
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

DISCIPLINARY PROCEEDINGS- Vasavi LS¹**ABSTRACT:**

Labour Laws, mainly dealing with the Employer-Employee Relations, with numerous laws, is also a vast law of statutes consisting of several rules and regulations. Even though it has grown creatively and abundantly over several years, there is a lack of one fundamental aspect: there is no well-defined, understandable disciplinary system (modus operandi). When an action is to be taken against a wrong-doing employee, each employer follows his own interpretations of the misconducts stated in the statutes and gives punishments after an enquiry is made, if necessary, as he deems fit according to the circumstances. The employer has his idea of discipline and, accordingly, a particular method of its enforcement. Since there are no uniform laws regarding the same in the private sector, the Central Legislature, known as, the Industrial Employment (Standing Orders) Act, 1946, has framed the Model Standing Orders which laid down domestic Enquiry. The Factories have to follow this model Standing Orders mandatorily but can make changes according to their convenience (Factory's facts and circumstances). The notion behind conducting the inquiry is to safeguard the industrial employee's job, i.e., job security. Hence, the employer has to substantiate the disciplinary action he intends to take action against an employee by holding a domestic enquiry in a fair, reasonable, and just manner. Domestic Enquiry is predominantly based on the Principles of Natural Justice. This paper mainly deals with the Factories as employers and how the domestic enquiry takes place in the Factories and the disciplinary proceedings in Industrial Relations with real-life case studies.

Keywords: *Industry, Domestic Enquiry, Inquiry, Factory, Enquiry Officer, Preliminary Investigation, Disciplinary Proceedings, Enquiry Report, Findings, Employer-Employee Relations, Standing Orders, Industrial Disputes.*

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INTRODUCTION:

An organization is established with a clear and definite outline to achieve an objective/goal of growth in the industry, demanding many resources. The Factory's primary sources are man-power, money, materials, and the combination of procedures performed by the apparatus. The most important is the man-power, who can think and draw decisions. As organizations require more workforce, people of different backgrounds, social life, mindsets, and thinking processes apply and work together as inter-connected forces to achieve the aim. It is likely expected that there would be scope for conflicts between them. To mitigate the risk involved, the organization/employers frame specific rules accepted as the code of conduct. They have to be followed by all their employees mandatorily—failing which, they would be punished under a well-defined procedure established by the organization, usually known as the Disciplinary Proceedings. The Code of Conduct of each organization is framed based on the Model Standing Orders or Certified Standing Orders enacted by the Central Government.²

These Standing Orders are based on the Principles of Natural Justice, which mainly provides for:

1. *Audi Alterem Partem* – **Hear the Other party.**
2. *Nemo Judex in causa sua* – **No one can be a judge in his own Cause.**³

Article 311 of the Constitution of India provides that "No person holding a civil post shall be dismissed, removed, compulsorily retired or reduced in rank, unless an inquiry is held and is given a reasonable opportunity of being heard in respect of the charges levelled against him."⁴

The Human Resource (HR) is the crucial component of an organization, which exploits other organization resources to achieve the organizational objectives. The Human Resource Department (HRD) aims to get the best outcomes out of human resources available at the organization. For this achievement, the department has several sub-divisions, such as Training & Development, Grievance Handling, Performance Appraisal, Career Planning, etc. One of the sub-systems of HRD is the system of Reward and punishment. It is essential that every organization, regardless of its being a government or semi-government or private, should have a well-established reward and punishment system to guarantee to attain the organizational

² S. L. Dwivedi, "Industrial Disputes Act- 1947", Labour Law Agency, 1997.

³ Muthuswamy and Brinda, "Manual on Disciplinary Proceedings", Swamy Publishers P. Ltd., IX ed. 2003.

⁴ INDIAN CONST.Art. 311 cl. 2.

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objectives through the people's work.⁵

The two structures followed in any organization, reward and punishment, are to assure employees to work better, accomplish the organizational goals, and forestall employees from working against the organizational objectives, respectively. Misconduct or non-compliant behavior can usually be tackled by counselling, warning, etc. In extreme cases, for example, criminal breach of trust, theft, fraud, etc., which fall under India's penal provisions, the employer has the freedom to proceed against the employee. Nevertheless, such proceedings are time-consuming and necessitate a higher degree of proof. Adding to the above option, the employer can deal with the wrong-doing employee within the terms of employment. In such a possibility, a worker might be awarded any penalty, which varies from the letter of discontentment to the dismissal from service, i.e., termination of the employer-employee relationship.⁶

Earlier, the common law notion was that the employer could hire and fire the employees as he wishes. As time passed, this notion has gone. At present, the employer has to follow the rules. He can inflict punishments only after following some statutory provisions depending upon the type and nature of the Organizations [Government, Semi-governmental Organizations(PSUs, societies and other bodies controlled by the Government) and Private Entities, etc.]⁷

Some of the Statutory Provisions available of the Organizations in India are:

1. Part XIV of the Constitution (Art. 308-323) – terms of employment of servants appointed for the State affairs.
2. The Central Civil Services (Classification, Control and Appeal) Rules, 1965.
3. An organization's own set of rules comply with the regulations laid out by the Government.
4. Various Industrial and Labour Laws such as the Industrial Disputes Act, 1947, Factories Act, 1948 and Model Standing Orders, etc.

WHAT IS MISCONDUCT?

The word 'misconduct' is defined neither in the Industrial Disputes Act, 1947 nor in Industrial Employment (Standing Orders) Act, 1946. It is usually described as "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful

⁵ Ruth Mayhew, *Six Main functions of a Human Resource Department*, SMALL BUSINESS, <https://smallbusiness.chron.com/six-main-functions-human-resource-department-60693.html>; (June 26, 2018), (accessed on 31/10/2020).

⁶ Id.

⁷ Administrative Vigilance, Institute of Secretariat Training and Management (Publications).

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behavior, willful in character, improper or wrong behavior" ⁸. In other words, it is any unlawful conduct on the part of a person concerned in the administration of justice that is prejudicial to the rights of parties or the right determination of the cause.⁹

There are various kinds of misconducts:

- Absent Without Leave for less than six days.
- Late Coming.
- Lingering or chit-chatting in the department during working hours.
- Failure to wear a specified uniform.
- Negligence of duties or neglect of work.

These acts and omissions caused by employees are minor misconducts. The punishments can be through warnings, fines, passing remarks in their service records, recovery of loss of goods from the concerned workman, and deducting the damages caused to the organization from the workman's wages.¹⁰

- Willful disobedience or non-compliance of any lawful order of a superior.
- Abetment, instigation, or inciting for doing Legal strikes.
- Causing an adverse change in the employer's business/property through Theft, dishonesty, or fraud.
- In the course of employment, if the employees are seen as taking bribes, giving it to others, or any illegal gratification.
- Habitual non-attendance without leave for more than ten straight days or overstaying the sanctioned leave without sufficient grounds.
- Persistent failure to comply with any standing order or any rule relevant to the establishment. Habitual neglect of work or habitual negligence.
- In the employer's establishment premises, the employee engages himself/herself in some other trade.
- Causing disturbance on the premises of the establishment by indecent behavior, causing riots, or through drunkenness.
- Damaging any property of the establishment, willfully. Or stopping any work in progress activities on the premises.

⁸ Black's Law Dictionary, 2nd ed.

⁹ Black's Law Dictionary, 2nd ed., <https://thelawdictionary.org/misconduct/>. (accessed on 31/10/2020).

¹⁰ Peer Mohd. Sarkar, *Misconduct and Disciplinary Action*, CITE HR, <https://www.citehr.com/54381-misconduct-disciplinary-action-pdf-download.html>, (accessed on 31/10/2020).

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- Any Union related matters, like promoting for the membership or funds inside the premises.
- Any leakage of information regarding the processes adopted by the establishment of unauthorized personnel.
- Doing illegal activities, like gambling, inside the premises.
- Smoking or sputtering in the prohibited areas of the establishment.
- The employee has failed to adhere to the notified safety instructions or mishandling the safety devices.¹¹

When an employee is found guilty of major misconduct, the penalties imposed are warnings, demoting, prohibit them from promotion, dismissal, suspending from work, fine. It can also lead to asking them to vacate the company's quarters, withholding their increment, or any other punishment, any other which the manager may deem fit.

DOMESTIC ENQUIRY:

The word "Domestic", derived from the Latin word 'Domus' (house), has an adjective meaning, 'belonging to the house' or 'relating to internal affairs' or 'private'. Enquiry (inquiry) means 'making investigation/ examination of facts/principles' or 'searching/seeking information by asking questions' or 'asking what, whether, how, why, etc. It also means 'search for truth'.¹² Accordingly, in the framework of Industrial Management, ' domestic enquiry' means management's search for truth or otherwise of facts/circumstances or allegations/charges alleged by it against its employees.¹³

This is not a judicial enquiry, but a quasi-judicial one, where the reason is to find out the truth behind the allegations made against the employee/worker. Here, the Enquiry Officer acts as the presiding authority, where the Accused workman is known as the Charge Sheeted Employee (CSE). The presenting Officer is known as the Prosecutor/Management Representative (MR).

The rationale behind this enquiry is of two bases: firstly, to give a reasonable opportunity to the CSE to prove his innocence; secondly, the employer gets a chance to assess the merits from the findings and the evidence produced in the case, for him to derive an inference regarding the guilt of the CSE and later to decide punishment to be imposed.

Even though the proceedings are based on Criminal Trial, i.e., Evidence' rules, the Principles of

¹¹ id at 9.

¹² Shodhganga, *Domestic Enquiry vis-a-vis Industrial Relations*, Shodhganga, http://shodhganga.inflibnet.ac.in/bitstream/10603/66023/18/18_chapter%204.pdf, (accessed on 01/11/2020).

¹³Id.

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Natural Justice and fair play have to be followed. This is the last chance given to CSE to prove his innocence or lose his job.

PRINCIPLES OF NATURAL JUSTICE (PNJ):

The word is derived from the expression 'jus naturale', meaning – justice that comes to a person naturally or part of his nature.

In India, a common-law country, PNJ is slightly different from England. Article 21 of the Constitution provides that no man shall be deprived of liberty and life except according to the procedure established by Law.¹⁴ For a law/rule enacted by any organization, to be valid and not void, it should be according to the Principles of Natural Justice.

In A K Kraipak's case, the Supreme Court has observed that "Rules of natural justice aim to secure justice or to put it negatively, to prevent the miscarriage of justice. These rules can operate only in areas not covered by any law."¹⁵ In other words, PNJ is not to supersede the law but to supplement the Law. If the procedure established by law doesn't expressly or impliedly provide for PNJ, it is void.

1. **Audi Alterem Partem – (*Hear the Other party*)** – the CSE should be given a reasonable opportunity to be heard. It should be followed throughout the proceedings, from the beginning till the end.
2. **Nemo Judex in Causa Sua – (*No one can be a judge in his Own Cause*)** –the Disciplinary Authority and the Inquiring Authority should be unbiased. The Enquiry Officer should act in all honesty and good faith (PNJ), contrary to which the decisions/findings are liable to be quashed.

This principle is also known as Rule against Bias, where the Authority will be disqualified from giving his findings as a judge from the case because of the bias. The Biases can be of three types: Personal (personal/professional relationship), Pecuniary (financial interest), and Official Bias (subject-matter/departmental).

3. The order given by the Management Authority should be a **Speaking Order**, nothing less. Speaking Order contains the reasons as to how the Authority reached the conclusions. From this order, it can be ascertained whether the authority has considered the evidence laid before him. In *Bhagat Raja v. Union of India*, it was held that if the

¹⁴ INDIAN CONST.Art. 21.

¹⁵ A K Kraipak v. Union of India, decided on 29th April 1969.

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authority does not provide any reason in its order, then it goes against the elementary requirements of a quasi-judicial process, thus becoming void.¹⁶

4. The authority's decision should be in **good faith**, that is, justice should not be served, but it should manifestly appear to be served.

This principle is an extension of the second principle of 'no-one can be a judge in his own cause'. This principle implies that the authority has given due consideration to the facts and evidence presented during the trial or enquiry and has concluded impartially and without any bias. The PNJ is introduced into the disciplinary proceedings by Article 311 of the Constitution. This requires an unbiased/impartial authority appointment, which would be the Enquiry Officer in the present scenario.

The essential requirements of Natural Justice have been gathered in the case of *G. Gabriel v, State of Madras*: "All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards";

- a. The CSE must be given a fair and reasonable opportunity to defend himself.
- b. The person who has been assigned the duty of holding the inquiry must carry-out the responsibility exclusive of biasness and absolutely without vindictiveness.
- c. The Enquiry Officer must conduct himself impartially and dispassionately, not only during the procedural stage of the inquiry, but also in dealing with the evidence and the material on record and drawing up the final order.
- d. The conclusion must be awarded based on the evidence and not on the matter outside the records, which means that it shouldn't be found on the evidence's misreading.¹⁷

DISCIPLINARY PROCEEDINGS IN INDUSTRIAL RELATIONS:

The Disciplinary Proceedings includes the following steps:

A. PRELIMINARY INVESTIGATION (PI):

This is also known as fact-finding enquiry. It is customary, not mandatory, to have a Preliminary Investigation regarding the allegations raised in a complaint (by his superior or other workmen) against a workman, to understand prima facie whether formal proceedings are required. The PI is conducted only to know whether there are sufficient materials against the workman and frame charges. It is done for the Employer and PI's satisfaction when he is

¹⁶ Bhagat Raja v. Union of India, (1967 SCP 302).

¹⁷ G. Gabriel v. State of Madras, (1959) 2 MLJ 15 (Mad HC).

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satisfied that punishment should be inflicted on the employee.

The PI starts by raising a complaint. The statements recorded during the same are not a part of the regular enquiry unless the Management submits the same during the enquiry proceedings. If the witnesses' statements of the PI differ from the final enquiry, then they can be questioned regarding the same by the Enquiry Officer.¹⁸

B. CHARGE AND CHARGE-SHEET:

The Domestic Enquiry starts when the Charge-sheet or Show-cause-notice is issued to the workman, containing the details relating to the allegations of the misconduct made against him. It also includes the date, time of the commission, and relevant clause of the Organization's Standing order for that misconduct. This is issued for the offending employee to submit his explanations regarding the allegations against him.

a. The Standing Orders of the organization is basically the rules governing the Employees of an Organization. It also provides the method in which Charge-sheet is issued to the workman, and prescribes the procedure to be followed subsequently.

b. The Employee must explain within the time specified in the Charge-sheet, which is sent to him personally. If he refuses or is absent, it is sent to his permanent and local address through a registered post, attested by two witnesses. Even then, if it is not accepted, it should be published in a local newspaper, either in English or the local language, as it is not sufficient to display it only on the organization's notice board.¹⁹ If the Management has any documents against CSE, it can supply the same along with the Charge-sheet.

C. SUSPENSION PENDING ENQUIRY:

According to the severity of charges, an employee might be suspended alongside the serving of charge-sheet. The circumstances where the suspension can be issued are:

- a. When a disciplinary proceeding is pending or contemplated.
- b. Where the case in respect of any criminal offence is under investigation, inquiry, or trial.
- c. His continuance in office will prejudice investigation/ inquiry/trial or to the security of the state.
- d. When the presence of the employee in the office is likely to affect discipline.

¹⁸ Ramanathan. S, *Misconduct, Disciplinary proceedings and Punishment*, Jour. I, Lab. I. C. 1992.

¹⁹ Bata Shoe Co. pvt. Ltd. v. Ganguly, (1961-1-LLJ, 303, SC).

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- e. Where a prima facie case has been established due to criminal or departmental proceedings leading to the conviction, revival, dismissal, etc.
- f. Acts of misconduct: Moral Turpitude; Corruption; embezzlement; serious negligence in duty resulting in loss; Desertion of duty; Refusal or failure to carry out written orders.

The suspended worker is to be paid subsistence allowance equal to one-half of his wages for the first ninety days of suspension and three-fourths of the wages for the remaining period of suspensions if there is a delay in the completion of disciplinary proceedings, which is not due to the worker's own conduct.²⁰

D. EXPLANATION BY THE EMPLOYEE:

After the charge-sheet is served to the accused workman, he must explain the allegations to the Authority. His reply should consist of either admitting the charges and pleading guilty; or denying the accusations. He can also ask for more time for the explanation after examining the documents that own the Organization. Sometimes, he may not submit the explanation, which leads to the management taking proper steps to hold an enquiry.

If the misconduct is minor and he is pleading guilty, the management need-not hold a detailed enquiry. He can be awarded either a warning or a small suspension. If the misconduct is severe or mentions that the allegations are baseless, false, or biased, a proper enquiry must be made. If he is making a bona fide request for an extension, it might be allowed to avoid future complications.

E. APPOINTMENT OF ENQUIRY OFFICER (EO):

After considering the accused's explanation or when no explanation is given if the management desires to hold an enquiry, appoint an EO by sending him a formal letter. He can be an Official of the Organization or an Outsider, but he should be unbiased, a person of high integrity and moral values; he must be impartial towards the parties, i.e., should have no interest in the matter.

F. NOTICE OF ENQUIRY:

Once the EO is appointed, he must send notice to all parties, i.e., the management and the CSE asking them to be present during the period of enquiry along with the witnesses, if there are any. This Notice consists of the parties' names, date, place, and time of the enquiry. The time and date vary from case to case according to the facts and circumstances.

²⁰ Section 10-A, Industrial Employment (Standing Orders) Act, 1946.

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The EO should give sufficient time to the CSE to prepare his defence and collecting evidence, which can be used during the Enquiry.²¹

G. THE MANAGEMENT REPRESENTATIVE (MR):

Notice is sent to an official of the Organization to represent the Management in leading the case, and he also has the right to examine CSE and his witnesses, if any.

According to the Organization's Standing Orders, the CSE can be represented by his co-worker or himself for defending the case. The EO, not the management, decides the representation by a co-worker on behalf of the accused. The procedure is such that the CSE also has to be presented for the enquiry. If he refuses to take part in the enquiry or doesn't report even after the notice is being served on him or withdraws himself from the enquiry, the enquiry may proceed as ex-parte. The courts have held that, if the EO is a practicing lawyer or legally trained personnel; CSE is given an unlimited opportunity to represent his case through a lawyer.²²

H. SUPPLYING ALL THE RELEVANT DOCUMENTS:

As mentioned earlier, during the serving of the charge-sheet itself, the management has to supply all the documents available to the CSE. Suppose the Management has obtained any materials/documents after the charge-sheet is served. In that case, it should supply the same to CSE before relying on those documents as proofs during the enquiry. This is because the CSE, who has to answer the accusation/charge, should also know the evidence that the accusation is supported.²³

I. WITNESSES:

There is no provision under employment laws regarding the EO compelling the witnesses' attendance under the Civil Procedure or Criminal Procedure, unlike the adjudicating authorities, who are empowered to make the witnesses' attendance as a Civil Court under Civil Procedure Code.²⁴

The domestic enquiry rationale is to determine whether the CSE commits the misconduct or not before inflicting punishment on him. The MR has to prove the misconduct by submitting oral or documentary evidence before the EO. Whereas, CSE has to prove that he has not committed the alleged misconduct by cross-examining the evidence brought by the MR or by leading his own evidence to rebut the evidence of MR. Both the parties are given

²¹ Markandey Katju, *Domestic Enquiry*, page 22, 1st ed, 1975.

²² Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranth Nodkarni, 1983 SCR (1) 828; Bharath Electronics Ltd v. K Kasi, ILR 1987 KAR 366.

²³ Meenglass Tea Estate v. workmen, 1964 SCR (2) 165.

²⁴ Section 11(3)(a) of Industrial Disputes Act.

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reasonable opportunities to produce such evidence, either documentary or oral, which they consider essential for proving their arguments. If either of the parties rejects to do the same, the EO is not to be blamed, alleging that the enquiry rendered was unfair/biased.

- a. The ordinary enquiry is not sufficient to fulfil the requirements of Natural Justice's principles in employment law. For the proper fulfilment of PNJ, the CSE has to be allowed to defend himself along with a fair chance to refute the evidence/witnesses brought forth by MR. Suppose the CSE denies the allegation against him. In that case, the burden of proof lies on the management to prove the misconduct and allow the CSE to cross-examine the MR witnesses and an opportunity to examine himself and adduce any evidence that might support his plea.²⁵
- b. If any of the EO findings are based solely on the other employees' report without making it available for cross-examination would be void due to the violation of the rules of PNJ.²⁶

J. ENQUIRY:

An enquiry is considered to be appropriately held if (i) the employee proceeded against has been informed clearly of the charges levelled against him; (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges; (iii) the employee is given a fair opportunity to question witnesses including himself in his defence if he so wishes on any relevant matter and (iv) the enquiry officer records his findings with the reason for the same in his report.²⁷

- a. The Disciplinary Proceedings and Criminal Proceedings are entirely distinct and different jurisdictional areas. In the case of Disciplinary Proceedings, the question is whether the wrongdoer is guilty of the misconduct, which would lead to his discharge or dismissal from service or a lesser punishment. In case of criminal proceedings, whether any offence committed under criminal law, such as Indian Penal Code, Prevention of Corruption Act, or any other penal statute is established and what sentence would be imposed upon him. Therefore, if there is an acquittal in the criminal proceedings, the disciplinary proceedings will still not be barred, as those two are independent of each other.

²⁵ Tata engineering and Locomotive Co. Ltd. vs. S.C. Prasad, (1969) 3 SCC 372.

²⁶ State of Mysore v. Shivabasappa Shivappa, (1964) ILLJ 693 Kant.

²⁷ Sur enamel and Stamping works v. Its workman, AIR 1963 SC 1914.

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- b. It is the EO's discretion to grant or refuse the adjournments, and the mere fact that he refused to adjourn would not void the enquiry. The question of whether CSE was denied reasonable opportunity by refusing to adjourn depends on the facts and circumstances of each case. Suppose it prima facie appears that there is a failure of PNJ from a rejection of the adjournment by the EO. In that case, it is considered to introduce an element of disability in the enquiry.²⁸
- c. When a worker refuses to participate in the inquiry or withdraws from the inquiry proceedings, it is the EO's duty/obligation to complete the inquiry by taking all the evidence ex-parte to find out whether the charges have been proved or not. After the conclusion of the proceedings, EO should submit his findings to the Disciplinary Authority. The Authority must send a copy of the results to the CSE and ask for his explanation. If the CSE explains, the same should be taken-into-account, and then an appropriate order should be passed by the Authority under the law.²⁹

K. ENQUIRY OFFICER'S REPORT:

The Enquiry report is an essential document of the whole disciplinary enquiry. If the charges against CSE are proved, it leads to deprivation of his livelihood and attaches stigma/dishonor to his character in his record. Hence, the findings should indicate the application of the EO's mind to the pleadings and the proofs produced before him by the parties. As the report is a quasi-judicial one, it must contain reasons for the conclusions arrived and cannot be *ipse dixit* (declaration without proof) of the enquiry officer.

- a. The report consists of brief facts of the case, whether PNJ rules are followed, the parties' arguments, the witnesses and their cross-examinations; the brief understanding of the parties' evidence, and the EO's Findings and the reasons regarding the same.
- b. The report, without any reasons stated, would be of less value. The evidence need not be a direct one; circumstantial evidence is also sufficient unless it satisfies the test of preponderance of probabilities. The approach used by the EO is of importance, from which the Authority would decide the punishment. Failing to find the approach would make it impossible for the Authority to take proper disciplinary action against the wrongdoer.³⁰

²⁸ J.K. Cotton Spinning & Weaving Co. Ltd. v. Its Workmen, 1965 (II) LLJ 153 (SC);
Management of Eastern Electric and Trading Co. v. Baldev Lal, AIR 1975 SC 1892.

²⁹ Imperial Tobacco Co. of India Ltd. v. Its workmen, AIR 1962 SC 1348.

³⁰ Anil Kumar v. The Presiding Officer, Labour Court, Punjab, AIR 1985 SC 1121.

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L. PUNISHMENT:

This is the last stage in the proceedings. This stage starts after Authority has received EO's findings, a copy of which is served to the CSE asking for his explanation and receiving the explanation, if any. Considering the severity of the misconduct and the mitigating circumstances, and any other factors relevant to the case, the Disciplinary Authority decides the quantum of punishment to be imposed on the CSE. The sentence should be proportional to the severity of the misconduct.³¹

The punishments which the Authority can impose, in an industrial law area, are:

- a. Warning.
- b. Fine.
- c. Withholding of his Increment.
- d. Demotion.
- e. Suspension.
- f. Discharge.
- g. Dismissal from Service.

The legal position of 'Report of the EO' was discussed *Union of India v. HC Goel*³²; *A.N. D'Silva v. Union of India*³³. The reasons were that EO acts as a delegate of that factory. The aim of the enquiry is to check the proofs and decide the charges. The EO findings are binding on the employer, as he is the final authority to decide.

THE FOLLOWING PROCEDURE IS FOLLOWED DURING THE ENQUIRY (THE STEPS IN BRIEF):

1. As per PNJ, the enquiry will be held in the presence of the parties concerned. No outsider other than the parties concerned will be allowed to participate in the Enquiry.
2. Usually, the enquiry will be conducted on the date mentioned in the charge sheet. However, on the request of either party, the Enquiry Officer (EO), at his own discretion, may adjourn/postpone, and further date and time will be given.
3. The concerned parties should make it a point to be present during the Enquiry, in time as per the schedule.
4. The Enquiry Proceedings will be recorded in English and explained in the language understood by the Charge sheeted employee (CSE) or Co-Employee (CE), if necessary.
5. The EO will record the proceedings in English, either by his hand, typed by him, or typed by the typist to dictate the EO.

³¹ Management of Federation Indian Chambers of Commerce and Industry v. R.K. Mittal, 1972 AIR 763.

³² Union of India v. H.C. Goel, AIR 1964 SC 364.

³³ A.N. D'Silva v. Union of India, AIR 1962 SC 1130.

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6. At the end of the day's proceedings, the same will be read out, if necessary, translated and explained in the language understood by CSE/CE. After this, all the parties concerned for the proceedings will sign the proceedings, in token of acknowledgement.
7. In case of production of documents, the parties should be so by placing two copies to facilitate handing over copy to the opposite party duly certified and marked exhibits.
8. The documents produced by the Management Representative (MR) will be marked as Exhibit ME-1, ME-2, etc., and those produced by the CSE will be marked as Exhibit DE-1, DE-2, etc.
9. The MR will present his case first by producing the Management Witnesses first, and MR will complete examination-in-chief. After completion of the same, CSE/CE can subject the witness to Cross-examination.
10. When all the MR witnesses are exhausted, and he closes his evidence. The CSE can present his case by producing the witnesses, referred to as Defence Witnesses (DW), after which the MR will cross-examine the DWs.
11. During the Cross-examination, no irrelevant questions will be put. In case of a dispute, the EO will hear both the parties and finally dispose of it.
12. After both parties present their witnesses and complete the evidence, an opportunity will be given to argue the case. They may do so either orally, and the EO will record the same. In case the MR wishes to file written arguments, MR will file the same, and a copy of the same is provided to CSE/CE. In case the CSE/CE wants to file written arguments, it will be only after the receipt of the MR's written statements and reasonable time is provided to file his written arguments in the enquiry.

CASE STUDIES:

Due to the Confidentiality Agreement entered into with the Factory, the parties' names, including the Factory's name, are not disclosed.

CSE – Charge-sheeted Employee. MR – Management Representative. EO – Enquiry Officer.

FSO – Factory Standing Orders. XYZ – Factory Name. DA – Disciplinary Authority.

1. **Facts:** Mr B (CSE), a general worker, works in the Shipping Dept. of the XYZ factory. While unloading the goods, he caused damage to the rack. Mr J, the supervisor, asked all the workers, specifically Mr B, who denied the same. Mr J, while going through the

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available evidence, i.e., unloading pick list, came to know Mr B was allotted to do the same. The following day, when asked, Mr B accepted the same and threatened him in Kannada for spreading rumors about him despite him agreeing to the fault. Then, CSE took the High-Reach Truck and showed how the damage had occurred by damaging another rack.

Issues:

Cl. 21.2(k) – drunkenness/riotous behavior during the working hours inside the premises.

Cl. 21.2(o) – willful breakage/damage to the property of the Factory.

Cl. 21.2(u) – threatening/intimidating any other employee/worker.

Findings of the EO: CSE should have voluntarily disclosed it immediately after the damage was caused, where he didn't. This proves that he has the habit of hiding the facts from higher authorities to avoid disciplinary action. He was guilty of all three charges.

The DA awarded the CSE a punishment of 14 days suspension.

- Facts:** The normal practice at a Factory's security point is the employees' physical search to ensure that they don't carry/steal anything related to the Factory. Mr T (CSE) was found to be in wrongful possession of the items, which were later seized. When the Preliminary Enquiry was made, he accepted that he carried, but not steal it.

Issue: Cl. 21.2 (d) of FSO – Theft, fraud connected with the company's business or property, he was charged.

Findings: both the parties were given reasonable opportunities to present their cases. CSE himself admitted that he had taken the items out negligently, i.e., committed theft, which amounts to grave misconduct. As per the arguments done by both the parties, it can be concluded that the items were not concealed by the CSE, as it could be easily located. As there is an element of Intention, the CSE is found guilty.

The DA awarded the CSE 3 days of suspension.

- Facts:** Mr F (CSE) was on the night shift. On the day of the incident, he was not allotted any work. The workers weren't supposed to sleep during the working hours as they were provided with restrooms to rest—the Asst. Security Officer (ASO), while doing rounds, found CSE sleeping near the machinery. During the preliminary enquiry, he admitted that he was asleep.

Issue: Cl. 21.2(y) of FSO – sleeping while on duty, he was charged.

Findings: The contention of CSE, that he was forced to mock-play for a photograph to

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show awareness to others cannot be taken into account, as that is the duty of the EHS Dept., which looks after all the safety measures of a factory. If posters were to be made, circulars/notices would be sent across for the same. CSE was fully aware of the same, as he worked in the factory for the past 28 years. He should have reported the same to the HR or EHS Dept., but CSE didn't do it. And he has admitted the charges during the preliminary enquiry. The said story was the afterthought of CSE to escape disciplinary proceedings. He is found guilty.

CSE was awarded two days of suspension for the grave act of misconduct under the FSO.

CONCLUSION:

The Domestic Enquiry, an evidential analysis, plays a vital role in the Industrial Relations System. In this fast-moving and developing market economy, as it is observed that the law is not without loopholes, the employer may victimize/harass the employee in the façade of disciplinary action by delaying the adjudications pointing out all its lacunas. It is to be comprehended that domestic proceedings' crucial objectives are to establish or derive inference whether punishment should or should not be awarded to an employee. About the industrial relations, Domestic Enquiry plays the role of an Alternative Dispute Resolution to resolve the grievances between the employer and employee.

Even though there may not be any provision/rule to the effect of applying Principles of Natural Justice, they apply to domestic inquiries. Natural justice principles are easy to assert, but their exact extent is far less effortless to define. The twin pillars of Principles of Natural Justice are the Right to be heard and the rule against bias. These rules are usually used in terms of 'Fairness' & 'Impartiality' respectively. These Principles are essential to guarantee justice to the workman whose conduct is being enquired into. Therefore, it is fundamental to understand their scope and extent and implications for the purpose of the domestic enquiry. We happen to crossways with new and different cases every day. Still, the fundamental composition about the mechanism assigned to hold a domestic inquiry and come to a decision remains the same. Hence, the employer ought to give appropriate consideration to this aspect of the disciplinary proceedings to avoid the downsides in this area.

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