

Limitations and Role of disciplinary Judge in Evidentiary Process

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an introduction :

Evidence plays an essential and important role in determining the administrative responsibility before the administrative judiciary, because the judge considers him decisive to convince the facts before him or not, And since the criminal judge and the disciplinary judge took the doctrine of free proof, which is based on the complete freedom of the judge in proving the lawsuit before him, so we had to discuss the role of the criminal judge and the disciplinary judge and the limits and the role of each of them in proving the lawsuit before them.

From this standpoint, we will clarify the topic in question on the following points:

Search problem and its purpose:

Our choice of the topic of research 'limits and role of the disciplinary judge in proof' comes from the great importance of proof in general and evidence in the disciplinary field in particular, and given that there are no provisions for proof before the disciplinary judiciary, it was necessary to discuss this research the issue of the role that the disciplinary judge is based on proof And the limits that he must adhere to and not to be infringed.

The scope of research and its difficulty:

The focus of the study in this research revolves around evidence in the disciplinary lawsuit and the role played by the disciplinary judge when he begins to analyze and refute the evidence before him in the lawsuit to prove it.

The subject of the study here lies in the scope of the boundaries and role of the criminal and disciplinary judge in proof, but we are discussing an extension about the role of the disciplinary judge and his limits in proving his disciplinary lawsuit before him.

Division and study plan:

We start this research by talking about the role played by both the criminal Judge and the disciplinary judge when proving the lawsuit, and then we talk about the principles that govern the disciplinary judge when practicing his role in proving disciplinary lawsuit and the extent of his commitment to it, and the extent of his freedom to search for evidence that is useful in revealing the truth And his authority towards this evidence.

We will clarify these points that we address in this research as follows:

The first topic: the limits and role of the judge in proof in general.

The first requirement: the role of the criminal and disciplinary judge in proof.

The second requirement: the principles governing the role of the disciplinary judge in proof.

The second topic: the judge's role in searching for evidence and his authority towards it.

The first requirement: the judge's role in searching for evidence.

The second requirement: the judge's authority towards the evidence he discussed and reached.

The First Topic

Limitations and Role of disciplinary Judge in Evidentiary Process

Given all legal actions, whether civil, criminal, or disciplinary, we shall conclude that substantiation of the case is an essential, necessary and inevitable element to arrive at the truth, which is sought by both the judge and the parties to the case. Also, considering the evidentiary systems in such actions, we will find that each system is different from the other. In civil actions, the Hybrid Proof Theory is adopted. In criminal and disciplinary actions, the Absolute Evidence Theory is adopted.

For the purpose of this Paper, we will address the Absolute Evidence Theory which is adopted by both the criminal judge and disciplinary judge. However, does this Theory mean that a judge has sole discretion in forming an opinion? Is his role in Evidentiary Process in disciplinary action is absolute or limited? Or is he bound by restrictions and limits in the exercise of such a role?

Hence, according to this Theory, is the judge has sole authority in providing proof in an action by forming an opinion using such means as he deems appropriate, without restrictions or limitations? Or, otherwise, is his role limited and restricted by certain restrictions or limitations? And, if there are any such restrictions or limitations which cannot be broken, are these stipulated or assumed by the fundamental and self-evident principles?

The First Requirement

Criminal and Disciplinary Judge's Role in Evidentiary Process

The criminal judge, while examining a criminal action brought before him, and the disciplinary judge, while examining a

disciplinary action brought before him, both aim at reaching the truth and then render a ruling to punish the defendant if it is proven that this defendant committed a crime, or he is acquitted if it is proven to the judges that he is innocent of the relevant charges. Therefore, we will discuss the role of each judge during the process of consideration of action, in terms of evidence therein. However, for the purpose of this Paper, we will extensively address the role of the disciplinary judge.

First: Role of Criminal Judge:

The position of a criminal judge on a criminal action features the same position of a civil judge on civil action. As both judges engage in a public service task, then there shall not be personal will or intentions. In civil or criminal actions, the judge shall perform their respective duty, and, therefore, the judicial impartiality (evenhandedness) will prevail in both actions. Nevertheless, in both actions, there are established principles; the accused shall be presumed innocent until proved guilty, the burden of proof is on the person who brings the action, each litigant is entitled to access to the evidence or submissions of their opponent to reply to and discuss them, that the judges must base their findings on the evidence before them, and that judge's satisfaction and, therefore, their decision, shall be based on admissible reasons.⁽¹⁾

In the Absolute Evidence Theory, the criminal judge enjoys an extensive power to select and weigh the evidence presented to him, upon which his judgment is based. In the absence of provisions for criminal evidence and absence of governing rationing, the criminal justice system granted the judge, in consideration of the criminal action, a vital role in substantiation of the action, whether

(1) Ahmed Abu Al-Wafa - Commenting on the Provisions of the Evidence Law - Mansha'at Al-Maaref, n.d., p. 23

in the selection of the appropriate evidence or weighing evidence presented to them; and, accordingly, forming their satisfaction and, therefore, their decision.

The Judge has a sole power to employ all means of proof; to find out and reveal the truth. Eventually, he will render his rulings by his satisfaction as per the circumstances of each action respectively. He is not limited or affected by a

specific opinion he expressed before in evidence presented to them or other judges in another action, even if the circumstances are the same in both actions and between the two pieces of evidence.⁽¹⁾

Secondly: Role of Disciplinary Judge

Under the disciplinary judiciary, the role of the judge in the disciplinary action is fundamental and central, in terms of substantiation of the action. Thus, as long as the disciplinary judge elects the Absolute Evidence Theory, his role is then effective and influential on evidence; as he has the sole power to apply whatever means available to him, while the weight of evidence is absolute. His role in the evidentiary process is so effective, by adopting any such path or means as he considers appropriate to reach the truth; especially in the disciplinary case to which one of its parties represents the vulnerable position, namely an accused individual, who has to rebut such charges made by the administrative authority, representing the strong position.

The relationship in the disciplinary action is between the parties to the action, as previously mentioned; either of them is the weak party, and the other is the strong party. Given such powers granted

(1) Dr. Raafat Abdel-Fattah Halawa - Criminal Evidence: Its Rules and Evidence - Dar Al Nahda Al Arabia - 2003 - p. 55

to the administrative authority, the strong party, which has all the evidence, including documents and papers that are beneficial in reaching the truth, while the other party has no evidence to support its position, the positive role of the disciplinary judge here comes to rebalance the positions of parties to the case.

For achieving justice, correspondence between factual truth and judicial truth requires the judge to adopt either the Absolute Evidence Theory or Hybrid Proof Theory. However, on the one hand, such absoluteness may lead to feeling unconfidence in the justice of judges, while the legal positions are still unbalanced; as the judge's extensive power varies from one person to another. On the other hand, this leads to limitation of evidence, even if it aims at achieving balanced treatment and establishment of the litigants' confidence in justice. Yet, it may also lead to keeping the judicial truth away from the factual truth. Therefore, the Hybrid Proof Theory requires the judge to determine the evidence and the weight of some of them. In addition, the judge has the authority to weigh any such evidence that has not been valued by the law, as well as provided with some positive powers in preparation of the case. Accordingly, the role of the judge, under the Hybrid Proof Theory, is featured with a sort of impartiality leading to providing confidence and balance treatment, while ensuring to bring the judicial truth closer to the factual truth.⁽¹⁾

In this context, the Egyptian State Council Law 47 of 1972 did not establish specific legal standards of proof to be followed by the judge, nor did it indicate any respective procedures, nor did specify the weight of any evidence. Therefore, the disciplinary judge is not limited by nor required to follow specific means or standards of proof, making his role more positive and fundamental. This

(1) Dr. Ahmed Kamal El-Din Musa - Ibid, p. 49.

positive and fundamental role grants the judge the sole power to determine such methods of proof acceptable to him, which are - in his opinion- in alignment with the circumstances of the case brought before him, and to determine the weight of each of them.

In administrative actions, the administrative judge adopts such means of proof as set out in the private law, takes into account such procedures as established for each of them, and refers to them within such limits that do not conflict with the nature of the action, the regulations of the administrative judiciary and the special executive provisions. Meanwhile, the judge has the sole power to assess the extent of the authority of such means on an equal basis, as all such evidence before the administrative judiciary is equal. Based on this, the judge can form his opinion out from any satisfying evidence while observing the rights of the defense. Thus, the administrative judge has the full authority as a general basis to evaluate the extent of his reliance on such means of evidence; forming his full opinion. ⁽¹⁾

In disciplinary actions, the role of the disciplinary judge in preparing for the case is absolute. He has the right to adopt the various means of such evidence created by the jurists of administrative law, whether they are general means such as submitting documents and papers or ordering to conduct investigations, or investigative means such as seeking the assistance of expertise, testimony, inspection, interrogation, and comparing scripts, etc.

Therefore, the disciplinary judge's role in evidence is not limited to the provisions of the law, whether or not it is related to the applied disciplinary procedures, or such general procedures applied before the trial courts. Rather, his role, in this area, features an

(1) Dr. Ahmed Kamal El-Din Musa - Theory of Evidence in Administrative Law - Dar Al Fikr Al Arabi - 2012, p. 52.

extensive power in adopting such means as he deems - in his opinion- appropriate and useful in proving the case, without being adhered to any rules or procedures.

The absolute role of the disciplinary judge in evidence, during consideration of the case, can be supported as that so far, no general theory of disciplinary proof has been formulated. Moreover, the administrative and disciplinary jurisprudence did not address the means of proof in disciplinary law in such depth arrived by criminal jurisprudence. In Egypt, just a few opinions are made about proof in the administrative case. However, such opinions do not constitute a unanimous consensus of a majority of jurists, and they cannot be even relied upon in forming a specific jurisprudential opinion.⁽¹⁾

The legislator granted to the disciplinary judge the full power to substantiate the case, by solely determining such means of proof that are beneficial to the case, and to investigate the evidence himself. Also, the disciplinary judge shall rely on submissions of the litigants or under his duty, order to adopt such procedure as he deems appropriate and necessary to adjudicate the case. He has the sole authority and power to take the statements and interrogate the defendant, to hear witnesses, and to order to conduct a disciplinary investigation, if the available elements of proof are insufficient or not satisfying⁽²⁾. Therefore, the disciplinary judge's role in substantiation of the claim - from our point of view - is positive and absolute and not bound by anything, whether in terms of the power of assessment, satisfaction with a specific means, or completion of missing procedures before the referring the case to the court.

(1) Dr. Muhammad Majed Yaqout, Explanation of Disciplinary Law for Public Service - Dar Al-Jamiaa Al-Jadida, 2009 - p.1323

(2) Dr. Muhammad Majed Yaqout, Ibid. p. 1324.

Furthermore, it should be noted that the judge has the sole power to determine the accepted means of proof and to assess the extent of their strength in proof. Thus, the legal evidence in administrative disciplinary law, in particular, is based on absolute satisfaction, as it is before the criminal courts, including the role of the judge in his satisfaction with the submitted evidence. However, he exceeds this by gathering and presenting the evidence. Hence, the judge is granted more power and authority under the disciplinary than the criminal law.

About the judge's role in substantiation of the case, it is said that his duty is mainly the legal aspect. However, where the judge's duty has a special nature in which the various aspects are determined; thus, the social aspect and psychological aspect are no less important than the legal aspect, which is the basis of his duty. This is because the criminal or disciplinary judge is not a legal researcher despite the common importance of legal provisions. Thus, they are the basis for the function of both, with that being said: A criminal judge is nothing but a psychiatrist, whose duty is to reform behavior and rectify any inconsistencies therein. ⁽¹⁾

While the positive and absolute role of the disciplinary judge is established by the power of directing the case, the civil judge's role, however, is substantially negative; as it is limited to monitoring the proceedings pursued by the litigant. In the civil case, the judge - in general - may not intervene in it but resolve the dispute when the case becomes ready for adjudication, which, therefore, justifies the description of the civil trial as an act and direction of the litigants. ⁽²⁾In the disciplinary case, in contrast, the role of

(1) Dr. Khaled Hamad - Judicial Persuasion in the Field of Weighting of Criminal Evidence - Research Journal for Humanities and Social Sciences - Studies and Research Center, 140.

(2) Judge / Jihad Safa - Research in Administrative Law - Al-Halabi Human Rights Publications, 1st Edition, 2009, p. 75.

the disciplinary judge is the sole and absolute in the proceedings for establishing the case. Under the Absolute Evidence Theory adopted in substantiation of the disciplinary case, the judge has the sole discretion to consider whatever he deems appropriate and productive for the substantiation of the case. His role can be called the role that is superior over any opinion. Hence, this is the difference between the role of the disciplinary judge and the role of the civil judge in evidence.

In this regard, the Supreme Administrative Court provides that:

“The disciplinary judge has the complete and sole authority in substantiation of the case. He is not bound by specific means of proof, while having the sole power to determine such means of proof to be acceptable to him, and such evidence as he is satisfied with according to the circumstances of the case before him. He may rely on whatever he deems important, base his opinion and satisfaction, and neglect whatever he sees as in doubt to him, for rendering his judgment. The satisfaction of the disciplinary judge is the basis for his judgment without taking into account the precedence of means or instruments of proof.⁽¹⁾”

Consequently, the adoption of the Absolute Evidence Theory makes the disciplinary judge’s role in substantiation of the case an important, positive, and crucial one. This role is reflected in the power of the disciplinary judge in substantiation of the case unconditionally.

In light of the foregoing, we conclude that the role of the disciplinary judge in substantiation of the case is expressed in the following matters:

(1) Ruling of the Supreme Administrative Court in Appeal No. 3063 of 31 J Hearing dated 20.2.1988; Modern Administrative Encyclopedia - Technical Office - Part 29 - p. 800.

The disciplinary judiciary's embracing of the Absolute Evidence Theory, under which the judge has an unconditional power, makes his role essential in substantiation of the case. Indeed, it is considered the main element in substantiation of the case, and, eventually, arriving at the truth.

The role of the disciplinary judge is not limited to referring to general means of proof in the disciplinary case, such as requesting access to case and investigation documents and papers. Rather, he has the power to seek investigative means, such as expertise, testimony, and/or inspection, to obtain any grounds for revealing the truth.

The role of the disciplinary judge is different from that of the civil judge; as the latter is bound by certain means of proof, and may not accept specific means or neglect others. While the civil judge may not have the right to accept any means of proof as not furnished by the legislator, the disciplinary judge is not bound by, but rather, has the full right to use different means of proof, as well as not limited by legal provisions; as the disciplinary judge has no specific provisions for proof.

The most important feature of the disciplinary judge's role in substantiation of the disciplinary case is that, during consideration of the case, the judge's role is not limited to his judicial duty only, but is considered a mirror for the legal, social and psychological aspect while performing such a role, to arrive at anything appropriate to the relevant dispute. For this judge, all the available and legitimate means of proof are on the same degree of strength. Thus, the legal, social and psychological role may be practiced to reach the appropriate means corresponding to the relevant dispute. The rationale behind this is that the disciplinary judiciary, as indicated

earlier, did not provide regulating provisions on evidence. Hence, the judge has an important role in the substantiation of the case. Also, this role would not only serve at the legal aspect but goes beyond it to include the psychological and social aspect, reaching the truth.

The role of the disciplinary judge in the substantiation process of the case reflects his positive role, which fully corresponds with the Absolute Evidence Theory. This follows that the judge never leaves substantiation of the case on the shoulders of individuals. This role is not only vested in the judge to decide upon the strongest argument but rather he plays a significant role in the truth-seeking. Also, an opponent must be lawfully granted the opportunity to discuss the evidence presented by the other opponent. As all the evidence procedures are conducted against the litigants, each opponent can comment on the evidence presented by the other opponent, and, thus, the opportunities for submitting arguments are equal for both opponents.⁽¹⁾

The Second Requirement

Principles Regulating the Role of Disciplinary Judge in Evidence

The substantiation of the case represents the judge's satisfaction, by employing such legal evidence which establishes or denies the facts of the case⁽²⁾. As the role of the judge in the proof process varies as per the type of case and the evidence theory adopted by the judge. The disciplinary judge follows the Absolute Evidence Theory in substantiation of the case, the basis of which relies on the judge's complete power to select and weight evidence, and, then form his satisfaction as he deems fit, with no restriction or

(1) Dr. Amr Fathallah Okasha. Ibid, p. 54

(2) Dr. Hisham Abdel-Sayed Al-Safi - E-Guide before Administrative Judge - Journal of Law and Political Science - Faculty of Law, Helwan University, Part 10, Issue (4) of 2017, p. 251.

condition placed by law or any certain evidence to be adopted.

Nevertheless, as the disciplinary system adopts the Absolute Evidence Theory; does it make him free from all restrictions and limitations, and be completely free to do whatever he wants and what he orders? Or shall he be bound by certain fundamental rules and principles for substantiation of the case, whether by his precedents or by general rulings? Does the adoption of the Absolute Evidence Theory in the disciplinary judiciary reduce and/or affect the positive role of the disciplinary judge, which is considered one of the most important features of the disciplinary judge regarding his role in substantiation of the case?

Since the disciplinary system lacks special provisions provided by the legislator for regulating substantiation of the case, which entails that the judge then adopts the Absolute Evidence Theory, which makes him not bound by certain rules or limitations imposed by the legislator. He has full authority in substantiation of the case. law. However, for establishing the principle of respect for the law and its sovereignty, there are certain principles or rules governing the role of the judge in any case, whether civil, criminal justice, or disciplinary judiciary, as these principles are stipulated by general customary rules or principles, intuitions, and provided for in the laws of evidence, and laws of civil and commercial pleadings, which is considered the general principle we must refer regarding public and fundamental rules.

Therefore, the role of the disciplinary judge in substantiation of the case is governed by certain general principles or rules that shall be adhered to in proof, no matter was the type of the case under consideration; civil, criminal, or disciplinary.

These rules and principles can be clarified as follows:

First Principle: Principle of Judge's Impartiality:

The principle of judge's impartiality implies that the judge, in forming his opinion, is bound to the evidence presented by the litigants, in such means as specified by the law. He shall decide upon the case as per weighing evidence and in accordance with such rules stipulated by the law in this regard. For example, he is not entitled to search on his own for any facts, documents or evidence that was properly presented by litigants; to uphold or deny their allegations.⁽¹⁾

The principle of the judge's impartiality does not imply that the judge shall be impartial to one of the parties to the litigation at the account of the other. Indeed, it is intended for the judge to limit the formation of his opinion on such evidence presented by the litigants, and in such ways specified by the law. Hence, he will adjudicate the case based on such evidence as weighted by him, in accordance with the rules stipulated by the law in this regard.⁽²⁾

Without a doubt, this principle is important as it is one of the requirements of the judicial function and one of the main guarantees⁽³⁾ in litigation which shall apply even if there is no explicit provision thereon. Also, there is no doubt that such importance is increasing at the stage of establishment of rights, being the most important and difficult stages of litigation. However, it should be noted that this principle is one of the most important features of restricted evidence, and has a basis in civil opinion. In contrast, the disciplinary action holds the Absolute Evidence Theory, which increasingly supports the positive role of disciplinary judge.

(1) Dr. Ali Barakat - Evidence Procedures before Civil Court - Dar Al Nahda Al Arabia- 2016 - p. 20.

(2) See: Dr. Osama Ruby Abdel Aziz - Ibid, p. 27.

(3) Dr. Ali Barakat - Ibid, p. 21.

Correspondingly, we conclude that this principle, with all its conditions, cannot be fully applied. Rather, the disciplinary judge may adopt whatever he deems appropriate and valid, and neglects whatever he deems inappropriate, of such conditions and certain elements during consideration of the case, being consistent with the nature of the disciplinary case and the evidence therein.

The principle of the judge's impartiality bears certain important results, which the civil litigation judge shall take fully. While in disciplinary cases, the disciplinary judge shall take whatever he deems appropriate and neglects whatever he deems inappropriate, without adhering to any obligations imposed on by law, based on the Absolute Evidence Theory in disciplinary cases.

Therefore, we conclude that the results of the principle of impartiality of the judge, which shall be observed by the disciplinary judge, are as follows:

Judge's refusal or disqualification with his personal knowledge:

In the establishment of the principle of impartiality that shall be observed by the disciplinary judge in general and in the substantiation of the case in particular, the judge shall form his satisfaction and base his opinion in ruling on the evidence in the case, so that the litigation and any evidence presented therein is the sole vehicle from which the judge derives his satisfaction. Thus, the judge may base his ruling on his personal information and knowledge.⁽¹⁾

The judge may refuse or disqualify himself from relying on a specific fact or evidence known to him without being submitted by

(1) Kindly Refer to: Dr. Ali Barakat, Ibid, p.22.

the litigants. Therefore, he may not base his opinion or judgment on such fact or evidence. Thus, the judge, in establishing his judgment, shall be limited on such submissions and evidence presented by the litigants to establish their rights in the relevant dispute.⁽¹⁾ Accordingly, the judge may not rely on his personal information or knowledge in the case or on whatever he personally saw or was involved in any other court without the presence of the litigants. ⁽²⁾

While the judge is permitted to render a judgment according to his own assumptions or speculations, no matter how relevant they are. Rather, he shall seek the precise rationale in such thinking that led him to this satisfaction; i.e, his satisfaction shall be in alignment with reasoning and logic⁽³⁾. The reason behind the inadmissibility of the judge's judgment on his personal knowledge is that he is not a litigant or party to the case, but rather he is a judge whose duty is to be impartial and to deliberate the submitted evidence until the case is concluded. Even if he is aware of a fact or evidence that may affect the case or be more powerful than the presented evidence. Yet, the judge is not allowed to render a judgment by relying on such facts he is aware of, as this conflicts with and exceeds his judicial function, may bring him to be a party to the case, and may cause doubts and/or suspicions against him for being biased towards one opponent than the other.

“Personal knowledge” or **“Personal Information”** means such information that is known to the judge regarding the facts of the case, where such information is not submitted under such

(1) Dr. Osama Ruby Abdel Aziz, Ibid, p. 28.

(2) Dr. Muhammad Majed Yaqout, Explanation of Disciplinary Law for Public Service - Dar Al-Jamiaa Al-Jadida, 2009 - p.1346

(3) Dr. Hassan Rabie - The Role of the Criminal Judge in Evidence - A Comparative Study - Dar Al Nahda Al Arabia - Fourth Edition - p. 158.

legally prescribed means as established by the legislator for consideration of cases. This reflects respecting the litigants and their rights of defense granted by law, while not surprising the litigants with evidence and facts that are not submitted by them or discussed among them, nor that were not proven within the proceedings and the existing submissions.⁽¹⁾

The parties to a disciplinary case (Administration and Employee) recourse to the court to support their claims only when investigation attempts failed to reach a solution to their mutual satisfaction. That, if they knew that the judge will decide upon this case based on his personal knowledge and/or such information that he may be aware of, they would not recourse to the court, and, rather, they would only rely on the preliminary investigation and the results thereof. Either party refers to the judge to submit whatever evidence they have and to support their rights, to which the judge shall adhere in the case. From this point, the disciplinary judge may not form an opinion or render a judgment with his personal information, even he is aware of the facts of the case or all the circumstances thereof.

Consequently, a disciplinary judge who, for example, witnessed an incident by the employee at the administration, even if by chance, may not be a member at Judicial Council to decide the case in particular. Because, in this case, he will be aware of the incident and circumstances and then may be affected by his attitudes or personal knowledge about this incident. Therefore, this judge may not be a member of the Judicial Council to decide the case in particular, based on his personal knowledge and information in this case.

(1) Kindly Refer to: Dr. Ali Barakat, Ibid, p. 23.

*** Disciplinary judge shall refuse / disqualify himself to decide upon a case based on an opinion of a third party or based on evidence fabricated by a litigant,** following the Absolute Evidence Theory adopted by the judge in substantiation of the case. He has full power to take any evidence and has the right to seek such available means as he deems most effective in proof; contrary to the Restrictive Evidence Theory that is adopted in civil cases. However, the Absolute Evidence Theory and the full power granted to the disciplinary judge in proof do not make him free from all restrictions and from applying all means to obtain evidence in substantiation of the case. The judge may not decide upon the case based on an opinion of a third party. Rather, he shall form this opinion when he is completely satisfied with the evidence, and he is not permitted to adjudicate on an opinion of third parties.

Of the restrictions of the disciplinary judge's role in forming his opinion is not to rely on the opinion of third parties. Rather, he shall derive from his opinion and satisfaction from such sources as derived by him out from the investigation of the case. For example, he may not base his ruling on such facts and documents of the present case.⁽¹⁾

In substantiation of the disciplinary case, the judge enjoys a positive and effective role. However, this role prohibits the judge from ruling and adjudicating the case based on an opinion of a third party. Therefore, as the role of the disciplinary judge reflects the main focus of proof in the case, his judgment and decision shall be based on his own opinion and satisfaction, not on opinions of third parties, even if this opinion was presented in the matter of another case different from that referred to him.

(1) Dr. Muhammad Majed Yaqout, Ibid. p. 1346.

This is unacceptable and cannot be relied upon. However, such reliance shall be based on the opinion of the judge himself, not the opinions of third parties.

This is concerning the judge's refusal to adjudicate based on the opinion of third parties. As for his refusal to render a ruling in the case based on such evidence that may be fabricated by a litigant, the main rule is that the litigant has the right to, indeed, he shall submit evidence for supporting his claims. The other litigant has the right to prove the opposite. However, such positivity is limited by the rule that the litigant may not fabricate evidence for himself to support his claims.⁽¹⁾

In the Evidence Law, it is established rules that it is not permissible for the litigant to fabricate evidence for himself against his opponent. This represents a rule imposed by legal reasoning and dictated by justice considerations, and it is no more than an application of a fundamental rule in jurisprudence, namely: "The same person cannot be an opponent and an arbitrator at the same time."⁽²⁾

Based on the foregoing, the role of the disciplinary judge lies and appears in this case by seeking the source of such evidence presented to him in substantiation of the case by either party, and whether it is legitimate or illegitimate. If the judge is in the opinion that this evidence is made by either litigant to the case, then he shall reject it and set it aside, and not rely thereupon. This is in the application of the rule that the judge shall disqualify himself from ruling based on evidence made by either litigant as evidence against the other litigant.

(1) Dr. Osama Shawqi Al-Meligy - Employment of Outputs of Advanced Scientific Techniques and its Impact on The Rules of Civil Evidence - Dar Al Nahda Al Arabia- 2000

(2) Dr. Ali Barakat - Ibid, p. 49.

Therefore, litigants to the disciplinary case may not, for example, prepare a new accounting book to include data on his own, nor sign it in order to use it as evidence for him in the case. Here comes the role of the disciplinary judge, who shall reject this evidence completely; as it was made by either litigant, as it is logical that it is not permissible for a litigant to fabricate evidence for himself. The role of the judge is to examine this evidence, whether it is legitimate or made by the litigant; otherwise, each litigant would fabricate evidence for himself in support of his claims or rights. Thus, this constitutes prejudice to rights and adversely affects the positive role of the disciplinary judge in substantiation of the disciplinary case.

It should be noted that the role of the disciplinary judge in substantiation of the case is a positive one, featured by full power in order to reach evidence strengthening his satisfaction before rendering his ruling. However, of the restrictions that shall be taken into account while exercising this role, is that the disciplinary judge shall refrain from deciding upon the case if he knows that such evidence presented to him was fabricated by either litigant for themselves. The judge, in this case, shall reject this evidence, set it aside, and form his opinion based on any other evidence in the case.

Second Principle: Satisfaction of Judge:

One of the established principles in the disciplinary system, as in criminal justice, is that the judge is free to form his opinion and satisfaction. This means that the judge has full power to derive his satisfaction out of any such evidence that he is satisfied with out of the evidence presented in the case, while the formation of opinion is not limited by any other evidence unless the law

provides otherwise.⁽¹⁾

The principle of judicial satisfaction implies that the judge is free to accept all evidence presented by the parties to the case, as there is no evidence to be prohibited by the law to be accepted in advance. He may set aside any such evidence with which he is not satisfied; as there is no evidence imposed on him. Thereafter, he has full discretion in weighing each piece of evidence separately, and has the power to match all the evidence, and reach the logical conclusion from this combined and supportive evidence, which constitutes his opinion of innocence or conviction of the defendant.⁽²⁾

In this context, the principle of judicial satisfaction, its idea and essence, lies in such power granted to the judge to take any evidence as he deems important, necessary, and powerful; up to the opinion formation. Here, the judge is free to set aside any evidence or means that is not satisfied with. His authority lies in the weight and determination of each piece of evidence and the extent of usefulness and feasibility in substantiation of the case.⁽³⁾

In this regard, the Supreme Administrative Court provides that: "The disciplinary judge has the complete and sole authority in substantiation of the case. He is not bound by specific means of proof while having the sole power to determine such means of proof as acceptable to him, and such evidence as he is satisfied with according to the circumstances of the case before him. He may rely on whatever he deems important, base his opinion on his satisfaction, and neglects whatever he sees as in doubt to him,

(1) Dr. Tharwat Abdel-Aal Ahmed - Disciplinary Accountability Procedures for University Faculty Members - Dar Misr Publishing and Distribution - n.d., p. 283.

(2) Dr. Mahmoud Najib Hosni - Jurisdiction and Evidence in the Criminal Procedures Law - Dar Al Nahda Al Arabia- 1992 - p. 60.

(3) Declerc (Raoul) la prevue en matiere penale Bruxelles 1988 p. 44..

for rendering his judgment. The satisfaction of the disciplinary judge is the basis for his judgment without taking into account the precedence of means or instruments of proof.⁽¹⁾

The principle of the satisfaction of the judge means the authority to be satisfied with any evidence in substantiation of the case, so he can take certain evidence and set aside the other without restrictions. His satisfaction then comes based on the adoption of the Absolute Evidence Theory as adopted in the disciplinary evidence. For example, a judge may not be bound by a specific evidence fort, unless there are certain cases provided for by law, in this case, he shall abide by them.

The power of the criminal judge which, for example, lies in his weighing of the evidence presented to him, implies that he is free to take such evidence as he deems that he can rely thereupon, and to derive sources of satisfaction out from any evidence without considering by another evidence. Accordingly, the principle of judicial satisfaction, in this sense, falls within the scope of the principle of the power of substantiation of the case, being the regulator of the Evidence System in criminal matters in general.⁽²⁾

Accordingly, the role of the disciplinary judge, under this principle, depends on the power of this judge to be satisfied with any evidence and refute it with another; as the formation of the judge's opinion stems from his own decision.

This principle is considered of the most important forms and results of the Absolute Evidence Theory, which grants the judge full power to form an opinion based on whatever he sees appropriate

(1) See: Ruling of the Administrative Court in Appeal No. 3063 of 31 J - Hearing on February 20, 1988; Modern Administrative Encyclopedia, Part 219.

(2) Dr. Khaled Hamad - Judicial Persuasion in the Field of Weighting of Criminal Evidence - Research Journal for Humanities and Social Sciences - Studies and Research Center, 130.

without being bound by specific evidence or following a specified route as prescribed by law.

The principle is the basis on which the judge exercises his power to take any route or any evidence he deems appropriate and influential in deciding the case. The judge's freedom in substantiation of the case as well as his role, which is featured by flexibility and sole discretion, and taking evidence and setting aside the other, is based on the principle of judicial satisfaction, which has the most significant role in adjudicating the dispute brought before him.

However, this principle does not entail that the judge is in control of everything, in order to avoid falling over, and then he becomes in control of all matters. As mentioned above, the judge is not permitted to render a ruling as per his desires or passion, or rely on a primitive method in his thought of the matter. He shall examine the accuracy by following the precise rationale in such thinking that led him to whatever he is satisfied with. The role of the disciplinary judge in proof, based on the principle of judicial satisfaction, requires the observance of sound logic and further reflection; in order for his satisfaction to be based on grounds that lead to the desired result. However, this principle does not mean that the judge shall exercise his power in substantiation of the case in any way he deems fit, but rather it shall be appropriate, logical, and more reasonable. The judicial control leads the disciplinary judge to a result that may be completely different if logic and reason are observed.

The reason for this principle lies in that it corresponds with ordinary and logical thinking in ordinary life and scientific research. People would not limit their thinking to specific evidence, rather, they

derive the truth from any evidence. This principle ensures that the judicial truth does depart from the actual truth.⁽¹⁾

This principle, the judicial satisfaction, implies that the ruling of establishing the facts that form the crime and attributing them to an accused depends on the satisfaction of the judge where the legislator did not dictate a specific authority of the evidence, by granting the judge absolute power to weight the submitted evidence, to weight the evidentiary strength for each evidence, under the facts and circumstances of the case. He has the authority to ensure correspondence between the submitted evidence and to draw reasoning from this combined and supportive evidence, which constitutes his opinion of innocence or conviction of the defendant.⁽²⁾

In criminal cases, the criminal judge concludes the elements of his satisfaction from any evidence. However, this evidence shall be legitimate and has been brought and discussed before the judge. For the judge to be satisfied, the legislator obliged the judge to be based on logic and reasoning. With these requirements, describing satisfaction of freedom becomes a questionable matter, especially since the restrictions, controls, or exceptions that limit the power of the judge to form his opinion and satisfaction may be dictated by considerations related to protecting the defendant's right to defense or the desire to suppress such control that causes excessive satisfaction of the results of this principle.⁽³⁾

The principle of judicial satisfaction of the disciplinary judge is the fertile ground for which the judge practices his duty without being limited to taking a specific route or guided by specific

(1) Dr. Mahmoud Naguib Hosni, *Ibid*, p. 62.

(2) Dr. Hassan Rabie, *Ibid*, p. 149.

(3) Dr. Khaled Hamad, *Ibid*, p. 131

evidence imposed on him. Rather, he may consider all the routes and evidence available to him to form his opinion. However, such satisfaction with this evidence shall be legitimate; that it is not based on judicial control; and that this satisfaction is based on logic, sound reasoning, and the normal course of matters.

Under this principle, the role of the judge implies that if the judge is free to be satisfied and has the power to derive his opinion from any evidence as concluded by his conscience, then this satisfaction shall be based on logic and sound reasoning away from personal desires. Also, the satisfaction with evidence resulting from the case shall be without any dictation by the legislator to follow a specific route for arriving at the truth or a specific authority as dictated by the evidence.⁽¹⁾

The effect of applying the principle of judicial satisfaction and the judge's power to form his opinion based on his satisfaction with the disciplinary field, and as adopted by the Supreme Administrative Court: "The disciplinary judge can derive his opinion from such evidence with which he is fully satisfied, and set aside suspicious evidence. For example, he may take part of the testimony and neglect the others, may take the statement of a witness at any stage of the investigation and may reject the request for expertise if he contented himself with forming his opinion and satisfaction with the proven facts."⁽²⁾

Accordingly, under the disciplinary system, one of the most important results of this principle is that the role played by the disciplinary judge is reflected in his authority to accept all evidence to substantiate any fact to be considered important in the case,

(1) Dr. Idris Jamal - Defendant's Contribution to Supporting Evidence of Innocence - Journal of Legal Studies - Al Bassira Center Research, Consultation and Educational Services - p. 145.

(2) Dr. Tharwat Abdel Aal, Ibid, p 285.

so he cannot be contested by that evidence is not derived by his satisfaction or opinion therefrom. He has the full authority to exclude any evidence in which he is not satisfied. That is, there is no evidence to be imposed on him to derive his opinion therefrom. Thus, the disciplinary judge is completely free and has absolute authority, provided that he shall observe the applicable legal rules and principles.

In this regard, consideration shall be given to an important issue and a rule followed in the disciplinary system, is that for convicting of an accused, it is sufficient that the court will be reasonably satisfied that the accused, the employee, put himself under suspicion, even if the disciplinary court has not yet established the violation against him in a certain manner that does not hold any suspicion or presumption that he committed these disgraceful acts.

The importance of this issue and the rule is reflected in the case in which an employee is accused of committing a criminal offense, upon which this employee is referred to the Public Prosecution, then it turns out that this accused is innocent of these charges. In this case, under the disciplinary system, the role of the disciplinary judge in satisfaction differs.

In such a case, the disciplinary court is not adhered to the criminal judgment of acquittal, except for the judgment of acquittal, as the incident has not occurred. The court then has the right to prosecute the accused, not for the incident in which doubts in proof were made against him and then he was acquitted, but for the disciplinary violation arose from this incident, by putting himself under suspicion, and that he was criminally accused of committing the same. This is because as this suspicion would

lead the employee to be surrounded by suspicions that adversely affect his career. Hence, this employee is considered to have violated his duty, on the one hand, and, on the other hand, committed a disciplinary violation of another type, being not that violation surrounded by doubts against him. From this point, here comes the role of the judge in the satisfaction under the disciplinary system.⁽¹⁾

Accordingly, it can be said that the role of the disciplinary judge in the proof is subject to the principle of judicial satisfaction, which is an opinion mainly based on personal reasons that are valid for the judge, but are not valid for third parties. Hence, this explains the sufficiency of the majority in rendering a ruling, but it becomes superior, in terms of integrity, over objective evidence bringing him closer to certainty. However, it is not a certainty of his integrity over causation and acceptance. Causation is more a personal matter which cannot be featured by strict certainty.⁽²⁾

While the judge's certainty shall be based on rationally admissible evidence, and if the judge is free to form his opinion and to elect such evidence that he is satisfied with, this is conditional on that the judge's conclusion of the truth of the incident and the relevant evidence fall within the requirements of reasoning and sound logic of matters.⁽³⁾

Given the foregoing, we conclude that the role of the disciplinary judge in substantiation under the disciplinary judge, is exercised freely and that his role is reflected in free duty more than any other judge. This is occurred under the Absolute Evidence Theory

(1) See: Dr. Tharwat Abdel-Aal Ahmed - Disciplinary Accountability Procedures for University Faculty Members - Dar Misr Publishing and Distribution - n.d., p. 286.

(2) Dr. Khaled Hamad, Ibid, p. 132.

(3) Dr. Ramzy Riad Awad - The Authority of the Criminal Judge in Weighing the Evidence, Dar Al Nahda Al Arabia - 2004 - p. 28.

in the disciplinary system, in which the disciplinary judge has a significant, positive and active role in accepting any evidence, setting aside any evidence, and deriving the judgment from any such evidence or route available to him; arriving a correct judgment in the case by virtue of sound logic and informed opinion.

However, the judge's disciplinary role in the substantiation of the case is not free from any restrictions. Rather, he shall exercise his role, by observing two principles, i.e. The judge's impartiality and the judicial satisfaction, as previously explained. These two principles guide the disciplinary judge in the exercise of his positive and effective role in the substantiation of the disciplinary case.

The Second Topic

The Role of Disciplinary Judge in Seeking Evidence and his Authority towards them

The basic principle governing evidence in civil provisions is absolute equality between the parties to the litigation. This means that they share the burden of proof and denial between them with the same means as determined by the law. For the judge, he stands between them in a negative position in terms of examination and seeking evidence, so that his role would be limited to balancing the evidence presented by the litigants in the case, and then deciding on in favor any of the party who holds the most conclusive and positive evidence.⁽¹⁾

Nevertheless, this principle cannot be found in disciplinary matters and articles; as the two litigants to the disciplinary case

(1) Dr. Hassan Rabie - The Role of the Criminal Judge in Evidence - A Comparative Study - Dar Al Nahda Al Arabia - Fourth Edition - n.d. p. 45.

are the administration (plaintiff) and the employee (defendant). In this case, the burden of proof is based on the presumption that a person should be presumed innocent unless and until proven guilty. Accordingly, the role of the disciplinary judge in the disciplinary case is completely different from that of the civil judge in the civil case, in terms that each of them has the authority to seek evidence himself. As in the disciplinary case, the disciplinary judge has the right to seek evidence up to the substantiation of the case. This role is positive then. However, for the civil judge, this role is completely different in the matter of seeking evidence, so he is not permitted to do so, and, then, he does not have a positive role as that played by the disciplinary judge. Rather, his role in terms of proof is negative and limited to just weighting the submitted evidence, while he does not bear the role of seeking evidence himself.

Thus, the role of the disciplinary judge in seeking evidence is made available to him as permitted by law, based on the positive role played by the disciplinary judge in establishing evidence in the case.

The First Requirement

The Role of Disciplinary Judge in Seeking Evidence

The role of a disciplinary judge differs from that of a civil judge, due to such principle as adopted by each of them in rendering judgments. The civil judge bases his judgment on such evidence presented by the litigants in the case as permitted by law. However, the disciplinary judge decides upon the case based on his own satisfaction. As the law permits the disciplinary judge to select out from all such means whatever he deems as leading to justice, by revealing the truth that concerns the community. This imposes

on the judge a positive role in seeking evidence by which he can reach that truth and then announce it in his judgment. ⁽¹⁾

The disciplinary judge is not limited, for example, to the results of the investigation he ordered to be conducted. However, if the judge's weighing of evidence is featured by freedom, this does not mean that it is a discretionary weighing of evidence. The position of the disciplinary judge in substantiation of the case enjoys an investigative authority enabling him to determine the elements that constitute his satisfaction with complete freedom. This is such freedom that gives the investigative meaning to the investigative nature of the proceedings before the disciplinary judiciary.⁽²⁾

It is established and agreed that the disciplinary judge follows the Absolute Evidence Theory in substantiation of the disciplinary case. This Theory goes in alignment with the disciplinary system, on which the legislator did not enact provisions for disciplinary proof. This makes the disciplinary judge free to take or not take any evidence and to form his opinion. Not only that, but rather, he may seek evidence by which he can reach the truth. Therefore, the role of the disciplinary judge in seeking the truth requires him to seek evidence that leads to arriving at the truth. All of this comes as a result of the Absolute Evidence Theory.

The administrative judge has the full, independent and absolute authority to seek any evidence, while he is not subject to the desires and motions of the parties to the case. The impartiality of the administrative judge does not imply passivity; as he may deviate from the desires and intentions of the parties. And while the administrative judge retains the authority to weigh the evidence

(1) Kindly Refer to: Dr. Hassan Rabie, Ibid, p 47.

(2) Kindly Refer to: Judge / Jihad Safa - Research in Administrative Law - Al-Halabi Human Rights Publications, 1st Edition, 2009, p. 76.

submitted by the parties, he has the full right, absolute discretion and authority to order investigation procedures. ⁽¹⁾

The truth sought by the criminal judge is the factual truth as well as the goal of the criminal action, which is criminalization based on right and legitimacy. It requires the criminal judge to practice a positive and active role in the pursuit of the truth. While this role seems to be clear and tangible, given the nature of the task undertaken by the authorities handling the criminal action, this role appears clearer and more prominent in rendering the judgment, as the criminal judge is the one who administers the criminal action.⁽²⁾

The above-mentioned regarding the criminal judiciary shall also apply to the disciplinary judiciary based on that the two judiciaries take into account the Absolute Evidence Theory and the right of the judge to form his opinion with no conditions or restrictions. The truth sought by the disciplinary judge represents the factual truth, the aim of which is to criminalize the violations committed based on the duties and prohibitions, imposed on the employee. Therefore, the disciplinary judge has the right to reach the truth by personally seeking evidence that is useful in the case.

The right of the State to punish an employee for breaching and violating his job duties depends on proving the occurrence of these breaches and violations against him, by following certain procedures to prove this violation. Therefore, the disciplinary judge shall exert all efforts to reach the truth about the case and to decide on its subject, with a judgment that is most close to truth and justice, whether by conviction or innocence. In seeking

(1) chales debbasch : contentieux administrative , jean- claude ricci , cit , op ,p535.

(2) Dr. Muhammad Zaki Abu Amer - Evidence in Criminal Provisions - Al Fania Printing and Publishing - n.d. p. 98.

the truth, the disciplinary judge may not, as the civil judge, stand on balancing between the arguments of the two litigants to the dispute, to give weight one over the other. Rather, the disciplinary judge shall exert every effort to investigate the truth of the crime in every manner leading to this truth.⁽¹⁾

The administrative judge is not bound by a specific means of evidence, but rather has full power to seek and weigh the means of evidence, which is an inspection feature held to the administrative judge in general. It allows him to trace and verify the allegations of the parties. It, thus, extends the range of the judge's satisfaction and subjects it under his oversight, as well his assessment of the seriousness of such the means as provided by the parties, seeking to establish the right in the dispute. Hence, he can move from a codified proof system to an absolute evidence system with the aim of rebalancing between the parties to the case. ⁽²⁾

The above-mentioned role is in contrast to that of the civil judge, who is bound by a specific codified legal system in matters of evidence. On the contrary, the disciplinary judge follows the principle of freedom of proof without restrictions or conditions. The reason for this lies in the nature of the litigation in the disciplinary case, which always brings together two disparate and unequal parties, namely: The administration (the strong party) and the employee (the weak party). Accordingly, the disciplinary judge needs to be granted full power to seek evidence that helps reveal the truth in such various means as he deems relevant to the truth.

To enable the judge to exercise his role in seeking and weighing evidence, if he deems that the adjudication in the case requires

(1) Kindly Refer to: Dr. Hassan Rabie, Ibid,p 80.

(2) Ihsan bin Daoud - The Principle of Freedom of Evidence before the Administrative Court - Al-Manara Journal Legal and Administrative Studies - Special Issue - p. 82.

specific evidence, then he shall investigate the same as long as possible, no matter was the defendant's behavior on this evidence. As the investigation of incriminating evidence in the disciplinary case shall not be conditional on the will of the defendant in the case.

However, if the judge neglects the evidence on the grounds that the defendants did not insist on it without providing the reasons indicating that the case is no longer lacking in that evidence, then his ruling is void and shall be appealed.⁽¹⁾ If the disciplinary judge deems that in order for him to be satisfied that there is evidence that shall be investigated or examined in the case, then he shall consider the same. In doing this, he may not take the opinion of the defendant(s) unless the judge affirms and clarifies that this evidence is actually unproductive in the case.

The disciplinary judge, in order to seek and investigate the evidence that is useful in the case, means that he is granted extensive powers to search for such means and evidence, no matter was their source, reflecting the Absolute Evidence Theory that prevails in this type of cases and supporting his positive role in the case in such a manner that far exceeds that of the civil judge.⁽²⁾

The administrative judge in general and the disciplinary judge, in particular, are granted significant and independent powers when seeking substantiation of the case. In practicing these powers, they are not subject to desires and motions of the parties but rather he has the right to deviate from them.⁽³⁾ They shall not be satisfied

(1) Kindly Refer to: Dr. Muhammad Zaki Abu Amer, Ibid, p. 99

(2) Dr. Youssef Bin Dani - Independence of Rules of Evidence in Administrative Law from Theory of Evidence in Private Law - Institute of Legal and Administrative Sciences - Law Journal - p. 172.

(3) Charles debbasch jean-claude ricci : contentieux administrative cit p 533.

with such evidence submitted by the litigants to the case but shall play a positive and effective role in seeking the truth and gathering such evidence corresponding therewith and complementing any deficiency in such evidence that was discussed before him and in the presence of the litigants. This is because the trial is the last chance to review the evidence and handle anything that arose out by the investigation authority.⁽¹⁾

The disciplinary judge, while considering the case, and in order to seek evidence that benefits and affects the reveal of the truth, shall investigate himself in the incident, as he may not be satisfied with such investigations that have been conducted, aiming at arriving at the truth. As the court is considered the last resort that shall be enabled to seek, search, investigate for evidence that affects the substantiation of the case and reveals the truth. On the other hand, the judge is not bound by the actions of the litigants in the case.

Thus, the role of the disciplinary judge in seeking such evidence that is useful in substantiation of the case becomes evident in that he shall - on his own and by his duties- whether or not requested by the parties to the case, investigate himself in every evidence required to decide the case, as a material defense or dictated by the facts and supported on a prima facie basis. If this evidence cannot be investigated before the court, it shall delegate one of its members or another judge to do the same. While the court may not have the right to remand the case to the investigation authority, it must conduct all proceedings itself. ⁽²⁾

(1) Kindly refer to: Dr. Hassan Rabie, Ibid, p. 80.

(2) Kindly Refer to: Dr. Muhammad Zaki Abu Amer - Evidence in Criminal Provisions - Al Fania Printing and Publishing - n.d. p. 101.

Therefore, the disciplinary judge, represented in the authority invested upon him to seek such evidence leading to the truth, finds the basis in the principle of judicial satisfaction upon which the disciplinary evidence is based. This principle makes the judge free to take any way leading him to the truth, while the law did not limit him doing in anything, and granted him the full authority to opt from all such means that he deems leading to the truth, even if such means imply that he will seek evidence to reveal the truth, wherever this evidence is found. In this regard, the sole observer on the disciplinary judge his conscience.

In short, the disciplinary judge is not bound by a specific way to reach the truth. Rather, he has the right to search for and seek such evidence that is beneficial in revealing the truth, without being prohibited by law. This is what characterizes the disciplinary judge from the civil judge, and makes it different, as the latter has not been granted the power to seek and search for evidence, and he cannot do the same. Indeed, as his role is limited to examining the submitted evidence, he may take whatever he deems as arriving the truth, and may set aside the other. On the contrary, the disciplinary judge is permitted to play his role in seeking and searching for evidence, without being bound by o a specific way. This is what characterizes the role of the disciplinary judge in substantiation of the case.

The Second Requirement

The Judge's Authority over such Evidence Examined and Sought by him

The disciplinary judge adopts the Absolute Evidence Theory, under which he has the full power of proof, whether by accepting or rejecting the evidence submitted in the substantiation of the case. He has full freedom and authority to form his belief and opinion by being satisfied with or setting aside this evidence. Also, he has the right to seek evidence and up to arriving the truth. This authority and role, reflected in seeking the evidence, are completely different from that of the civil judge in the civil action.

The disciplinary judge must search for such evidence he deems useful in substantiation of the case, where he does not find a way otherwise. Such an obligation grants the judge full authority to practice his right towards this evidence, whether by accepting it and considering it as strong and decisive evidence in settling the dispute or by setting it aside after examining it and considering it as weak evidence that does not constitute useful evidence in revealing the truth in the case. The judge, when searching for evidence and then taking it, is the sole one who, by virtue of his satisfaction and conviction, weights the evidence in terms of its strength and influence in substantiation of the case.

In addition, the disciplinary judge, if a case of a breach of conduct against an employee by virtue of his position is referred to him, shall search and investigate evidence that helps him reveal the truth. If the case evidence relates to papers, there may be papers that have not been submitted by either litigant, or they addressed them. However, the judge, by searching for evidence, may discover that such lack of papers - as he may see - is useful

in revealing the truth, so he seeks them and examines them, then informs the litigants of them. He has the full authority to the weight of evidence brought by searching by the judge. Also, he has the full authority to consider it strong evidence in helping him reach the truth, as well as the authority to set them aside and not rely thereupon.

While the factual truth is the resort sought by the disciplinary judge in his positive role in proof, this truth itself represents the judge's satisfaction, as it constitutes its essence and entity, whether that truth was in conviction or innocence. This is because that the content of conviction represents such conclusion reached by the judge on the grounds that the entity of such satisfaction consists of material facts that are proven to the judge, and establish whether the accused is responsible or not.⁽¹⁾

If the judge has the authority - in order to prove the disciplinary case - to search for and weigh the evidence that is beneficial in revealing the truth, then it is a fortiori that he has full authority towards it, so he may consider it or set it aside. The reason for this lies in the fact that his authority stems from his authority and role in the search for and seeking the evidence. Thus, if the judge has the right to search for evidence, he also has the right to exercise his full authority towards this evidence that he searched for and concluded as well, so his satisfaction stems from his conscience and weighting of such evidence regarding its strength and authenticity to reveal the truth.

It is evident that the extent of the judge's commitment to searching for credible evidence that helps him reveal the truth and his authority towards it in terms of showing the extent of its strength and influence in proof, or setting it aside and searching for other evidence that helps in seeking truth.

(1) Dr. Khaled Hamad, Ibid, pg. 137.

The judge cannot be satisfied with such evidence as submitted by the litigants, but rather, he shall play a positive role in searching for the evidence, exercising his authority towards it, and weighting thereof for its extent, strength and legitimacy. Thus, the judge may not be bound by searching for and collecting evidence to expedite the trial, but rather, he shall weigh the evidence, practice his authority towards it, and examine it to ensure its authenticity. This may prevent him from seeing the clear way to arrive at the truth in which it is equal to be in favor of the accusation or favor of the accused. If the prompt justice is a great advantage, then not being hasty is a greater advantage, so that no one will recourse to the judiciary to obtain a judgment without being provided with reasons for true conviction, after calm discussions and free and equal argument by everyone who has a legitimate right in this judgment.⁽¹⁾

Accordingly, the judge's authority to search for and accept evidence and practice his authority towards it, by acceptance or dismissal, is supported by the implementation of the principle of judicial satisfaction, which is the necessary conclusion for it. As a result, the judge has full authority to decide upon the means of evidence, and direct his investigations as per such requirements as he deems fit with a sound sense of the present case.⁽²⁾

Under the authority granted to the disciplinary judge in carrying out his role in the search for evidence and such means that are useful for substantiation of the case and revealing the truth, he shall practice his authority towards this evidence. He has the right

(1) Kindly Refer to: Dr. Hassan Rabie - The Role of the Criminal Judge in Evidence - Dar Al Nahda Al Arabia- Fourth Edition - n.d., p. 87

(2) Dr. Adel Mastari - The Role of Criminal Judge in light of Principle of Judicial Satisfaction - Journal of the Legal Forum - Fifth Issue, 2008 - p. 187 - Faculty of Law and Political Science, University of Mohamed Khider Biskra

to examine, review and investigate such evidence in all such ways as he considers appropriate; reaching certainty that this evidence is strong and is more useful than other evidence in revealing the truth.

The point of the disciplinary trial is reflected in the conviction of the judge based on such evidence submitted to him, whether such evidence as by submitted the litigants or such submitted that he searched for and reached. Therefore, no other evidence cannot be imposed on the judge, as the latter has the full authority to take evidence over another, without any hierarchy or sequence among the means of proof in the disciplinary articles.

However, the authority of the disciplinary judge towards such evidence for which he searched and found is not absolute. However, they are limited by the validity of this evidence that he found by searching for it. The evidence found by the judge shall be lawful evidence so that the judge can exercise his power; especially if this is evidence stems from his point of view and will be useful in revealing the truth. Thus, the validity of the evidence is required so it will not become illegal or invalid, and, then, all findings of search and/ investigation are deemed null and void.

The basis of the disciplinary judge's commitment to the legality of the evidence, whether they are submitted by the litigants or came as results of the judge's search, lies in that discipline is in the public office, albeit it aims in achieving efficiency in administrative duties and ensuring the functioning of public utilities. However, it is mainly based on achieving a guarantee for the employee regarding such disciplinary measures against him. Therefore, the judge may not apply any disciplinary sanctions against the defendant except through such legitimate procedures in which

the guarantees established by law are secured. This does not prevent the evidence from being glaring and almost pronounced against the accused as long as such evidence is suspicious, and the source thereof is not featured by integrity and adherence to the law.⁽¹⁾

Based on the foregoing, the disciplinary judge's authority towards such evidence he concluded by searching is considered an absolute authority that is bound only to legality. The evidence, as well as such means of obtaining it, shall be then considered legitimate, in terms of accepting it or setting it aside. This falls at the core of the judge's authority towards the evidence. No one can dictate to him any requirements or instructions, so the formation of his satisfaction with and weighting the evidence is an inherent authority invested in him. No one participates in such authority or prevents him from practicing it, or places restrictions or requirements on him. Nevertheless, within the scope of exercising such authority, the judge shall take into consideration the legality of disciplinary evidence, whether it was submitted by the litigants or came as a result of the judge's search. Otherwise, his authority over such evidence is considered absolute by acceptance or dismissal, or the weighting of the evidence and the strength thereof.

(1) Dr. Tharwat Abdel-Aal Ahmed - Disciplinary Accountability Procedures for University Faculty Members - Dar

Misr Publishing and Distribution - n.d., p. 290.

Results :

1 - The Judge has a sole power to employ all means of proof; to find out and reveal the truth. Eventually, he will render his rulings by his satisfaction as per the circumstances of each action respectively

2 - the disciplinary judge's role in evidence is not limited to the provisions of the law, whether or not it is related to the applied disciplinary procedures, or such general procedures applied before the trial courts. Rather, his role, in this area, features an extensive power in adopting such means as he deems - in his opinion- appropriate and useful in proving the case, without being adhered to any rules or procedures.

3 - the role of the disciplinary judge in substantiation of the case is governed by certain general principles or rules that shall be adhered to in proof, no matter was the type of the case under consideration; civil, criminal, or disciplinary :

First Principle: Principle of Judge's Impartiality

Second Principle: Satisfaction of Judge

4 - The administrative judge has the full, independent and absolute authority to seek any evidence, while he is not subject to the desires and motions of the parties to the case. The impartiality of the administrative judge does not imply passivity; as he may deviate from the desires and intentions of the parties. And while the administrative judge retains the authority to weigh the evidence submitted by the parties, he has the full right, absolute discretion and authority to order investigation procedures.

5 - The point of the disciplinary trial is reflected in the conviction of the judge based on such evidence submitted to him, whether such evidence as by submitted the litigants or such submitted that he searched for and reached. Therefore, no other evidence cannot be imposed on the judge, as the latter has the full authority to take evidence over another, without any hierarchy or sequence among the means of proof in the disciplinary articles.

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Limitations and Role of disciplinary Judge in Evidentiary Process

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Abstract

The disciplinary judge's task differs from the mission of the civil judge; This is due to the principle that each of them adheres to in its judiciary; The civil judge builds his ruling on the evidence submitted by the opponents in the lawsuit as defined by the law, but the disciplinary judge rules in the lawsuit according to what is convinced of it, and his conscience is reassured about; The law has opened the door to the disciplinary judge wide, chooses from all ways what he deems to achieve justice, by revealing the truth that concerns the entire society, and this imposes on the judge a positive role in the field of excavating the evidence according to which he can reach that fact and declare it in wisdom

Key words

Limitations – Judge - Evidentiary – Disciplinary – Positive role

حدود ودور القاضى التأديبى فى الإثبات

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الملخص

إن مهمة القاضي التأديبي تختلف عن مهمة القاضي المدني، ويرجع هذا إلى المبدأ الذي يلتزم به كل منهما فى قضائه؛ فالقاضي المدني يبني حكمه على الأدلة المقدمة من الخصوم فى الدعوى كما حددها القانون، بيد أن القاضي التأديبي يحكم فى الدعوى وفقاً لما يقتنع به، ويطمئن إليه ضميره؛ فالقانون قد فتح الباب أمام القاضي التأديبي على مصراعيه، يختار من كل الطرق ما يراه موصلاً إلى تحقيق العدالة، وذلك بالكشف عن الحقيقة التي تهتم المجتمع بأسره، وهذا يفرض على القاضي دوراً إيجابياً فى مجال التنقيب عن الأدلة التي يستطيع بمقتضاها الوصول إلى تلك الحقيقة وإعلانها فى حكمه.

الكلمات المفتاحية:

حدود - القاضي - الدعوى - التأديب - الدور الإيجابي .