**Decision Number:** 8081

**Decision Date:** 2066/01/13 (2009/04/26)

**Final Decision:** Supreme Court, Joint Bench

**Pre-Decisions:** Administrative Court, Kathmandu

**Petitioner:** Man Bahadur B.K. (resident of Deurali V.D.C.-8, Palpa District, formerly working as a Cooperative Officer under the Cooperative Department, who was removed from service)

**Respondent:** Administrative Court, Kathmandu, et al. (et al.)

**Key Words:** Disciplinary Action, Jurisdictional Error, Absence Without Leave, Right to Hearing, Principles of Natural Justice

## Key Points:

1. An administrative authority must make decisions based on facts and law, applying judicial discretion and providing reasoned decisions.

2. The authority imposing disciplinary action and the authority requesting clarification must be the same and legally authorized.

## Facts of the Case

\* The petitioner was appointed to the Nepal Administration Service as a Section Officer, Class III, in 2047 B.S. (1990/1991 A.D.) and was working as a Cooperative Instructor at the Cooperative Training Center under the Ministry of Agriculture and Cooperatives.  
\* The petitioner sought approval to study Chartered Accountancy and was granted study leave by the Government of Nepal (Secretary Level) on 2053/11/2 B.S. (1997/01/15 A.D.).  
\* The petitioner was sent to Japan for an agricultural cooperative training program from May 5 to July 7, 1997.  
\* The petitioner requested that the additional time spent beyond the initial three-year study leave be deducted from his accumulated leave.  
\* The petitioner was informed of his removal from service via a letter dated 2058/12/19 B.S. (2002/04/01 A.D.) and a notice published in the Gorkhapatra newspaper on 2058/12/24 B.S. (2002/04/06 A.D.).  
\* The petitioner filed an appeal with the Administrative Court, which upheld the decision to remove him from service.

## Petitioner's Contention

\* The decision to remove the petitioner from service was made by the Minister of Agriculture, who lacked the jurisdiction to do so.  
\* The Public Service Commission was consulted by the Ministry of General Administration, not the Agriculture Ministry.  
\* The petitioner was not given an opportunity to present a defense before the disciplinary action was proposed.  
\* The decision to remove the petitioner was contrary to the principles of promissory estoppel and legitimate expectation, as study leave had already been approved.

## Respondent's Contention

\* The petitioner only requested permission to fill out a form for study and was never actually granted study leave.  
\* The petitioner remained absent from the office for a long period without authorization.  
\* The decision to remove the petitioner from service was lawful and in accordance with the Civil Service Act, 2049 B.S. (1992 A.D.) and the Civil Service Rules, 2050 B.S. (1993 A.D.).

## Legal Issues

1. Whether the Minister of Agriculture and Cooperatives had the authority to impose disciplinary action against the petitioner.

2. Whether the petitioner was afforded a reasonable opportunity to defend himself.

3. Whether the decision to remove the petitioner from service was lawful and justified.

## Judgment

The Supreme Court quashed the decision of the Minister of Agriculture and Cooperatives to remove the petitioner from service, as well as the Administrative Court's upholding of that decision. The Court issued a writ of mandamus ordering the reinstatement of the petitioner to his previous position. The court reasoned that the authority to take disciplinary action against the petitioner rested solely with the Ministry of General Administration, and that the Minister of Agriculture overstepped his jurisdiction by removing the petitioner. Additionally, the court found that the petitioner was not given a proper opportunity to defend himself, as required by the Civil Service Act.

## Significance

The decision clarifies the jurisdictional boundaries for disciplinary actions against civil servants and reinforces the importance of adhering to due process and principles of natural justice.

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