and departmental decisions involving a public inquiry. The appearance of tribunals as part of the administrative structure is deceptive, for typical tribunal exercises functions, which are essentially judicial in character, although of a specialized nature[41]. Finally, most tribunals could today be regarded as specialized courts.

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[38] Cited at No. 36P. 49
[39] Ibid
[40] Cited at No. 7 P. 702
[41] Ibid P. 702

We consider that tribunals should properly be regarded as machinery provided by parliament for adjudication rather than as part of the machinery of administration. The essential point is that in all these cases the parliament has deliberately provided for a decision outside and independent of the department concerned[42].

On the other hand, the public inquiry, while it grants citizens affected by official proposals some safeguard against ill informed as unreason decisions, is essentially a step in a complex process, which leads to a departmental decision for which a minister is responsible to the parliament[43].

Currently there are about five administrative tribunals in Ethiopia. These are the tax appeal commission, the labour relation ship board, the social security tribunal, the urban land clearance matters tribunal and the civil service tribunal. From those the Ethiopian civil service tribunals which only one tribunal is established, under proclamation No. 515/2006 Art 74 as provide and its decision are appeal able to the Supreme Court on points of law. Tribunals and inquires are both part of ordinary structure of administrative justice.

This is the purpose that disciplinary codes systems are designed for and in pursuing it, an attempt is made to reconcile a number of different requirements. There is a need to protect the employee against the risk of arbitrary actions on the part of the employer of the employee and the need to ensure that the administration runs smoothly in the interest of efficiency and of the community and at the same time to provide guarantees of fair treatment for its officers[44]. This power enables the superior to issue orders to subordinates within the limits of his

[42] Ibid
[43] Ibid
[44] Disciplinary Code and Procedure in the Public Service Published 1975 International Labour Office Jeneva P. 1

jurisdiction, to have these orders carried out and supervise their application and to impose sanctions if they are not obeyed.

1.3.2. The concept of disciplinary measure in the civil service

The word discipline comes from the word disciple. It is important to differentiate between discipline and disciplinary. The latter is what we take when discipline has failed disciplinary action, are taken by management in response to an employee's failure to meet standards, objective or rules of the organization[45].

According to Blacks law dictionary, disciplinary proceedings are proceedings which are brought against attorney to secure his or her censure, suspension or disbarment for various acts of un professional, conduct, most status have procedural rules governing such proceedings in including disciplinary rules for attorneys[46].

Hence, discipline does not mean blind obedience; any agencies should first establish discipline breach, and legal administrative measures maybe taken. But, in taking disciplinary measure it has to be done in accordance with the law and the established disciplinary proceedings and must observe the rights of the employee's who are subject to the measure.

As, mentioned in the above discipline it is the expression in legal terms of that power which every superior is given over each one of his subordinates to ensure the smooth and effective functioning of the administration. This power enables the superior to issue orders to subordinates within the limits of his jurisdiction, to have these orders

[45] Internet Website
[46] Blacks, H. Cambll, Blacks Law Dictionary 1 edition P. 464

carries out and supervise their application, and to impose sanctions if they obeyed. Discipline is also something more than carried out orders[47].

To come to our countries according to proclamation No. 515/2006 Art 69 a government institution shall establish a disciplinary committee to which hears, litig acts and to recommend and submit to the head of a government institution. A disciplinary measure maybe taken in accordance with the civil servants proclamation and regulation No. 77/2002 as provided.

[47] Cited at No. P. 3

CHAPTER TWO

2. The civil servants law related to disciplinary measure under proclamation No 515/2006.

2.1. The Right and duties of the Civil Servants

The rights and duties of the civil servants between employer and employee are correlated are to each other; the right of one is the duty of the other in other words; it can be seen as the other side of the same coin. This relationship is governed by law proclamation No. 515/2006.

2.1.1. The Right of Civil Servants

The civil servants have many rights under the civil servants law and their rights are as follows:

- Objective of Promotion[1]. Shall give, for enhancing the performance of government institution to motivate the employees.
- The right to transfer and reassignment[2].
- Getting annul leave[3]. As it is including the constitution, civil servants should refresh their mind for the next task and work. It is giving twenty days for first year and one more day for each one service years, but cannot more than thirty days. .
- Taking performance evaluation in a transparent manner.[4]
- Maternity leave[5]. Also it is interrelated to the women human right. It is giving thirty days before confinement and sixty days after confinement and other leaves as may be recommended by physician.

[1] The Ethiopian Civil Servant Law Proclamation No. 515/2006 Art. 23
[2] Ibid Art. 26-30
[3] Ibid Art. 36-40
[4] Ibid Art. 31/2
[5] Ibid Art. 41

- Sick leave.[6] The total is eight months three months with full pay, three months with half pay and two months with out pay of salary.
- Leave for personal matters[7].
- Special leave with out pay[8]. It can be seen as an exception to the rule; the rule is getting overall leave.
- To oppose the deduction of his/her salary with out court order, the law or his/her consent /Art 10 of proclamation No. 515/2006/
- Medical Benefit[9] Healthy person is important not only for himself but also for the society and for the public office in particular. Therefore, it is necessary that they get adequate medical benefit.
- Occupational safety and Health.[10]
- Getting certificate of service[11]
- Getting severance pay[12]
- Getting the disability pension and gratuity[13]
- The right of exemption from tax[14]. Occupation safety and health, the right of exemption from tax (as far as the disability pension and severance pay is concerned) gating certificate of service and the like rights are part and parcel of the civil servants.
- The right to get information contained in the personal records or to have a copy of it[15].
- The right to get training[16].

From the above mentioned rights, we can understand that the administrative agencies recognize the employee's need and in return

[6] Ibid Art. 42
[7] Ibid Art. 43
[8] Ibid Art. 45
[9] Ibid Art. 46
[10] Ibid Art. 47-56
[11] Ibid Art. 87
[12] Ibid Art. 88
[13] Ibid Art. 54
[14] Ibid Art 55
[15] Ibid Art. 59(1)
[16] Ibid Art. 57-58

want employees perform their job in good manner. By creating workable environments, by giving clear instructions, by observing and evaluating every ones work periodically and by praising a job well done, they reinforce each employee self control and self respect, and create a well disciplined atmosphere by avoiding and preventing typical cause of discipline problems[17].

2.1.2. The Duties of Civil Servants

1. According to Art 61 sub /1-5/ of the proclamation No. 515/2006 Civil Servants are expected to:[18]

   Sub. Art 1. Be loyal to the public and the constitution:

   Sub Art 2. Devote his whole energy and ability to the service of the public.

   Sub Art 3. Discharge the functions specified in his Job description and accomplish other tasks ordered legally.

   Sub Art 4. Observe laws, regulations and directives related to the civil service.

   Sub Art 5 Have a duty to performance government policy efficiently.

   Although this is mentioned as a duty of the civil servant, the government agencies as an employer and responsible person, must do its level best activities by observing all laws related to public service (civil service) and give training, workshop, seminar etc. for it's employee (civil servants) in this case it can be seen as the duty of both parties.

   As far as policy is concerned, the writer believed and argued that this is impose between to be one of the duties of the worker or the civil

[17] Internet Website
[18] Cited at No. 1 Art. 61/1-5/

servant because any policy is the general direction or out of certain state or government.

2. According to Art 62 have ethical conduct[19].
3. According to Art 63, submit for compulsory medical examination except for HIV Aids[20].
4. According to Art 64, properly handle property of the agency[21].
5. Liable for intentional/negligent loss of property[22].
6. Promptly inform the concerned official of any situation, which he may have reason to believe, could present a hazard[23].

From the above mentioned duties a civil servants or who is employed in any one of the government agencies is expected to do his job effectively, efficiently and he/she should follow certain rules, regulations which govern their performance on the job, use of equipment and materials, safety and health standards and acceptable conduct. On the other hand, it is a duty of every employer or the government institutions to ensure so far as is reasonable and practicable the health safety and welfare at work of all his employees. And under Art 61/3/ as provided the term accomplishes other tasks ordered legally[24]. It is more technical and more generalized and needs some professional clarity.

2.2. The Power of the Head of the Government office and disciplinary measure

Before dealing with the power, the writer will discuss the definition of the term "Head of a government institution". According to Art 2/8/ of the Federal Democratic Republic of Ethiopia Civil Servants law proclamation No. 515/2006 ''Head of a government institution" means a government

[19] Ibid Art. 62
[20] Ibid Art 63
[21] Ibid Art. 64
[22] Ibid Art. 65
[23] Ibid Art. 48/2/ C.
[24] Art. 61/3/

official who directs the institution and includes his deputy[25]. The given powers of a Head of government institution are:-

1. The power of establishing a disciplinary committee, which shall investigate disciplinary charges, brought against civil servants and there by submit recommendations to him or his deputy[26].
2. The power to assign the chairperson two of the members and the secretary[27].
3. The power and responsibilities to take disciplinary measures a civil servant who has committed grave disciplinary offence entailing fine not exceeding three months salary, down grading or dismissal depending on the severity of the offence[28].
4. Approval of the recommendation of the disciplinary committee or where he has good reasons; [29]

a. To decide other wise or
b. Order the committee to further investigate the charge

From the above-mentioned power of the head of government institution related to a disciplinary measures that, "the head of a government institution and his deputy" are empowered to approve the recommendation of the disciplinary committee or to make a decision. In other words, the head of the government institution is empowered to give a unique decision from the recommendation of the disciplinary committee. In addition to this, the administrative agency is a party to a dispute and decision-making organ at the same time or the organ is a Judge in his own case. This would have a negative impact on a favor of impartial decision of the disciplinary measures.

[25] Ibid art. 2/8/
[26] Ibid Art. 69/1/
[27] The Federal civil sevant Grievance and disciplinary Procedure No. 77/2002 Art. 23/2
[28] Ibid Art. 4
[29] Ibid Art. 20/21/a-b/

Generally, administration sanctions are given as oral warning, which are imposed by the immediate superior in the service[30], and sanctions one degree heavier or written warning imposed by the concerned official having a rank out lower than the division head[31]. Rigorous penalties are imposed by the head of the government institution or his deputy[32]. It implies that, the head of the government institution or his deputy have a discretionary power in the disciplinary decision making process.

2.3. Overview of the disciplinary committee

2.3.1 The composition of the disciplinary committee

Before dealing with the composition of the disciplinary committee the writer, begin the discussion from the establishment of the discipline committee. According to the current civil servants proclamation No. 515/2006 and regulation No. 77/2002 as provided, "Any government institution shall establish a disciplinary committee that conducts formal disciplinary inquiry and submits recommendations to the head of a government office[33]. The members of the committee are five in number and it shall have a chairperson and a secretary. Moreover, they assigned as follows:-

- The head of a government office shall assign the chairperson, two of the members and the secretary of the committee and two members of the committee should be elected by the general meeting of the civil servants of the government office[34].

[30] Cited at No. 27 Art. 3/2
[31] Ibid Art. 3/2/
[32] Ibid Art. 3/3/
[33] Cited at No. 1 Art. 69 and cited a No. 27. Art. 22
[34] Cited at No. 27

From the above provisions, we can understand that the disciplinary committee members must be composed from the civil servants and the head of the agency[35]. However, most of the committee members are appointed by the head of the government office. This implies that, the impartiality of the disciplinary committee members is questionable. In addition to this the regulation considered as a quorum where the chairperson and two other members are present at meeting of the committee[36].

Here it has to be noted that, in quorum the two members of the committee may be those assigned by the head of the institution or the elected representative of the civil servant, it is not clearly provided or it need some clarity. Because civil servants have the right to have a representative present, and they must be given the opportunity to refute the information or to present mitigating evidence.

2.3.2 The power and Role of the disciplinary committee

2.3.2.1 The power of the disciplinary committee

According to the Federal civil servants proclamation No. 515/2006 and Disciplinary and Grievance procedure council of ministers regulations No. 77/2002, the power of the disciplinary committee is as fallows:

- A government institution shall establish a disciplinary committee, which shall investigate disciplinary charges brought against civil servants, and there by submit recommendations to the concerned officials[37]. To do this the disciplinary measures may be taken irrespective of any court proceeding or decision[38] and the report

[35] Ethics and accountability in Africa Public services Edited by Sading Rashed and Dele Olowee First Edition 1993 P. 234
[36] Cited at No. 27 Art. 26/2/
[37] Cited at No. 1 Art. 69
[38] Ibid Art. 69/2/

required to be proportional to the imposing rigorous disciplinary penalties[39], depending on the gravity of the offence. The other important point is the term of office of disciplinary committee members, which is two years[40]. And the committee meets frequently for discharging its duties, its quorum and majority vote under its power.[41]

On the other hand, any member of the committee who has been proved to have a quarrel with the accused person or to related to him by consanguinity or by affinity, shall be removed or may be dismissed from membership. Because he may disclose secrets involving cases under inquiry or obstruct in any manner the activities of the committee he fail to meet the requirements of membership[42].

In addition to this according to regulation No. 77/2002 Art 25 as provided the term of office of disciplinary committee members should be two years. But the submission of the recommendation or decision of the disciplinary committee has no limited range of days. It implies that the disciplinary committee may not accomplish one case in the given term of a disciplinary committee. In other words, the disciplinary committee is not bound to report one case periodically.

Therefore, the power of the disciplinary committee shall be subject to the law, to apply the necessary procedures. It means, its power is limited by the civil servants proclamation No. 515/2006 and regulation No. 77/2002. Acting out of the provisions of the civil servants proclamation and regulation may the result would be dismissal from membership.

[39] Ibid Art. 68/2-14/ and Art 67/1
[40] Cited at No. 27 Art. 25
[41] Ibid Art 26/1/3/
[42] Ibid Art. 27/1/2

2.3.2.2 The Role of the discipline committee in the decision making process.

The decision-making process of the discipline committee is as provided in the Federal Civil Service Disciplinary and grievance procedural regulation No. 77/2002.

The disciplinary committee shall bring the charge together with copies of evidence attached there with and summon him to appear with his statement of defenses and the summons shall indicate the place, date and time of the hearing and shall be served at least ten days before the date of the hearing. In addition to this, where the charge could not be served either because the where about of the accused is unknown or he is unwilling to receive it. The summons shall be posted on the notice board of the government office for fifteen days[43]. The purpose to do so is to ensure the fundamental constitutional right of hearing and defending him before the courts of law (although it is the quasi judicial).

However, the disciplinary committee shall; submit recommendation on the dismissal of the charge to the head of the government office where it up holds the objection, or order the accused to submit his statement of defense, where it dismisses the objection[44].

Where the accused admits the charge, the disciplinary committee shall, unless it finds it necessary to make further investigation, examine the charge and the statements of the accused and there by give its recommendation. Where the accused denies the charge, the disciplinary committee shall investigate the charge by hearing the testimony of witnesses of both parties and by examining the documentary evidence[45].

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[43] Cited at No. 27 Art. 11/3/
[44] Ibid Art. 12/2/
[45] Ibid Art. 14

But, the witnesses of the disciplinary committee are not responsible for their testimony. Because a testimony given with out moral duty will not respect persuasive testimony.

In addition to this, the disciplinary committee shall require the concerned body to produce copies of documentary evidence or summoning of witnesses[46]. The parties have right in disciplinary hearing should conducted fairly. Such as the employer is able to out line case against the employee and the employee is given the chance to defend the allegations or his actions. The employee must be given time to consider his position and prepare any defenses to the employers claims.[47]

In the name of a fair hearing adequate time to prepare one's case in answer, access to all material relevant to a case right to ones case orally, in writing or both, the right to examine and cross-examine witnesses. The right to be represented, the right to have one's case decided solely in the basis of material- which has been available to the parties, the right to a reasoned decision which takes proper account of the evidence and answers of a case[48]. To sum up, the disciplinary measures, ethical rules to be design to ensure to the principles of impartiality, objectivity, integrity, efficiency and discipline of public servants when exercising adjudicative powers[49].

After the conclusion of the inquiry, the disciplinary committee shall submit it to the head of a government institution a report on the findings of the inquiry and its recommendation. Where the accused is found guilty at the conclusion of the inquiry, the recommendation of the disciplinary committee shall indicate the penalty to be imposed. The gravity of the offence and the circumstances under which it was

[46] Ibid Art. 15 and 16
[47] Jance Nairence Employment Law for Business Student First Published 1999 P. 156
[48] Peter Cane an Introduction to administrative law P. 161
[49] Cited at No. 35 P. 25

committed, the commendable ethical conduct and accomplishment of the accused manifested in his past performance and, the past disciplinary records of the accused, and where the accused is found not guilty at the conclusion of the inquiry, should be provided with a letter evidencing his acquittal[50].

From the above analysis of the role of the disciplinary committee we can understand that the disciplinary committee must discharge their duties in compliance with rules laid down in the constitution, proclamation, regulation and polices of as concerned. In addition to these expected to them, to required to satisfy the obligation to give fair hearing and natural Justice and their recommendation must be persuasive to both parties. To decide and to improve the quality of complex decisions making process, the committee members must be familiar with the civil servant law, which apply to the initiation of the disciplinary process and to facilitate the accused employee due process rights[51]. From the point of view the role of disciplinary committee is not an easy task it implies that, the disciplinary committee members expecting to have skills, knowledge or professional competence in addition to other professions, to adjudicate uniform, fair and persuasive decisions for both parties and the audience.

But, under our civil servants law, disciplinary committee members are not required to be lawyers or are not required to get legal training. In the absence of legal skill and knowledge they cannot frame the necessary issues, they cannot determine the relevant and the non-relevant evidences and they cannot exclude the non-essential and irrelevant facts in the decision making process. In the role of decision making the principle of due process is very important to make administration decisions fair, accurate and respect human dignity.

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[50] Ibid Art. 19
[51] Cited at No. 17

2.4. Accountability and Responsibility of the administrative decision maker

Accountability is a prime, enduring ethical value required of all the public servants, and responsibility is too. It means accountability and responsibility are two faces of the same coins. Above all, with out the two, there is no good governance. Not only had the question of good governance but also as it provided, in Art 13 of the FDRE constitution. Any public officials are accountable for any failure in official duties[52].

During the process of decision, evaluating employee performance is often a very challenging task and it is the most important responsibility of a decision maker. It helps to correct or eliminate inappropriate behavior or conducts of the civil servants.

According to the Ethiopian Civil Servants proclamation No. 515/2006 of Art. 66 "the objective of disciplinary penalty shall be to rehabilitate a delinquent civil servant when he can learn from his mistakes and become a reliable civil servant or to discharge him when he becomes recalcitrant"[53]. Also, in a democratic system of government, public servants must account to their superiors /at all levels in the hierarchy/ for their superiors/ at all levels in the hierarchy for their official actions and in actions. In addition, they must accept the responsibility for the authorized acts of their subordinates they should not volunteer to superior officers any identification of the persons to blame[54]. And according to Sadig Rasheed and Dele Olowu, accountability is a very important for the activities of an instruction. It is to mean that, every public servant is required to endure ethical value, and each person is

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[52] The FDRE Constitution Art. 12/1/ and 2
[53] Cited at No. 1 Art. 68
[54] Cited at No. 35 P. 27

responsible for his/her actions and accountable for his own deeds and misdeeds[55].

To sum up accountability implies that all government officials are responsible to externally imposed principles and standards of behavior and to external sources of authority designed to control their conduct under normal circumstance.

There are certain values and standards of performance that are intended to guide and regulate administrative decision-making. Such standards and values need to be backed by enforcement machineries, institutions and procedures to secure compliance with the standards[56].

From the above all argument mentioned we can understand that the civil servant decision maker is responsible and accountable for his/her acts, failure to meet the standards, objectives, or rules of the organization.

On the other hand, Sading Rasheed and Dele Olow contend that disciplinary procedures are not only cumbersome and outdated; they are weak and at times often make accountability and productivity improvements impossible. Civil service managers do not possess the capacity to hire and fire senior officials. In any case a large number of senior official are selected based on seniority rather than meritorious performance or worse based on their political loyalty or ethnic background[57].

From the above two different arguments the civil servant law have a lack of clarity with the accountability and the responsibility, when the decision maker made a failure in the decision making processes. Because the disciplinary committee members are only responsible for

[55] Ibid Page 8
[56] St. Mary's University College Administrative Law Module October 2004 P. 75
[57] Cited at No. 35 P. 234

disclosed, secrets obstructed the activities or failed to meet the requirement of membership in related to the disciplinary measure act. However, according to proclamation No. 515/2006 Art 90/2/ as provided an official or member of a committee who intentionally or negligently authorize unlawful appointment, promotion, salary increment or other benefits shall be liable under the relevant criminal and civil law. But the disciplinary committee who intentionally or negligently made unlawful recommendation, or violates the rules of faire hearing or violates the right of justice he is not liable of under criminal or civil law. Thus, according to regulation No. 77/2002 Art 27 as provided the disciplinary measure committee are responsible only for : disclosed the secrets , obstructed the activities or failed to meet the requirement of a disciplinary committee. The fail arty and the consequence of these are dismissals from member ship.

2.5. Reasons for imposing disciplinary action

According to the Ethiopian Civil Servant proclamation, No. 515/2006. The following are list offences for which an agency head or delegated committee may take disciplinary action[58].

- To undermine one's duty by being disobedient, negligent or tardy or by nonobservance of working procedures;
- deliberate procrastination of cases or mistreatment of clients;
- To deliberately obstruct work or to collaborate with others in committing such offence.
- Unjustifiable, repeated absenteeism or non-observance of office hours in spite of being penalized by simple disciplinary penalties.
- To initiate physical violence at the place of work;
- Neglect of duty by being a local or drug addict;

[58] Cited at No. 1 Art. 68/1-14

- To accept or demand bribes;
- To commit an immoral act at the place of work;
- To commit an act of misrepresentation or fraudulent act;
- To inflict damages to the property of the government due to an initial act or negligence;
- Abuse of power;
- To commit sexual violence at the place of work, and to commit any breach of discipline of equal gravity with the offences specified under the above.

This implies that the civil servants misconduct is a broad one. The behavior or action of the civil servant constituting a breach of professional conduct can reside in the manner in which duties are discharged 0r in failure to discharge them as well as in the work committed, or in other words in omission as well as in commission. The civil servants misconduct is not readly definable from this angle either. Whatever form it takes, a break of professional conduct can always be reduced. Nevertheless a failure to fulfill an explicit or implicit obligation, one that is laid down or one that derives clearly from prohibitions and other obligations mention that must be made of the whole field of breaches of professional conduct arising out of the responsibility placed on every official in the discharge of his duties. In addition to these if the agency has published work on administrative regulations or other policies to which the employee must comply, violations of these provisions may also be cause for disciplinary action[59].

From the point of view of the writer, disciplinary measures may be imposing implicitly. In addition to provided in the proclamation No. 514/2006 Art 68 rigorous disciplinary measure. It means the civil servants misconduct could be explicit and implicit. The implicit rules,

[59] disciplinary cods and procedure in the public service, 1975 international labour office Janva P. 22

which the civil servants comply, violations of these may also be cause for disciplinary action. This implies reasons for imposing disciplinary actions cannot be restricted by law.

2.6. Disciplinary sanction and appeal procedure

2.6.1. Disciplinary sanction

Agencies are expected to follow effective disciplinary procedures. This can help to maintain good employee relations within the work place. A work place with out reasonable employer relations encourages absenteeism, low motivation, disloyalty and poor levels of performance and productivity[60].

The essential feature of a disciplinary sanction must relate to the offences in respect of both for its breach of professional conduct and the nature of the sanction. In other words the official must have committed an offence competed with the performance of his duties, and a disciplinary sanction affects his career. The imposition of sanctions drives from the civil servant of the official's individual responsibility, whether he breaks a rule in a particular case. Allows a break of the rules to be committed between the administration and the civil servant at large a civil servant who has incurred a sanction recognizes its twofold significance. To-wards the administration, which considers that he has been guilty of an offence, and towards the civil servant: for disciplinary procedures can be often be instituted against an official merely or inefficiency brought by a head of the administration[61].

Proclamation No. 515/2006 and regulation No. 77/2002 shows that the position is much clearer for disciplinary sanctions than for offences. The most usual sanctions are warning, fine sanction, down grading and

[60] Ibid
[61] Cited at No. 27 Art 6/1/

dismissal. The sanctions are classified simple and rigorous penalties. Where the penalty is simple, its record remains for two years and, where the penalty is rigorous, its record remain for five years according to Art 68/5/ of Proclamation No. 515/2006.

2.6.1.1. Warning

The purpose of a warning is to ' punish' the employee for his past mistakes, but also to encourage him not to breach any rules in the future[62]. This sanction, also known as rebuke, reprieve or admonition, is the first and lightest, clearly provided in regulation No. 77/2002 this is initial sanction is two types in the civil servants disciplinary and grievance procedure those are oral warning and written warning.

Concerned official having a rank not lower than a division head can give a written warning. A warning whether verbal it is or written is given directly to the offender. The written warning will be attached to his personal file. A written warning is a disciplinary action more appropriate for violations of employee work rules or employee performance due to "unwillingness" rather than "Inability". The written warning should include the employee statement regarding the problem; the specific courses of action you except to be taken by the employee in the future, and a statement of additional action that will occur if a violation of the rules or standards is repeated[63]. According to Art 67/2/ of proclamation No. 515/2006 the penalties of oral warning and written warning, fine up to one month's salary, shall be classified as simple disciplinary penalties. In addition to this according to proclamation No 515/2006 with Art 73/7/ and Art 75/5/ cumulative reading provides simple disciplinary measures are applicable to the grievance handling committee. On the other hand in accordance with Art 29 of regulation No. 77/2002. the

[62] Cited at No. 47 P. 158
[63] Cited at No. 35

grievance committee has no right to investigate simple penalties. Implementation the provisions of the proclamation it needs clear and its own procedural provisions.

2.6.1.2. Financial sanctions

It is often difficult to draw a line between administration and financial sanctions. Those considered below certainly affect administration but from the very stress the financial motive. It include fines deductions from salary, delayed promotion to a higher step, transfer to a lower step or loss of rank. They are it would appear, less usual than the penalties considered so far[64].

The use of fines as a disciplinary sanction is as rule, it may be said that, where it occurs, it is considered a penalty for minor offences. There is also a marked tendency for legislation to limit the amount that the penalties shall be classified[65]. By the way according to proclamation No. 515/2006 Art 10 sub Art 1/a-c/ the salary of a civil servant may not be attach or deducted except with the written consent of the civil servant, by court order and as the provisions of the law. The monthly deductions from the salary of a civil servant to make pursuant to sub 1/ b and c/ by court order and as the provisions of the law shall not exceed one third of this salary. On the other, hand the monthly deductions from the salary of a civil servant to make pursuant to sub 1/a/ with the written consent of the civil servant. Its maximum is unknown which means the agency can attach or deduct the full salary of the civil servant. And according to Art. 67 of this proclamation fines up to one month's salary shall be classified as simple disciplinary penalties and fine up to three month's salary shall be classified as rigorous penalties[66]. Simple fine penalties

[64] Cited at No. 59 P. 27
[65] Ibid P. 28
[66] Ibid Art 67/1/ and 2

may give directly by the head of administrative office[67] or may be it recommended by disciplinary committee and approved by head of administrative[68] or by the head of the government office[69]. Simple fine penalties review in the administrative office by grievance committee[70] or it is not apple able for the civil servants administrative tribunal.

2.6.1.3. Down grading

Down grading, have much greater financial consequences than a fine more over. It remains in effect for a variable period, which may be years. In addition to its effect suspension to increments may be a heavy penalty, for an increment stopped is an increment lost and its amount ever a whole career may be substantial. The last kind of financial penalty is called down grading, it is that affecting step depends on various factors of which time is an important one: officials must wait a certain time before moving up steep[71].

Which means reeducation of seniority at a given step increases the time an official must stay at that step, during which he gets no salary increment. Mention should be made of salary deductions, not specified as disciplinary sanctions, that may made to compensate for material prejudice caused to the civil service[72].

Depending on the gravity of the offence down grading may imposed on a civil servant for a breach of discipline. These penalties only may given recommendation by disciplinary committee and approved by the head of a government office. When a civil servant who has do noted in accordance with Art 67 sub 1/e/ of proclamation No 515/2006 down

[67] Cited at No. 27 art. 3/3/
[68] Ibid
[69] Ibid Art. 4
[70] Cited at No. 1 Art. 73/7
[71] Cited at No. 17
[72] Ibid

grading up to the period of two years and up on the laps of his period of punishment shall reinstated. To a similar available vacant post with out any promotion procedures or in the absence of a vacant post, he shall reinstate to a similar post with out any promotion procedures, when it becomes available later time. Accordance with Art 67 sub Art 5/6/ of this proclamation after a down grading disciplinary measure has taken on a civil servant, such measure shall remain in his record for five years. Which means the consequence of the penalty of down grading is affected the promotion salary increment and other benefit of a civil servant up to the period of 5 years.

2.6.1.4. Dismissal

Before dealing with dismissal the writer, discuss some points about the purpose and types of penalties. The aim of disciplinary penalty shall be to rehabilitate a delinquent civil servant when he can learn from his mistakes and become a reliable civil servant or to discharge him when he becomes recalcitrant[73]. The usual sequence and types of penalties are warning, fine sanction, down grading and dismissal. Dismissal is a stage four penalty, and obviously the most sever form of dicipline[74].

The steps are so timed that the employee has the opportunity to correct the behavior prior to the next stage. The goal again is to apply the minimum level of discipline that will bring the employees performance up to expected levels[75]. If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissals will normally result[76].

[73] Cited at No. 1 a Art 66
[74] Cited No. 47 Page 159
[75] Cited at No. 17
[76] Cited No. 47 P. 153

It means when the employees behavior has not improved, the systems organized to take additional disciplinary action. However, a serious first offense may justify imposing a heavy penalty, such as down grading or dismissal. The employee maybe dismissed for any of the reasons of offences listed[77].

According to proclamation No. 515/2006 Art 84, the service of civil servants shall be terminated where[78]:

a. A disciplinary penalty under sub-Article 1/f/ of Article 67 of this proclamation dismissal is imposed on him and
b. The penalty is not revoked on appeal and according to Art 14/1/ sub-Article/d/. As provided a civil servant who has dismissed on grounds of disciplinary offence before the lapse of five years from the date of dismissal cannot be eligible to be civil servants. On the other hand, the civil servants have a right to get certificate of service. Where the service of a civil servant on the service is, terminate for any reason only indicating the type and duration of service as well as his salary. /Art 87 of proclamation No. 515/2006/

As mentioned above the government institution guide proscribes minimum and maximum sanction for each offence. The system of sanctions is generally more detained and exact than the list of offences and possible sources of an offence not always clearly defined. Normally, when the disciplinary committee and the head of the government office, applying disciplinary action have adjudicative powers and violations of natural Justice is unfair dismissal. In addition to this accordance with Art 87 where the service of a civil servant on service is terminated for any reason or where he so requests, he shall be provided with a certificate of

[77] Cited at No. 1 Art. 68
[78] Ibid Art. 84

service indicating the type and duration of service as well as his salary. In the cumulative reading of art 87 and Art 14/d/ the enforcement mechanisms are needs some clarity.

There fore, the disciplinary committee and the head of a government office or employers must use disciplinary procedures fairly, when imposing disciplinary sanction by using their adjudicative powers.

2.6.2. Appeal procedures

Appeal procedures are not differentiating from the process of disciplinary decision. The process sometimes includes a possibility of reconsideration, revision, and appeals to higher authority cancel or mitigate the sanction at its discretion. The appellate administrative Tribunals Judgments are final, except the appeal may make on basis of fundamental legal error if any, to the federal Supreme Court[79].

On the other hand, simple disciplinary penalties, oral warning, written warning and fine up to one month's salary' is appeal able to the matter's of a grievance handling committee[80] .

Which has the advantage that both the disciplinary and the grievance committee decisions are may made simply, and quickly, but gives no guarantee that the final decisions of the grievance committee will be independent?. As it is obvious that it is indicated in Art 75/5/ and 75/7/ cumulative reading all out of a simple discipline other facts which were observed and investigated by the grievance committee are appeal able for the administrative Tribunal[81]. Nevertheless, rigorous disciplinary penalty is appeal able to the administrative tribunal[82]. However according to Art 37 Sub Art/1, 2 and 4/of regulation No 77/2002 as provides a civil

[79] Cited at No. 59 Page 51-52
[80] Cited at No. 1 Art. 73/7/d/
[81] Ibid Art. 75/5/
[82] Ibid Art. 75/2/

servant shall clearly indicate the grounds of the appeal and the redress sought. Appeal shall be barred unless submitted with 30 days from the date the decision is communicated to the civil servant in writing. Not with standing the above provisions, the civil servant may, within 15 days following the caesura of the force measure apply to the Tribunal for the leave to appeal out of time where the appeal is delayed due to proven force measure. Provided, however, that no appeal against a decision of dismissal or demotion may be accepted after 6 months from the date of the decision.

CHAPTER THREE

3. The problems related to disciplinary measure

The writer of this paper worked as clerk of disciplinary committee in the geological survey of Ethiopia. As a result, he has a chance to closely observe legal and practical problems related to disciplinary measures.

3.1. The problem related to composition

According to regulation No. 77/2002 Art. 23 as provided, the total number of the disciplinary committee shall have five members and a secretary. The composition of the disciplinary measure committee members should be assignee and elected as follows.

1. The chair person, two of the members and the secretary of the committee shall be assigned by the head of the government office and
2. Two of members of the committee shall be elected by the general meeting of the civil servants of the agencies. Which means, more of the members assigned by head of the government office. On the other hand, according to Art. 26 of the regulation as provided, any meetings of the committee shall be a quorum where the chair person and two other members are present and their recommendation of the committee shall be passed by a majority vote in case of a tie. Which means, the chair person and two of the committee members, who is assigned by head of the agencies, are in the meeting of the disciplinary committee, they can render a decision and their recommendation shall be passed by majority vote. In other words, in the absence of the civil servants representative disciplinary committee members, the remaining disciplinary committee members can make a final report. Such

type of composition will be danger to the impartiality of the decision-making committee for various reasons.

First of all, the disciplinary committee members are the employee of the agencies, their promotion, salary increment or demotion is evaluated by the head of the agencies. As a result, they may tend directly or indirectly to be influenced since the power to promote or appoint rested in the head of the agencies.

Secondly the accused civil servant would certainly have feeling that the decision of the one side represented committee might likely to be affected by reason that the members of the committee are dependent on agencies concerned by reason that the members of the committee are dependent on agencies related to appointment and promotion. Therefore, the composition and the quorum of the disciplinary measure committee, are affected by the impartiality and the concept of balancing the composition of the disciplinary committee members.

Not only this, according to Art 24 of Regulation No 77/2002, one of the requirement of membership is expected to have more than two years service in government office. In other words unless otherwise the civil servants has more than two years service in a government office the new establishing the government office is can not be establish a disciplinary committee. In addition to this, the term of office of the disciplinary committee members shall be two years, however, that they may be re assigned or reelected at the end of their term of office.

But the law is silent as to the term office of the reelected and reassigned disciplinary committee members. Most importantly, also seen in practice, the head of government agencies, would order all of the disciplinary committee members to extend for the indefinite period of time, which means the head of government office would order the representative of

the civil servants with out the consent of the civil servants in the general. To pursuant to this, I have attached one copy of decision related to the reelected and reassigned disciplinary committee members.

As in the above discussion, the composition of a disciplinary committee has more complicated problems in relation to the law and practice.

3.2. The problems related to the approval of the simple disciplinary penalties.

According to the civil servants law, proclamation No 515/2006, Article 69 provides that the disciplinary committee submits recommendation to the concerned official after it investigates disciplinary charges brought against civil servant. On the other hand, according to regulation No 77/2002, Article 20 authorizes the head of the government agencies to approve the recommendation of the discipline committee when examining the recommendation submitted under Art 19 of this regulation.

The writer, more emphasizes in the problem of the law and practices in the approval of simple disciplinary penalties, which the proclamation authorizes to be approved by the head of the administrative. On the other hand, the regulation is authorizes to be approved by the head of the agencies. Now a day in the government office, it is one of the reasons of practical problems.

For instance, if the disciplinary committee submits the recommendation of simple disciplinary penalties to the head of the government office according to Article 19 of the regulation and, the head of government office would approve the submitted report. And when the accused against the penalties and he may bring the case to the grievance committee in accordance with article 75/5/as 75/7 cumulative readings of the

proclamation. The grievance committee after the investigation of the case, the recommendation is submitted to the head of government agencies, then the head of government agencies again to approved his own the latter decision and his decisions final or not apple able. In the other words, the head of the agencies affect the principle of impartial decision. Which means the principles of independency and impartiality in a simple disciplinary case not applicable for all in the civil service justice system? However, independent and impartial tribunal one of which is called administrative tribunal. And it is the right of the civil servant to bring their case before an independent and impartial tribunal, which should render just decision.

Therefore, any decision making body listed contrary to this right may be in violation of individual rights, then the civil service have an obligation to secure the independence and the approval of impartial decision in accordance with article 9/4/ and 13/1/ of the 1995 constitution.

3.3. Problems related to the witnesses testimony in the government office

According to the Ethiopia criminal procedure code of the Empire of Ethiopia of 1961, Art 136/2/ is indicated that the witnesses and experts shall be sworn or affirmed before they give their testimony. Moreover, in the civil procedure code of the empire of Ethiopia of 1965 art 203 as provides facts to be proved by affidavit, and that the affidavit of any witnesses be read at the hearing, on such conditions as it thinks reasonable and the production of a witness for cross examination.

On the other word, an oath or affirmation before the witnesses give their testimony is mandatory.

In addition to this, according to proclamation No. 414/2004, the criminal code of the federal democratic republic of Ethiopia, Art 453/2/ stated

that, where a witness has been sworn or affirmed to speak the truth. Particularly where the result sought has been in whole or in part whoever being a witness in judicial or in quasi judicial proceedings knowingly makes or gives a false statement or experts. The punishment shall be rigorous imprisonment not exceeding ten years. This means, the oath or affirmation has two important points. The first one is sworn or affirmation binds the witnesses to give their testimony truly, as they know. The second function of the oath or affirmation, is the false testamentary to be punishable by his wrong testimony.

When we come to the civil servants law, the disciplinary procedure does not require the witnesses or experts to be sworn or to affirm before they give their testimony.

The researcher has observed the practices of the disciplinary committee with regard to examination of witnesses. The witnesses of a disciplinary measure are concluded with out oath or affirmation before they give their testimony. The witnesses give their testimony with out a moral duty, which means their testimony like as opinion or suggestion. It is that the opinion or suggestion may be true or false, because the witnesses are not bound by moral duty or does not entail a legal duty.

Therefore, we can conclude that the examination of witnesses in the government office, has its own legal and practical problems in light of ensuring justice.

3.4. The Problem of the non-legal Professionals of the disciplinary committee members

As I have discussed earlier the civil servants laws are not requiring to the disciplinary committee member's to be a lawyer's and the civil servant laws are not requiring the disciplinary committee members to get a training.

But on the other side of view, the role of the disciplinary committee is not an easy task, because their power and scopes shall have subject and limits by the civil servant's law and procedures. Which means to ensure justice in the civil service expecting from their, to understand the aim, the purpose and the goal of the law, to interpreter the civil servants law efficiently, to know the principles of impartiality, fair hearing, due process of law, to take or render fair, prompt, legal and persuasive decision. On the other word, they have a duty to apply the rules and polices effectively and efficiently, to maintain smooth operation and to protect the agencies interest and the right of individual civil servants.

To come to the researcher point of view, according to proclamation No. 515/2006 Art. 66 the objective of disciplinary penalty shall be to rehabilitate a delinquent civil servant when he can learn from his mistakes and become a reliable civil servant or to discharge him when he becomes recalcitrant and as provides Art. 67 of this proclamation and regulation No. 77/2002 Art. 19 cumulative reading, after the conclusion of the inquiry, the disciplinary committee shall forthwith submit to the head of the government office a report on the findings of the inquiry and the recommendation of the imposing penalty depending on the gravity of the offences.

But, the disciplinary committee is exercising in the civil case out of his power's, or the disciplinary committee is interfering in the jurisdiction of the ordinary court. Thus a researcher have attached four copy related to this case.

CHAPTER FOUR

Conclusion and Recommendation

4.1. Conclusion

The study of the research based on the administrative law, particularly a disciplinary measures under the civil servants law, and more emphasizes on the gaps of the law and its impact. Where as one of the prime duties of the civil servants are to develop and maintain good work habit, behaviors and relationship in a work unit for the accomplishment of the agencies.

In order to discharge this function, the civil servant itself first should be able to perform duties properly and should adhere to the provisions of the policies, the proclamation, the regulations and directives issued by the civil service authorities on the ethical conduct of the civil servants. If any civil servants failed to meet the standards, objective rules of civil service or professional ethics, he is subject to disciplinary measures.

Where a disciplinary measures are taken, they have to be made in accordance with the concerned laws, procedures and accepted principles. In addition to this when the disciplinary committee exercises its decision making powers, it is expected to observe constitutionally enforced rights and procedures. The importance of following disciplinary policies and procedures that are fair, prompt, and legal, cannot be emphasized too strongly. These are determined not only by common sense and your own departmental rules, but also by applicable rules the federal civil servants proclamation and regulations which require that all forms of discipline must comply with due process.

4.2. Recommendation

The main point of the research is to give solutions for problems identified problems. The writer of this thesis has identified some problems and has recommended the respective solutions as follows:

1. With regard to the composition, more of the disciplinary committee members are assigned by the head of the government agencies, then we can conclude that, there is no fair representation of a disciplinary committee members in the government office in light of 'equal representative' of constitutional right. Thus, the writer of this thesis recommended that the formulation of the committee must be amended in such away that it must create equality of the representatives of both parties.
2. With regard to a quorum, the law lacks fair presentation from the assigned and elected members. And the law a gap of the term office of the reelected and reassigned members of the disciplinary committee have not a limit of the term of office.

   Thus, the writer recommends that, a quorum of a disciplinary committee to be equal members from both parities and the reelected and reassigned members of a committee must have a limit of the term of office.

3. With regard to the approval of a simple disciplinary sanction, the recommendation of the disciplinary committee and the grievance committee are approved one case in two times by the head of the government office. Thus the writer recommends that the provisions of Art 19/1/ of the regulation to be changed by the term. After the conclusion of the inquiry, the disciplinary committee shall forth with submit to the concerned government office a report on the findings of the inquiry and its

recommendation and the decision made by the disciplinary committee at any leavel must be apple-able to the administrative tribunal.

4. With regard to accountability and responsibility of the disciplinary committee members, they are not responsible, if they violate the right of the accused in the decision making process, if they may intentionally or negligently wrong recommendation. Therefore the writer recommend that, according to proclamation No. 515/2006 Article 90 as provided other committee's liability also a disciplinary committee should be liable for their wrongful act under criminal and civil law and also it is necessary to include the disciplinary committees ethical rules of conduct.
5. With regard to the non-legal professional of the disciplinary committee members, the law does not require the disciplinary committee members to be a lawyer. Unless otherwise, some or more of the disciplinary committee be a lawyer they can not render a legal reasoning, interpretation of the rule and persuasive report and they can not take the principles of fair hearing and due process of law. Thus the writer recommends that one or more of a disciplinary committee members to be a lawyer and to have a mandatory requirement of the law and additionally it is a better to give short term training to the committee members concerning to disciplinary measures, in order to achieve a fair decision and to have a good disciplinary system.
6. The witness of a disciplinary measure is not always expected to be true testimony. Their testimony is seen always as a suggestion. Because they give testimonies with out entering an oath. An oath has two consequences the first one is a moral duty and the second is legal punishment. The testimony given with out oath has not a moral duty nor a legal punishment. Thus I recommend that the witnesses should enter an oath before they give their testimonies.

7. Regarding the enforcement according to proclamation No. 515/2006 Art 14/1//a/, as provided any person who has been convicted by a court of competent jurisdiction, of breach of trust, theft, or fraud. Sub /b/ of this article, a civil servant who has been dismissed on grounds of a disciplinary offence before the laps of five years from the date of dismissal shall not eligible to be civil servant. However, the law excluded the enforcement mechanism, in other words the agency is with out teeth, then there must be a mechanism created for enforcing its decision. Therefore, the writer would like to suggest that the concerned should be given a mandate to see to it that they can enforce their decisions.

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name _____

Signed _____