

IMPROVING DISCIPLINARY PROCEEDING IN ENHANCING GOOD GOVERNANCE IN THE PUBLIC SECTOR.

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ABSTRACT

Public service is fundamental to good governance. It is an integral part of democracy because it serves as the neutral administrative structure which carries out the decisions of elected representatives of the people. With the advent of the modern state, government officials have been and are seen as stewards of public resources and guardians of a special trust that citizens have placed in them. In return for this confidence, they are expected to put public interest above self-interest. As such, public officials should have higher standards of performance and conduct than others. Yet, this is too realistic. Therefore there must be disciplinary mechanism. The objective of disciplinary action is to change the behavior of the individual concerned and to show other workers that discipline will not be tolerated. However, implementing an effective disciplinary system is one of the most difficult tasks. This paper, therefore, attempts to highlight the importance of disciplinary proceeding as an important control mechanism to enhance and strengthen the quality of good governance among public employees. In doing so, the authors argue that progressive discipline should replace the traditional punitive types of disciplinary action to handle disciplinary cases. This is because progressive discipline is based on the premise that discipline ought to have a positive rather than punitive focus.

Keywords: Disciplinary Proceedings, Good Governance, Public Sector

INTRODUCTION

Government reform is a worldwide trend and good governance is the latest flavor of the month for international agencies such as the World Bank (1992), shaping its lending policy toward third world countries (OECD, 1999). Good governance also concerns the public service, which has currently generated a lot of attention by the people at large.

Basically, the public service is fundamental to good governance. It is an integral part of democracy because it serves as the neutral administrative structure which carries out the decisions of elected representatives of the people. With the advent of the modern state, government officials have been and are seen as stewards of public resources and guardians of a special trust that citizens have placed in them. In return for this confidence, they are expected to put public interest above self-interest.

Public officials should have higher standards of performance and conduct than others. Yet, this is too realistic. Therefore there must be disciplinary mechanism. The objective of disciplinary action is to change the behavior of the individual concerned and to show other

workers that discipline will not be tolerated. However, implementing an effective disciplinary system is one of the most difficult tasks.

The exercise of disciplinary action in the public sector should be based on a set of clearly defined regulations and procedure. This initiative entrusted with the responsibility of improving existing systems and disciplinary procedures to ensure efficient implementation. Generally, Public Officers (Conduct And Discipline) Regulations 1993 lay down a code of conduct or discipline for the public service of the Federation (Gan, 2007).

Definition of Disciplinary Proceeding

Disciplinary proceeding is a mechanism that embrace source of power aspect (in taking disciplinary action and impose disciplinary punishment), policy, procedure, surcharge, and punishment function to investigate, judgment and punishment the employees. It also action in mechanism of deterrence such as to deterrence and avoid employees from involve in wrongdoing and immoral action. In extreme situation, disciplinary proceeding will provide allocation to end the service of employees. An administrative proceeding considering the suspension or expulsion from a profession of a licensed individual, as the result of a crime for which he or she was convicted, or of a disciplinary infraction such as a breach of a code of ethics (Samihah et.al, 2009).

As with any profession, discipline is used to address performance problems. It may be viewed as both corrective and punitive depending on the organizational objectives of the employer. In policing, discipline is usually viewed as punitive and often administered in a progressive form: oral counseling, verbal reprimand, written reprimand, suspensions of various lengths of time, and termination. Discipline comes in two forms: positive and negative. Positive discipline is not punitive; it focuses on teaching and coaching employees on proper job performance. Negative discipline involves punishment; specifically it is used to deter the employee. Innovative police agencies have shifted their disciplinary policies in the past ten years from negative discipline to positive discipline.

According to DeCruz (n.d) employers have adopted many types of procedures for disciplining employees. One of the more popular methods is the "progressive discipline" model. Progressive discipline is designed to improve employee performance while allowing the employer to document its efforts should discharge be necessary. Progressive discipline provides for a series of steps designed to remedy problems. If the problem is not remedied at the first stage, the next step is implemented until either the problem is resolved or the employee is discharged. The stages of progressive discipline generally include:

- Verbal counseling
- Written counseling
- Second written counseling
- Suspension/Decision-day
- Termination

Hays (2003), realize that the use of progressive discipline procedure is generally considered to be an effective means of responding to problem employees in contemporary public agencies. These procedures are based on the premise that discipline ought to have a positive rather than punitive focus. The progressive discipline procedures are usually inserted in employees handbooks and consist of lengthy lists of violations accompanied by the punishment that will invoked for the first, second and third offenses. For instance, tardiness might be countered with a verbal warning in the first instance, a written warning on the second occurrence and a formal reprimand on the third occurrence.

The goal of progressive discipline is to correct inappropriate and unproductive behavior and to allow the employee a reasonable opportunity to modify his/her behavior. Good supervision includes coaching sessions between the supervisor and the employee as a means to correct a behavior before it leads to written discipline. Progressive discipline is not appropriate to address serious offenses such as theft, workplace violence, harassment, or dishonesty which would warrant immediate discharge. Employees who are the focal point of an employer investigation related to an alleged serious offense, or actions that create a hindrance to the effective performance of city functions, reflect discredit upon the city, or otherwise render the employee unfit for duty; may be subject to administrative leave without pay pending the conclusion of the investigation. Serious violations, as determined by the City, may be dealt with by any of the disciplinary measures listed below on the first or subsequent offenses. It is not the intent of this policy to promote or require a lock-step progression of disciplinary measures to every disciplinary action.

According to DeCruz (n.d.), items to include when documenting disciplinary action are:

- All disciplinary action should be recorded in writing and kept in employee's personnel file
- Cite specific rule violation or employment problem
- List all applicable information including date of infraction and witnesses if appropriate
- List prior disciplinary action taken on same issue
- List specific future course of action including timetable
- Require employee to sign and date disciplinary action
- Require supervisor and witness to sign and date disciplinary action

Disciplining an employee is one of the most difficult tasks a supervisor must perform, next to terminating an employee. A "wait and see" or "things will get better" approach normally only adds to the problems. Co-employees will resent that another employee is getting away with something, thereby creating a morale problem. By counseling or disciplining an employee as soon as a problem arises, the employer is able to dictate the course of proceedings for existing and subsequent problem employees. By confronting the employee, things may improve immediately. Even if the problems do not improve, the employer has created the necessary "paper defense" in the event the employee is ultimately discharged. (DeCruz, n.d.)

Disciplinary action includes any action whereby a permanent classified employee is deprived of any classification or any incident of any classification, including dismissal, suspension, demotion, or any reassignment that causes a reduction in pay without the employee's

voluntary written consent, except a layoff for lack of work or lack of funds. A suspension may be for a period not to exceed thirty (30) assigned working days. Disciplinary actions may be invoked in the following order:

1. Written reprimand
2. Demotion, suspension with loss of pay, reduction in salary, or loss of paid leave
3. Discharge

Definition of Good Governance

Leftwich (1993) identifies three strands to good governance: systemic, political and administrative. The systemic use of governance is broader than government covering the distribution of both internal and external political and economic power. The political use of governance refers to "a state enjoying both legitimacy and authority, derived from a democratic mandate". The administrative use refers to "an efficient, open accountable and audited public service". And to achieve efficiency in the public services, the World Bank seeks to encourage competition and markets, privatize public enterprise, reform the civil service by reducing over staffing, introduce budgetary discipline, decentralize administration and make greater use of non-governmental organization (Williams and Young, 1994).

Good governance also known as an indeterminate term used in development literature to describe how public institutions conduct public affairs and manage public resources in order to guarantee the realization of human rights. Governance describes "the process of decision-making and the process by which decisions are implemented (or not implemented)". The term governance can apply to corporate, international, national, local governance or to the interactions between other sectors of society. The concept of "good governance" often emerges as a model to compare ineffective economies or political bodies with viable economies and political bodies. Because the term good governance can be focused on any one form of governance, aid organizations and the authorities of developed countries often will focus the meaning of good governance to a set of requirement that conform to the organizations agenda, making "good governance" imply many different things in many different contexts. In short "good governance" marries the new public management to the advocacy of liberal democracy. Governance is best understood in terms of the key elements that are commonly seen it describe what is "good governance" to assist performance, accountability, transparency, participation, relationship management and depending on the context efficiency and equity (Edwards M, 2002).

According to the World Bank, governance is "the manner in which power is exercised in the management of a country's economic and social resources for development. On this meaning, the concept of governance is concerned directly with the management of the development process, involving both the public and the private sectors. It encompasses the functioning and capability of the public sector, as well as the rules and institutions that create the framework for the conduct of both public and private business, including accountability for economic and financial performance, and regulatory frameworks relating to companies, corporations, and partnerships. In broad terms, then, governance is about the institutional environment in which citizens interact among themselves and with government agencies/officials.

In its report, Governance for Sustainable Human Development, the UNDP acknowledges the following as core characteristics of good governance such as 1) Participation, 2) Rule of law, 3) Transparency, 4) Responsiveness, 5) Consensus orientation, 6) Equity, 7) Effectiveness and efficiency, 8) Accountability and 9) Strategic vision. (Adel M. Abdellatif, 2003)

Good governance depends on transparency, accountability and equality in ways that are responsive to the needs of people. It is composed of the mechanisms, processes and institutions through which citizens and groups can articulate their interests, exercise their legal rights, meet their obligations and mediate their differences to promoting effective governance, including corporate governance, law, and civil society and managing the public sector.

Importance of disciplinary proceeding

Many consider that it is vital for persons facing disciplinary charges to be given a fair chance to speak for themselves since the rights involved in disciplinary proceedings are usually important ones and extend to the right to remain in a profession, service or occupation. It is anticipated that

The disciplinary tribunals will need very strong justification if decided to refuse legal representation completely in the disciplinary proceedings. Also, since the outcome of a disciplinary proceeding can be disastrous in terms of one's career and/or reputation, person facing disciplinary charges should carefully consider the option of obtaining professional assistance and legal representations.

In employment law, disciplinary action is a process for dealing with job-related behavior that does not meet expected and communicated performance standards. The primary purpose for discipline is to assist the employee to understand that a performance problem or opportunity for improvement exists. The process features efforts to provide feedback to the employee so he or she can correct the problem. The goal of discipline is to improve employee performance.

DøCruz (n.d.) claims that the goal of progressive discipline is to give the employee a chance to correct errors or work performance issues at the first opportunity possible. The process gradually increases the severity of the corrective action and corresponding disciplinary penalty if the employee fails to improve. An important point to remember about progressive discipline is that it is intended to be corrective, rather than punitive. Therefore, as a general rule, the minimum disciplinary action should be the first step in the corrective process.

The need for rules and disciplinary procedures because of:

- i. Rules are necessary because they set standards. A good disciplinary procedure helps employees keep the rules, and helps employers deal fairly with those who do not
- ii. Rules will normally cover issues such as absence, timekeeping and holiday arrangements, health and safety, use of the organization's equipment and facilities, misconduct, sub-standard performance, and discrimination, bullying and harassment
- iii. Rules and procedures should be clear, and should preferably be put in writing. They should be known and understood by all employees

- iv. All employees should have ready access to a copy of the rules and disciplinary procedures
- v. Management should aim to secure the involvement of employees and any recognised trade union or other employee representatives when rules and disciplinary procedures are introduced or revised
- vi. Rules should be reviewed from time to time and revised if necessary
- vii. Management should ensure that those responsible for operating disciplinary rules understand them and receive appropriate training

For management, progressive discipline maintains order and enforces organization rules. It affects employee morale and productivity positively. It helps rehabilitate employees who choose to correct their behavior; and it helps to justify termination of employment of those who do not. Discipline which is not properly administered and thereafter is reversed or rescinded has the negative effect of discrediting the rule, policy, procedure, and/or supervisor.

For supervisors, the administration of discipline is a responsibility as important as planning, organizing, leading, and controlling the work unit. This disciplinary responsibility requires the supervisor to establish, understand, communicate and enforce rules, policies, procedures, and the provisions of the collective bargaining agreements and employee handbooks. The effectiveness of the disciplinary action depends upon the supervisor's exercise of good judgment, fairness, tact and common sense in its administration. Supervisors must not allow inappropriate behavior to be ignored. It is their obligation to take appropriate action promptly. It is disruptive and divisive when disciplinary actions are reduced or set aside by an impartial third party. It is important for the maintenance of the work environment that disciplines not be reversed. Supervisors should carefully follow the principles of discipline to avoid this.

For employees, progressive discipline sets clear standards and warns of consequences for noncompliance. It assures predictable, progressive, and equitable treatment. It promotes fair decisions, and it provides a process to appeal disciplinary decisions.

Disciplining employees can be time consuming, difficult, and challenging. However, if you want the disciplinary action process to go as smoothly as possible, it is important to develop clear policies and procedures that will result in a strong disciplinary action program. By having a solid program in place, it will help to protect you and your organization. Below are some steps you can take to develop and implement an exemplary disciplinary action program.

Statistics

Until January 2009, the public service made up more than 1.4 million staff who cover 10% of the total workforce in Malaysia. It is undoubtedly true that public service is the backbone of the state. However, issues involving public officials misconduct have always captured people's attention these days.

Table 1 shows disciplinary action taken against public servant from 2002 to 2007. According to this table, the highest service classification faced disciplinary action is federal employees. In general, the number of disciplinary action decline gradually.

Table 1: Disciplinary action taken against public servant, 2002-2007

| Service Classification | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------------------------------------|------|------|------|------|------|------|
| Federal employees | 1136 | 552 | 1066 | 978 | 714 | 590 |
| State civil servants | 282 | 206 | 154 | 239 | 304 | 139 |
| Federal statutory bodies employees | 303 | 312 | 217 | 127 | 353 | 467 |
| Local council employees | 222 | 302 | 367 | 249 | 271 | 209 |
| Total | 1943 | 1372 | 1804 | 1593 | 1642 | 1405 |

On the other hand, disciplinary cases involving public servant for 2008 recorded a significant increase. According to Chief Secretary to the Government Tan Sri Mohd Sidek, 3,383 disciplinary cases involving public servants were recorded last year compared to 2,159 cases in 2007, registering an increase of 36.2 per cent. There was a 27.43 per cent increase in the number of cases in the federal public service, a 57.62 per cent increase in the state public services and a 30 per cent increase in the local authorities (Bernama, 2009).

Besides that, in the first quarter of this year compared to the corresponding period last year, the number of civil servants subjected to disciplinary action has increased by 71 or 20.1 per cent

The Public Service Department (PSD) has reported that 353 civil servants, excluding soldiers and policemen, were taken to task in the first quarter of this year compared to 282 in the corresponding period last year. Specifically, federal employees accounted for 241 or 68.3 per cent of the offenders in the first quarter of this year followed by federal statutory bodies' employees (69 or 19.5 per cent), state civil servants (eight or 2.3 per cent), local council employees (31 or 8.8 per cent), it said. (Bernama, 2009)

In short, it is understood that the number of disciplinary cases is start to increase. It seem that disciplinary proceeding should be enhance to improved the situation.

RECOMMENDATION

In order to further strengthen public sector capability, emphasis should be given to enhancing disciplinary procedure and action. The suggestion for disciplinary issue in public sector and improving disciplinary proceeding in enhancing good governance involves two aspects:

1. Disciplinary rules and procedure
2. Management and administration

These are two areas or aspect that needs to be improved in disciplinary proceeding.

Disciplinary rules and procedure

i) Disciplinary authority

a) Increase board membership

At the commission level, board membership should be added to four members and chairman. At this moment, board members are comprised of chairman and two members. A disciplinary committee quorum should retain the same. Law advisor or law officer should attend a hearing regarding case of reduction in rank and dismissal

b) Formulation of periodic time table for members attendance should.

ii) Disciplinary procedure

a) Oral hearing should be available as an option for officer.

b) Officer should be informing about the progress of their case if required.

c) Board decision should be informed to the officer as soon as possible (within 21 working days).

d) Administrative tribunal should be established in the local authority. This practice was implemented in Australia, Dominican Republic, USA, France and Hong Kong.

iii) Types of disciplinary punishments

The government has sufficient laws and regulations enabling the departments and agencies to take actions against delinquent officer. Furthermore, it is appropriate and parallel as implemented in other country. Thus, nothing should be change regarding disciplinary punishment.

Management and administration

i) Secretariat task scope should focus more on disciplinary management. Disciplinary secretariat at the ministry and department level should be strengthened

ii) Post in the disciplinary unit should be added so that they can play their role as a reference centre for Malaysian Public Service.

iii). Enhancing competency among head of department and secretariat. The major way in which competency is instilled into head of department is via:

a) Continuous training.

b) Strengthening and updating module for Public service Department (PSD) disciplinary management course.

c) A training kit and training for trainers on disciplinary procedure. It is the main reference to make sure disciplinary action is being done according to the rules and regulations.

d) Special training for new officers should be held regularly. This can be an important tool for enhancing public servant understanding about disciplinary issue.

iv) Attending basic module disciplinary management is must for every board member. This module covers law principal and example of court cases. This course should jointly organized by PSD, Public Service Commission (PSC) and Attorney General's Chambers. It will encourage action towards making its provisions widely known and to promote its effective implementation.

v) Secretariat should release complete surat pertuduhan according to the PSD standard.

vi). As part of the activities to enhance their understanding, every head of department should be given explanation regarding their role and responsibility in the disciplinary management context. At the same time, every matters regarding disciplinary should be included in the head of department job scope specifically.

vii) There must be cooperation between department disciplinary secretariat with other party (e.g. SPRM and police). This cooperation will result in more effective, work-saving and accurate action against misconduct.

viii) Enhancing the awareness of secretariat and disciplinary board about latest court cases via:

- a) Online court cases compilation
- b) Establish resource centre at JPA for the purpose of consultant service

x). Rating system

In order to address some of the concerns regarding accountability, government should introduce accountability index in public sector disciplinary management. This rating should be conducted from time to time. With the implementation of this index, the benefit accruing is the objective and accurate evaluation.

CONCLUSION

On par with the people's expectation, the government should take every effort to improve public services delivery system. Due to this, improved disciplinary proceeding will promote the effective implementation of the rules and regulation regarding disciplinary issues among public servant. Thus, public services delivery system will be enhanced. Indeed, improved public service delivery leads to enhanced good governance.

Overall, improved disciplinary proceeding in the public sector is hugely important. The government has devoted much attention to the issue of discipline among public servant. Therefore, we should keep the issue of disciplinary management under regular review.

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